FARGO CITY COMMISSION AGENDA
Monday, August 13, 2018 - 5:00 p.m.

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

A. Pledge of Allegiance.

B. Roll Call.

C. Approve Order of Agenda.

D. Minutes (Regular Meeting, July 30, 2018).

CONSENT AGENDA – APPROVE THE FOLLOWING:

1. Receive and file the following Ordinances:
   a. Amending Section 25-1513, of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages.
   b. Amending Section 01-0305, of Article 01-03 of Chapter 01 of the Fargo Municipal Code Relating to Classification of Ordinance Violations.

2. 2nd reading of the following Ordinances; 1st reading 7/30/18:
   a. Rezoning Certain Parcels of Land Lying in 19th Avenue Southwest Pond Addition.
   b. Rezoning Certain Parcels of Land Lying in Laverne's Addition.
   c. Rezoning Certain Parcels of Land Lying in Legacy I 2nd Addition.
   d. Rezoning Certain Parcels of Land Lying in 19th Avenue Northeast Pond Addition.
   e. Rezoning Certain Parcels of Land Lying in Grayland First Addition.

3. Settlement Agreement and Release with Gary M. and Susan D. Cavett.

4. Authorize the City Attorney to evaluate the collection of City Sales Tax in the wake of the Wayfair decision and to draft any Ordinance amendments, as may be appropriate, for consideration.

5. Receive and file General Fund – Budget to Actual through July 31, 2018 (unaudited).

6. Gaming Site Authorization:
   a. Metro Sports Foundation at the Scheels Arena.
   b. Fargo Youth Hockey Association at H.A. Thompson and Sons Arena.

7. Applications for Games of Chance:
   a. St. John Paul II Catholic Schools for a raffle on 4/27/19.
   b. Solberg Family Benefit for a raffle on 9/16/18; Public Spirited Resolution.
   c. YWCA Cass Clay for a raffle on 9/6/18.
   d. Fargo South High School for a calendar raffle from 8/24/18 to 9/28/18.
   e. Fargo South High School for a calendar raffle from 8/28/18 to 2/23/19.
   f. Fargo South High School for a calendar raffle from 12/7/18 to 2/5/19.
   g. Dakota Medical Foundation-Lend A Hand Up for a raffle and raffle board on 9/8/18.

h. Diamond in the Ruff Pet Rescue for a raffle and raffle board on 9/8/18.
i. El Zagal Escort Motor Patrol for a raffle on 10/1/18.
j. Fargo Air Museum for a raffle on 9/8/18.
k. Nativity Church of Fargo for bingo and a raffle on 11/4/18.

8. Bid award for Merchant Credit Card Processing (RFP18207).

9. Contract Extension with Duncan Solutions Company to December 31, 2018.

10. Parking Services Contract with Passport Labs Inc. until December 31, 2023 subject to final legal review.

11. Extension of the Class "A" Alcoholic Beverage License until February 28, 2019 for the Firebox.

12. Applications for property tax exemptions for improvements made to buildings:
a. Lisa Marie Wiley Artz, 1706 1st Street North (5 year).
b. Charlie J. and Desiree J. Wilson, 105 Woodland Drive North (5 year).
c. Roy V., Jr. and Lisa A. Sander, 3005 9th Street North (5 year).
d. Paul D. and Linda S. Kegel, 910 12th Street North (5 year).
e. BSAR Enterprises, 2308 Willow Road North (5 year).
f. Randy S. and Kendra Ball, 244 30th Avenue North (5 year).

13. Contract Agreement with Fargo Public Library to provide a breastfeeding friendly environment for their employees.

14. Contract Agreement with WeeKare ChildKare Center to provide a breastfeeding friendly environment for their employees.

15. Agreement for Services with Samantha Nienow.

16. Contract Agreement with Anchor Ingredients to provide a breastfeeding friendly environment for their employees.

17. Community Faculty Contract with UND School of Medicine and Health Sciences for medical school student training in the clinic

18. Bid award for 2019 spring tree order (RFP18240).

19. Resolution Approving Designating Signatory for HUD Environmental Reviews – Community Development Block Grant (CDBG) and Home Funds to Tia Braseth and Nicole Crutchfield.

20. Standard Form of Agreement with Western Specialty Contractors for parking facility restoration repairs.

21. Standard Form of Agreement with Shultz and Associates, Ltd. (RFQ18172).

22. Engineering Services Agreement Amendment No. 3 with HDR Engineering in the amount of $91,683.05 (Project No. FM-15-J0).

23. Receive and file the El Zagal Flood Mitigation Project update (Project No. FM-14-5).

24. Authorization of Engineering staff to secure appraisals and negotiate, the acquisition of 28 properties potentially affected by the 37-foot in-town project, with property owners wishing to sell in advance of the project authorization.

25. Three Access Easements (Street Easement), an Access Easement (Levee Easement) and a Utility Permit with Southeast Cass Water Resource District to support Laverne's Addition Plat.

26. Transit Public Comment Process on Fare/Service Changes.

27. Service Agreement Addendum 1 with DoubleMap, Inc. (TapRide) and Amendment to the Joint Powers Agreement for Transit Support with NDSU to extend the contract for the 2018/2019 school year.

28. Section 5310 Transit Grant Agreements with the ND Department of Transportation.

29. Bid advertisement for Filter-to-Waste Improvements at the Water Treatment Plant (Project No. WA1753).

30. Contract and bond for Project No. WA1854 (Valve Vault Improvements at Water Tower Nos. 4 and 9).

31. Bills.

32. Change Order No. 1 for an increase of $102,651.00 and time extension to 10/1/18 for Improvement District No. AN-17-G1.

33. Change Order No. 2 for an increase of $54,136.00 and No. 3 in the amount of -$17,480.00 for Improvement District No. NR-17-A1.

34. Change Order No. 1 for an increase of $41,200.00 for Improvement District No. NR-17-B.

35. Final Balancing Change Order No. 1 for an increase of $17,837.04 for Improvement District No. SL-16-A1.

36. Final Balancing Change Order No. 1 for an increase of $8,684.90 for Improvement District No. SL-16-B1.

37. Final Balancing Change Order No. 1 for an increase of $43.12 for Improvement District No. SL-17-F1.

38. Final Balancing Change Order No. 3 for an increase of $34,316.88 for Improvement District No. BR-16-C1.

39. Negative Final Balancing Change Order No. 1 in the amount of -$1,682.76 for Improvement District No. SL-17-E1.

40. Negative Final Balancing Change Order No. 1 in the amount of -$53.90 for Improvement District No. SL-17-G1.

41. Bid award for Improvement District No. SN-18-C2.

42. Create Improvement District Nos. FM-14-8 and NN-18-A.

REGULAR AGENDA:

43. Appointments to the Planning Commission.

44. Public Hearings - 5:15 pm:
    a. Black Mountain Addition (3149, 3151 and 3185 Main Avenue); approval recommended by the Planning Commission on 6/5/18:
        1. Zoning Change from GC, General Commercial to LI, Limited Industrial and P/I, Public and Institutional with a C-O Conditional Overlay and AG, Agricultural to P/I, Public and Institutional with a C-O, Conditional Overlay.
        2. 1st reading of rezoning Ordinance.
        3. Plat of Black Mountain Addition.

    b. Plat of Minnkota Section 16 First Subdivision a replat of Minnkota Section 16 Subdivision (5181 76th Avenue South); approval recommended by the Planning Commission on 5/1/18.

    c. Special assessment of nuisance abatement fees.

    d. Hearing on a dangerous building located at 427 15th Avenue South.

45. Resolution Authorizing the Issuance and Sale of $126,500,000.00 City of Fargo Sewer Revenue Bond, Series 2018A and Resolution Authorizing the Issuance and Sale of $20,229,000.00 City of Fargo Sewer Revenue Bond, Series 2018B.

46. Resolution Authorizing the Issuance and Sale of $23,950,000.00 City of Fargo Water Revenue Bond, Series 2018C.

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.

CITY OF Fargo

Office of the City Attorney

1a-6

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

August 3, 2018

Board of City Commissioners
City Hall
200 3rd Street North
Fargo, ND 58102

RE: FMC Articles 25-15 and 01-03 regarding Alcohol in Vehicles, Taxi Cab's and Selling/Consuming Alcohol in Public and Possessing/Consuming Alcohol in Public Building

Dear Commissioners:

I enclose for receive and file an ordinance that amends Articles 25-15 and 01-03. By amending § 25-1513 (A), and deleting § 25-1513 (F), the City will be consistent with state law regarding open containers in vehicles (a violation of § 8-0311 resulting in a $50.00 fine) and further recognizes the "taxi cab and chauffeured vehicle" exception in State law found at North Dakota Century Code § 39-08-18 (2). These changes are essentially ministerial in nature. Along these same lines, Police Chief David Todd is recommending a change in the nature of the offense for selling/consuming alcohol in public and in a public building. As you may recall, a number of years ago the offense of Urinating in Public was changed from a Class B misdemeanor to a non-criminal offense, resulting in a fine in the amount of $100. The proposed change to the penalty for consuming in public is consistent. Please note that failure to pay the fine may result in an Order to Show Cause resulting in an additional fine, not to exceed $1,500, or imprisonment for non-payment, or both (§ 01-0301 (E)). To effectuate this change, amended Articles 01-0305 (A)(1) and (C)(8) are presented for your approval.

SUGGESTED MOTION: I move to receive and file an Ordinance Amending Fargo Municipal Code Sections 25-1513 (A), 25-1513 (F) of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages, and an Ordinance Amending Fargo Municipal Code Sections 01-0305 (A)(1) and 01-0305 (C)(8) relating to penalties.

Regards,

Nancy J. Morris

Enclosures

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 25-1513, OF ARTICLE 25-15 OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE RELATING TO ALCOHOLIC BEVERAGES

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 25-1513 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby amended to read as follows:

A. It shall be unlawful for any person to sell or consume any alcoholic beverage ~~in any automobile, or~~ upon any street, alley or public highway, including any public sidewalk or boulevard, or on any private property without consent of the owner or occupant within the city of Fargo, except as permitted by subsection (J) of section 25-1509 of this chapter. It shall further be unlawful for any person to possess any bottle or receptacle containing any alcoholic beverage which has been opened or the contents of which have been partially consumed while such person is upon any street, alley or public highway, including any public sidewalk or boulevard, or upon property owned, operated or leased by the city of Fargo or by the state of North Dakota or any political subdivision or agency thereof, within the city of Fargo, except under a valid alcoholic beverages license issued under this article, and further except as permitted by 25-1509.1(C).

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

* * *

~~F. No driver of any taxicab operating or driving the same in the city of Fargo shall at any time possess, carry or have in such taxicab any alcoholic beverages except that such driver may accept for delivery to a customer from a dealer regularly licensed under the provisions of this article any package or packages thereof when such packages are wrapped and addressed and otherwise comply with subsection (E) above. Any police or other peace officer of the city shall have the right to enter and search any taxicab operating in the city under a license from said city or elsewhere at any time he may have reason to believe or suspect that the driver of such vehicle is violating the provisions hereof.~~

~~G~~F. No owner, operator, officer or employee or driver of any taxicab in the city of Fargo shall accept from any person, except a dealer regularly licensed under the provisions of this article, any order for the delivery of any alcoholic beverage.

Section 2. Penalty.

A person who violates this ordinance shall be deemed to have committed a non-criminal offense and shall pay a fee of $100.00 as provided in Section 01-0305(C) of the Fargo Municipal Code, as the same may be amended from time to time.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. Effective Date.

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

_____
Timothy J. Mahoney, Mayor

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 01-0305, OF ARTICLE 01-03 OF CHAPTER 01 OF THE FARGO MUNICIPAL CODE RELATING TO CLASSIFICATION OF ORDINANCE VIOLATIONS

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 01-0305 of Article 01-03 of Chapter 01 of the Fargo Municipal Code is hereby amended to read as follows:

A. Violations of the following ordinances are Class B misdemeanors, subject to punishment as provided in this article:

1. Section 1-0306(D) (failure to appear or post bond on a non-criminal, non-traffic offense), section 8-0305(A)(2) (fictitious registration), section 8-0305(A)(3) (lending registration plates), section 8-0308 (reproducing operator's or driver's license or permit), section 8-0309 (driving under suspension), section 8-0310 (driving under the influence), section 8-0314 (reckless driving), section 8-0320 (driving without liability insurance - $150.00 minimum fine), section 8-0803 (accidents involving damage to vehicle), section 8-0804 (duty to give information and render aid), section 8-0805 (duty upon striking fixture or other property), section 8-0809 (false

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

reports), section 10-0101 (minor using alcohol), 10-0104 (curfew), section 10-0201 (indecent exposure), section 10-0301 (disorderly conduct), section 10-0304 (carrying weapons), section 10-0317 (resisting police officer), section 10-0319 (incendiary devices), section 10-0320 (registration in schools), section 10-0321 (criminal mischief), section 10-0322 (harassment), section 10-0323 (simple assault), section 10-0324 (aiding and abetting), section 10-0601 (shoplifting), section 10-0602 (theft), section 10-0702 (order to disperse), section 10-0703 (tenant/owner cooperation required), sections 10-1202 (marijuana) and 10-1204 (marijuana paraphernalia), section 12-0117(C) and 12-0117(G) (potentially dangerous and dangerous dogs), section 13-0511 (removal of wastes), section 13-0513 (fee/permit for hauling waste), section 13-0529 (misuse of compost sites), article 13-13 (drug lab cleanup), chapter 17 (sewers and sewerage), article 18-09 (excavation code), 1 – 7 section 25-1509(A) (selling alcoholic beverage to minor), ~~section 25-1513(A) (selling/consuming alcohol in vehicle/public), section 25-1513(B) (possessing/consuming alcohol in public building),~~ section 25-1513(C) (minor misrepresenting age), and section 25-1513(D) (delivery of alcoholic beverage to minor), section 25-3302 (body art), section 25-3306 (body art unlawful practices); article 25-36 (tanning facilities).

* * * *

Section 2. Amendment.

Section 01-0305 of Article 01-03 of Chapter 01 of the Fargo Municipal Code is hereby amended to read as follows:

* * *

C. Violations of the following ordinances are noncriminal offenses and shall require payment of a fee as follows:

1. For a violation of the following ordinances, a fee of $5.00.
Section 8-1411 (bicyclist to obey traffic control devices), section 8-1412 (riders/passengers restricted), section 8-1413 (riding on roadway/bike paths-- restrictions), section 8-1414 (operate bicycle too fast for conditions), section 8-1416 (carrying packages-restrictions), section 8-

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1418 (riding bicycle on sidewalks-- restrictions), section 8-1419 (equipment on bicycles).

2. For a violation of the following ordinances, a fee of $20.00.
Section 8-0105 (driving wrong way on one-way street), section 8-0106 (obey temporary traffic sign/barrier), section 8-0113 (unlawful use of skates/coasters), section 8-0303(B) (parent/guardian allow unlicensed/under 16 to drive), section 8-0303(C) (owner allowing unlicensed/under 16 to drive), section 8-0304 (registration card to be carried in the driver's compartment-- inspection of card), section 8-0305(a)(1), section 8-0305(A)(4) (current registration required), section 8-0305(B) (current license required), section 8-0306 (violation of restricted license), section 8-0316 (permit unauthorized person to drive), section 8-0318 (operating motor vehicle on bicycle trail), section 8-0403 (disobey traffic control device (barricade)), section 8-0405 (traffic control signals), section 8-0406 (pedestrian-control signal), section 8-0407 (flashing signals), section 8-0411 (alter traffic or railroad sign), section 8-0412 (display unauthorized signs, signals or marking), section 8-0506 (impeding traffic), article 8-06 (regulating turning movements), section 8-0707 (pedestrian crossing street where prohibited), section 8-0709(A) (pedestrian walking in roadway), section 8-0710 (pedestrian soliciting rides or business), section 8-0712 (pedestrian obstructing traffic), section 8-0901 (fail to display flag/light rear of load), section 8-0902 (improper tires), section 8-0903 (improper horn), section 8-0904 (brakes required), section 8-0905 (mirrors required), section 8-0906 (obstructed vehicle windshield/windows), section 8-0907 (windshield wipers required), 8-0908 (mufflers/exhaust system required), section 8-0909 (leaking or loose load), section 8-0910 (lights/lamps fail to conform to state law), section 8-0911 (fail to display lighted lamps), section 8-0913 (illegal spotlights), section 8-0914 (improper towing connection), section 8-0915 (reflectors/taillight required on trailer), section 8-0916 (flashing lights prohibited), section 8-0917 (illegal light on vehicle), section 8-0919(A) (riding on exterior of vehicle), section 8-0919(B) (more passengers than capacity), section 8-0919 (C) (allow body to protrude from moving vehicle), section 8-0928 (modified suspension system), section 8-0929 (driving of vehicle in unsafe condition unlawful), section 8-1003 (A) thru (J) and (L) thru (S) (stopping, standing, parking prohibited in specific places), section 8-1010 (motor vehicle left unattended-- brakes to be set,

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

engine stopped, and keys removed), section 8-1011 (drive or park on private property), section 8-1013 (improper parking/obstructing traffic), section 8-1111 (vehicle required to stop at railroad crossing), section 8-1201 (following too closely), sections 8-1202 thru 8-1218(D) (general rules of the road), section 8-1301(A) (following fire apparatus), section 8-1301(B) (driving vehicle within block of fire apparatus), section 8-1301(C) (driving over fire hose), section 8-1301(D) (driving through/around barricade), section 8-1302 (driving through parade/funeral procession), section 8-1304 (failure to obtain parade permit), section 8-1305 (driving vehicle on sidewalk), section 8-1306 (improper backing), section 8-1307 (opening and closing vehicle doors), 8-1308 (helmet required-- operator/passenger), section 8-1309 (number of riders on motorcycle limited), section 8-1310 (clinging to a vehicle or allowing same), section 8-1311 (improper start of parked vehicle), section 8-1313 (unlawful riding on vehicle), section 8-1315 (unlawful towing), section 8-1316(A) (operating motor vehicle with view obstructed by load/passengers), section 8-1316(B) (passenger obstructing driver's view), section 8-1317 (coasting vehicle on downgrade prohibited), section 8-1318 (littering), section 8-1319 (unlawful operation of motor vehicle private property), section 8-1320(A) (operating snowmobile under 16 or allowing when prohibited), section 8-1320(B) (operating snowmobile in restricted area), section 8-1321 (use of seat belts required), section 8-1804(driving through school patrols), section 8-1902 (cruising prohibited), article 8-20 (motorized scooters).

3. For a violation of the following ordinance, a fee of $25.00.
Section 8-0931 (child restraint devices required), section 10-0103(B) (tobacco possession by minors prohibited).

4. For a violation of the following ordinances, a fee of $30.00.
Section 8-0301 (failure to have vehicle under control), section 8-03013 (careless driving), section 8-0501 (speed-care required).

5. For a violation of the following ordinances a fee of $40.00.
Section 8-1018 (taking on or discharging passengers), section 8-1403 (D) (failure to register/display license on bike), section 8-1415 (right-of-way emerging from alley or driveway), section 8-1417 (parking restriction), section 8-1420 (bicycles- age restrictions).

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

6. For a violation of the following ordinances, a fee of $50.00.
Section 8-0116 (failure to yield to emergency vehicle), section 8-0311 (open container), section 8-0317 (B)(2) (exhibition driving), section 8-0702 (fail yield right-of-way pedestrian), section 8-0801 (immediate notice of accident), section 8-1108 (A) (disobey signal of approaching train), section 8-1108 (B) (driving thru/around railroad crossing gate), section 8-1110 (disobey railroad stop sign), section 8-1218 (F) (unlawful passing of school bus), section 8-1218 (G) (unlawful proceeding past bus in oncoming lane), 8-1219 (use of motor vehicle), section 10-0311 (C) (panhandling within the city of Fargo).

7. For a violation of the following ordinances, a fee of $60.00.
Section 8-0505 (special speed limitation on bridges), section 8-0409 (traffic engineer to establish ad design public carrier stops and stands).

8. For a violation of the following ordinances, a fee of $100.00.
Section 8-0321 (use of a wireless communication device prohibited, section 8-1003(K) (parking in areas reserved handicap), section 8-0322 (Distracted Driving), section 10-0326 (urinating in public)~~.~~, section 25-1513(A) (selling/consuming alcohol in public), section 25-1513(B) (possessing/consuming alcohol in public building).

* * * *

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. Effective Date.

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

_____
Timothy J. Mahoney, Mayor

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

2a

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND LYING IN 19TH AVENUE SOUTHWEST POND ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in the proposed 19th Avenue Southwest Pond Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on June 5, 2018; and,

WHEREAS, the rezoning changes were approved by the City Commission on July 30, 2018,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot Two (2), Block One (1), 19th Avenue Southwest Pond Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "LI", Limited Industrial, District;

Section 2. The following described property:

Lot Three (3), Block One (1), 19th Avenue Southwest Pond Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "GI", General Industrial, District;

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. The following described property:

Lot One (1), Block One (1), 19th Avenue Southwest Pond Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "P/I", Public and Institutional, District with a "C-O", Conditional Overlay as follows:

- Restrict land uses to detention facilities and park/open space.

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

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

_____
Timothy J. Mahoney, Mayor

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

26

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PARCELS
OF LAND LYING IN LAVERNE'S ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

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

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on December 5, 2017; and,

WHEREAS, the rezoning changes were approved by the City Commission on July 30, 2018,

NOW, THEREFORE,

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

Section 1. The following described property:

Lots One (1), Two (2), and Four (4), Block One (1), Laverne's Addition to the City of Fargo, Cass County, North Dakota;

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

Section 2. The following described property:

Lot Three (3), Block One (1); Lots Five (5) through Thirteen (13), Block One (1); Lots One (1) through Seven (7), Block Two (2); Lots One (1) through Five (5), Block Three (3) and Lots One (1) through Four (4), Block Four (4), Laverne's Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "LI", Limited Industrial, District;

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

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

_____
Timothy J. Mahoney, Mayor

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN
PARCELS OF LAND LYING IN LEGACY I 2ND ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Legacy I 2nd Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on July 3, 2018; and,

WHEREAS, the rezoning changes were approved by the City Commission on July 30, 2018,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot Fourteen (14) less the following: Beginning at northeast corner of said Lot Fourteen (14); then south 22 degrees 36 minutes 35 seconds east, assumed bearing along the east line of said Lot Fourteen (14), a distance of 110.43 feet to southeast corner of said Lot Fourteen (14); then south 67 degrees 23 minutes 25 seconds west 23.07 feet along the south line of said Lot Fourteen (14); then southwesterly 18.59 feet along the south line of said Lot Fourteen (14) and along a tangential curve concave to the northwest having central angle of 05 degrees 19 minutes 32 second and a radius of 200.00 feet; then north 01 degrees 48 minutes 14 seconds west, not tangent to last described curve, 117.21 feet to the point of beginning and less the following: Beginning at the southwest corner of said Lot Fourteen (14); then north along the west lot line of said Lot Fourteen (14) to the northwest corner of said Lot Fourteen (14); then east along the north lot line of said Lot Fourteen (14) for a distance of 38.91 feet; then south 01 degrees 48 minutes 09 seconds east 119.45 feet to a point on the south lot line of said Lot Fourteen (14); then west along the south lot line of said Lot Fourteen (14) to the point of beginning, continuing 5727 square feet more or less,

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AND;

The east 9 feet of Lot Thirteen (13) and part of Lot Fourteen (14) described as follows: Beginning at the southwest corner of said Lot Fourteen (14); then north along the west lot line of said Lot Fourteen (14) to the northwest corner of said Lot Fourteen (14); then east along the north lot line of said Lot Fourteen (14) for a distance of 38.91 feet; then south 01 degrees 48 minutes 09 seconds east 119.45 feet to a point on the south lot line of said Lot Fourteen (14); then west along the south lot line of said Lot Fourteen (14) to the point of beginning, continuing 5727 square feet more or less, Block 3, Legacy I 2nd Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "MR-1", Multi-Dwelling Residential, District to "SR-5", Single-Dwelling Residential, District;

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

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

_____
Timothy J. Mahoney, Mayor

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2d

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND LYING IN 19TH AVENUE NORTHEAST POND ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in the proposed 19th Avenue Northeast Pond Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on June 5, 2018; and,

WHEREAS, the rezoning changes were approved by the City Commission on July 30, 2018,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot One (1), Block Three (3), 19th Avenue Northeast Pond Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "LI", Limited Industrial, District;

Section 2. The following described property:

Lot One (1), Block One (1) and Lot One (1), Block Two (2), 19th Avenue Northeast Pond Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "P/I", Public and Institutional, District with a "C-O", Conditional Overlay as follows:

- Restrict land uses to detention facilities and park/open space.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

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

_____
Timothy J. Mahoney, Mayor

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

2e

ORDINANCE NO. _____

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

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

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on July 3, 2018; and,

WHEREAS, the rezoning changes were approved by the City Commission on July 30, 2018,

NOW, THEREFORE,

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

Section 1. The following described property:

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

is hereby rezoned from "SR-3", Single-Dwelling Residential, District to "SR-4", Single-Dwelling Residential, District;

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

_____
Timothy J. Mahoney, Mayor

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

CITY OF Fargo

(3)

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

August 9, 2018

Board of City Commissioners
City Hall
200 North Third Street
Fargo, ND 58102

RE: Proposed Settlement—City of Fargo v. Cavett—4449 Oakcreek Drive South, Fargo

Dear Commissioners:

Enclosed is a proposed Settlement Agreement and Release between the city and Gary M. and Susan D. Cavett that is intended to resolve all the remaining disputed and open issues between the parties and to settle these disputes for an agreed-upon sum. It will also provide for a turn-over date for the Cavetts' property no later than October 15, 2018. As is indicated in the recitals of this Settlement Agreement, the Cass County District Court found that the city had established the required elements authorizing a "taking" under the state eminent domain statute and ordered the possession of the property be transferred to the city. The matter of compensation for the property was tried to a jury in June and the jury awarded $1,100,000 in compensation to the Cavetts. The city's obligation in eminent domain proceedings, in addition to such compensation included providing funds for meeting and relocation expenses, attorney's fees and other expenses. This all-in settlement amount of $1,210,000 will resolve all of such issues. For your reference, I am enclosing an aerial photograph depicting the existing levee and the location of the Cavett property. The acquisition of this property will allow the city to complete the levee project along drain #27.

SUGGESTED MOTION: I move to approve the Settlement Agreement and Release between the City of Fargo and Gary M. and Susan D. Cavett, as presented, and authorize the mayor and city auditor to execute the same.

Sincerely,

Erik R. Johnson

ERJ/lmw

Enclosures

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Settlement Agreement") is made and entered into by and between the **City of Fargo,** (hereinafter "City of Fargo"), a political subdivision of the State of North Dakota and its officers, members, employees and agents in their official capacities, and **Gary M. and Susan D. Cavett,** (hereinafter referred to as "Cavetts").

The above-named parties shall be collectively referred to as "the Parties."

RECITALS

A. The City of Fargo brought an eminent domain action by Complaint dated March 10, 2017 2016, in Cass County North Dakota, Case No. 09-2017-CV-00653.

B. The City is in the process of constructing permanent flood protection for multiple areas in the City of Fargo as part of the City-wide Comprehensive Plan for Flood Risk Reduction projects. Oakcreek Drive South is bounded by Drain #27. Properties on Oakcreek Drive South backing onto Drain #27 have bank stability and access issues which prevent the construction of temporary flood protection measures during a flood emergency.

C. The City Commission approved acquisition of 4449 Oakcreek Drive South on September, 12, 2016.

D. Gary M. and Susan D. Cavett are the owners of real estate (hereinafter "Property" or "Premises") located at 4449 Oakcreek Drive South in the City of Fargo, situated in the County of Cass and State of North Dakota, and legally described as follows:

> **Lot 14, Block 1, Oakcreek Addition, City of Farg0, Cass County, North Dakota.**

E. The Cavetts answered the above identified Complaint herein on March 22, 2017.

F. The eminent domain requirement issues were tried to the Court between June 25 and June 27, 2018. The Court found the City had established each of the requisite elements for a taking under the eminent domain statute and ordered possession of the property be transferred to the City on June 27, 2018. The issue of compensation was tried to a jury June 28 and June 29, 2018. The jury awarded $1,100,000 in compensation to the Cavetts on June 29, 2018.

G. The parties desire to enter into this Settlement Agreement in order to provide for full settlement and discharge of all claims and defenses which any party made or could have made by reason of the events described above and upon the terms and conditions set forth below.

AGREEMENT

The Parties agree as follows:

1.0 Release and Discharge

1.1 While the City of Fargo and the Cavetts maintain that appealable trial issues exist as to the establishment of public necessity, the admission of the Replacement Cost New appraisal and jury instructions, all parties hereto waive all rights to appeal herein and agree that a compromised settlement now is the best resolution of this matter.

1.2 In consideration of the settlement amount set forth below, the Cavetts, on behalf of themselves, their heirs and assigns, hereby release and forever discharge, the City of Fargo and Released Parties, identified as the City of Fargo, its insurers, agents, representatives and employees, from any and all past or future claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation of any nature whatsoever, which the Cavetts might have brought and which could, in any way, arise out of the events described in the Recitals above.

1.3 In consideration of the settlement amount set forth below, the Cavetts specifically waive their rights to any further statutory moving and replacement housing expenses under N.D.C.C. § 54-01.1-03 and N.D.C.C. §54-01.1-04. In addition, they waive attorney fees, statutory costs and filing fees.

1.4 The Cavetts acknowledge and agree that the release and discharge set forth above is a waiver of all claims and defenses the Cavetts might have asserted and a general release regarding causes of action they might have brought regarding the events described in the above recitals including any obligation to pay damages, attorney's fees and costs. It is understood and agreed by the parties that this settlement is a compromise reached in order to finally resolve the action described above.

1.5 The Cavetts waive the provisions of N.D.C.C. § 9-13-02, or any similar or other applicable state or federal statute or regulation, which provides that a general release does not extend to claims a creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected the settlement with the debtor.

2.0 Purchase.

2.1 The subject matter of this Settlement Agreement and Release is the real estate described above, consisting of a single-family dwelling, other buildings located thereon, and all items affixed to the property.

2.2 The total settlement amount is One Million Two Hundred Ten Thousand Dollars ($1,210,000), which sum includes replacement housing expenses,

moving/relocation expenses, attorney's fees, costs, filing fees, statutory costs and also takes into consideration the value of salvage rights the Cavetts have to the Property.

2.3 The mortgage on the Property, as well as any liens or encumbrances, will be paid by the Cavetts from the proceeds at the time of closing and the Cavetts shall receive the balance of the purchase price, less those amounts and any escrow amounts, in cash on the date of closing.

2.4 The City of Fargo shall pay for the cost of continuation of an abstract of title to the subject property to a recent date. Said abstract must show that the Cavetts have good and marketable title free and clear of all liens and encumbrances (other than those that will be handled at closing).

2.5 Taxes and installments of special assessments for the year of closing shall be prorated between the parties to the date of closing based upon current total true value as calculated by the County of Cass, ND, as of the date of closing. Prior year taxes and assessments must be paid by the Cavetts in advance of closing.

2.6 The Cavetts shall sign a warranty deed prepared by the City of Fargo. The City of Fargo will take title as follows: City of Fargo, North Dakota, a municipal corporation.

2.7 The City shall pay the costs of closing. Closing shall take place on September 4, 2018 or as soon thereafter as possible. The City shall acquire ownership of the real estate on the day of closing, subject to the Cavetts occupancy of the property until October 15, 2018 in terms described below.

2.8 The Cavetts agree to allow the City of Fargo to enter the Premises for the limited purpose of testing and inspection for the presence of asbestos. Such inspection and testing shall take place as soon as possible before closing. The City has given the Cavetts reasonable notice of its intent to inspect for asbestos. The Cavetts shall not unreasonably delay the scheduling of such inspection and testing by the City.

2.9 The Cavetts provide no express warranties on the subject property. The City of Fargo understands and agrees that the property is a used home and is being purchased "AS IS".

2.10 The Cavetts shall be allowed to remove specified salvage items from the property as long as such salvage operations are performed in a workmanlike manner which does not increase the amount of labor or expense to the City of Fargo when it takes possession on or before October 15, 2018. The Cavetts are also allowed to remove items detachable from the property by removal of nails, screws, hooks, hinges or wires. The specific salvage items the Cavetts are allowed to remove include Five (5) interior light fixtures which are identified by the photographs attached hereto as Exhibit A. All salvage items shall be removed in a professional manner and a contractor must be engaged, if necessary. Salvage

rights described above **exclude** any material or item adjacent to asbestos, such as flooring installed with mastics or adhesives which contain asbestos.

3.0 Terms for Occupancy Beyond Date of Closing

3.1 The City of Fargo agrees to allow the Cavetts to remain on the premises until October 15, 2018, except as provided in paragraph 3.4 below.

3.2 The Cavetts may occupy the premises between the closing on September 4, 2018 and the date they will vacate the property, October 15, 2018, without paying rent to the City for that forty-one (41) day period. The Cavetts shall furnish to the City a copy of a tenant's policy of insurance insuring against liability in the principal sum of at least $500,000 per occurrence. The Cavetts shall provide the City of Fargo with notice that is has been named as an additional insured on said policy. In addition, the Cavetts agree to indemnify and hold the City of Fargo harmless from any and all claims, demands or causes of action that may be asserted as a result of the Cavetts' continued occupancy of the premises past the closing date. The Cavetts shall pay all utilities for the premises until they vacate the property on October 15, 2018.

3.3 The Cavetts shall vacate the premises and remit all keys and garage door openers to the City of Fargo on or before October 15, 2018.

3.4 If the Cavetts vacate the property prior to closing, prior to the end of the month of closing, or prior to October 15, 2018, the Cavetts shall notify the City of Fargo five (5) days prior to vacating the premises.

3.5 In no event shall the Cavetts remain on the premises later than October 15, 2018, unless otherwise agreed to in writing signed by the Parties. The Cavetts are occupying the premises "as is." Accordingly, the City of Fargo shall not be responsible for any repairs of any kind. If the premises should become uninhabitable, the Cavetts' sole remedy is to vacate the premises. The Cavetts shall notify the City of Fargo five (5) days prior to vacating the premises.

3.6 The Cavetts agree that the City of Fargo will not be responsible for security or protection of the premises during their post-closing occupancy.

4.0 Representation of Comprehension of Document

In entering into this Settlement Agreement and Release, the Cavetts represent that they have relied upon the advice of their attorneys, who are attorneys of their own choice, concerning the legal and income tax consequences of this Settlement Agreement and Release; that the terms of this Settlement Agreement and Release have been completely read and explained to the Cavetts by their attorneys; and that the terms of this Settlement Agreement and Release are fully understood and voluntarily accepted by the Cavetts.

5.0 Warranty of Capacity to Execute Agreement

The Cavetts represent and warrant that no other person or entity has, or has had, any interest in the premises or causes of action referred to in this Settlement Agreement and Release, except as otherwise set forth herein; that the Cavetts have the sole right and exclusive authority to execute this Settlement Agreement and Release and receive the sums specified in it; and that the Cavetts have not sold, assigned, transferred, conveyed or otherwise disposed of any of the premises or causes of action referred to in this Settlement Agreement.

6.0 Governing Law

This Settlement Agreement and Release shall be construed and interpreted in accordance with the laws of the State of North Dakota.

7.0 Additional Documents

All parties agree to cooperate fully and approve and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement and Release, including, but not limited to, a Stipulation for Dismissal with Prejudice in the action listed in the Recitals above, as well as a proposed Order of Dismissal and proposed Judgment.

9.0 Entire Agreement and Successors in Interest

This Settlement Agreement and Release contains the entire agreement between the Cavetts, their successors, heirs and assigns and the City of Fargo its insurers, employees, agents and representatives with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

10.0 Effectiveness

This Settlement Agreement and Release shall become effective immediately following execution by each of the parties. There shall be one original which shall contain each of the Cavetts' original signatures and the original signature of the City of Fargo.

THIS IS A RELEASE. READ BEFORE SIGNING.

Dated: _____ _____

Susan D. Cavett, Seller

Dated: _____ _____

Gary M. Cavett, Seller

Date: _____ _____

City of Fargo, Buyer

By: Timothy Mahoney
Its: Mayor

ATTEST:

_____

Steve Sprague, City Auditor



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.

4449 Oakcreek Drive South

1:4,514	8/25/2016 9:18:44 AM

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

CITY OF Fargo

CITY OF Fargo

4

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

August 9, 2018

Board of City Commissioners
City Hall
200 North Third Street
Fargo, ND 58102

RE: City of Fargo Sales Taxes—South Dakota v. Wayfair

Dear Commissioners:

I write to seek your permission to evaluate the effect of the U.S. Supreme Court decision in South Dakota v. Wayfair, Inc. and if any amendments to our city sales tax ordinances are appropriate to remit to you such amendments for your consideration.

You are probably aware of the recent U.S. Supreme Court decision in the case of South Dakota v. Wayfair, Inc. This decision will allow the collection of local and state sales taxes even when the seller does not have a significant presence within the state. The North Dakota State Tax Commissioner has advised remote sellers to begin collecting North Dakota sales and use tax on their sales into the state and to begin collecting the tax on October 1, 2018. Under North Dakota law, there is an exception for small retail sellers that are below one of the following criteria in either the current or previous calendar year: (a) taxable sales shipped to North Dakota that meet or exceed $100,000; or (b) taxable sales shipped to North Dakota that meet or exceed 200 separate transactions. I have already begun evaluating the Wayfair decision and its impacts in North Dakota and on the city of Fargo. If any amendments to our ordinances seem appropriate I would like your permission to submit them for your approval.

SUGGESTED MOTION: I move to authorize the City Attorney to evaluate the collection of city sales taxes in the wake of the Wayfair decision and to draft any ordinance amendments, as may be appropriate, for our consideration.

Sincerely,

Erik R. Johnson

ERJ/lmw

5

CITY OF FARGO
GENERAL FUND - BUDGET TO ACTUAL
THROUGH JULY 31, 2018
(UNAUDITED)

	2018 BUDGET	2018 ACTUAL	VARIANCE
REVENUES:			
Taxes	$ 25,654,734	$ 26,091,849	$ 437,115
Licenses & Permits	2,543,465	2,784,196	240,731
Fines & Traffic Tickets	1,251,280	1,066,263	(185,017)
Intergovernmental Revenue	9,810,049	9,255,267	(554,782)
Charges for Services	8,565,945	8,034,186	(531,759)
Interest	1,976,381	2,977,577	1,001,196
Miscellaneous Revenue	404,417	422,967	18,550
Transfers In	9,925,657	9,881,001	(44,656)
Total Revenues	**$ 60,131,928**	**$ 60,513,306**	**$ 381,378**
EXPENDITURES:			
City Administrator	$ 3,745,718	$ 3,715,020	$ 30,698
Finance	4,426,144	4,339,046	87,098
Planning & Development	2,100,042	1,895,974	204,068
Transit	4,389,815	4,022,799	367,016
Public Works	9,042,122	8,857,282	184,840
Fire Department	7,630,962	7,520,411	110,551
Police	11,632,140	11,188,468	443,672
Health	6,074,106	6,168,877	(94,771)
Library	2,460,394	2,564,522	(104,128)
Commission	381,986	366,409	15,577
Civic Center	287,331	242,342	44,989
Social Services	358,400	343,121	15,279
Capital Outlay	589,512	560,225	29,287
Vehicle Replacement/IT	944,809	559,003	385,806
Contingency	(93,768)	4,109	(97,877)
Transfers Out	5,698,504	5,816,986	(118,482)
Total Expenditures	**$ 59,668,217**	**$ 58,164,594**	**$ 1,503,623**
Excess of Revenue Over (Under) Expenditures	**$ 463,711**	**$ 2,348,712**	**$ 1,885,001**

GAMING SITE AUTHORIZATION

OFFICE OF ATTORNEY GENERAL
SFN 17996 (02/2018)

(6a)

G-_____(____)
Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization
Metro Sports Foundation

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

Name of Location: Scheels Arena			
Street: 5225 31st Ave S	City: Fargo	ZIP Code: 58104	County: Cass
Beginning Date(s) Authorized: 8-13-18	Ending Date(s) Authorized: 6-30-19		Number of twenty-one tables if zero, enter "0":
Specific location where games of chance will be conducted and played at the site (**required**): Lobby			
If conducting **Raffle** or **Poker** activity provide date(s) or month(s) of event(s) if known: Fargo Force Hockey Games and any other unscheduled raffle drawings as determined by Metro Sports			

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

☐ Bingo	☐ Club Special	☐ Sports Pools
☐ **ELECTRONIC** Quick Shot Bingo	☐ Tip Board	☐ Twenty-One
☒ Raffles	☐ Seal Board	☐ Poker
☐ **ELECTRONIC** 50/50 Raffle	☐ Punchboard	☐ Calcuttas
☐ Pull Tab Jar	☐ Prize Board	☐ Paddlewheels with Tickets
☐ Pull Tab Dispensing Device	☐ Prize Board Dispensing Device	☐ Paddlewheel Table
☐ **ELECTRONIC** Pull Tab Device		

APPROVALS

Attorney General	Date
Signature of City/County Official	Date: 8/13/18
PRINT Name and official position of person signing on behalf of city/county above: Steven Sprague/City Auditor	

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original**, **signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

RETURN ALL DOCUMENTS TO:

Office of Attorney General
Licensing Section
600 E Boulevard Ave, Dept. 125
Bismarck, ND 58505-0040
Telephone: 701-328-2329 **OR** 800-326-9240

GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
SFN 17996 (02/2018)

(66)

G-_____(____)
Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization
Fargo Youth Hockey Assoc.

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

Name of Location			
H. A. Thompson & Sons Arena (Previously Teamsters Arena)			
Street: 831 17th Ave N	City: Fargo	ZIP Code: 58102	County: Cass
Beginning Date(s) Authorized: 8-13-18	Ending Date(s) Authorized: 6-30-19		Number of twenty-one tables if zero, enter "0":
Specific location where games of chance will be conducted and played at the site **(required)**: East side of lobby			
If conducting **Raffle** or **Poker** activity provide date(s) or month(s) of event(s) if known: Raffle Drawings to be determined by Fargo Youth Hockey Assoc.			

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

☐ Bingo	☐ Club Special	☐ Sports Pools
☐ **ELECTRONIC** Quick Shot Bingo	☐ Tip Board	☐ Twenty-One
☒ Raffles	☐ Seal Board	☐ Poker
☐ **ELECTRONIC** 50/50 Raffle	☐ Punchboard	☐ Calcuttas
☐ Pull Tab Jar	☐ Prize Board	☐ Paddlewheels with Tickets
☐ Pull Tab Dispensing Device	☐ Prize Board Dispensing Device	☐ Paddlewheel Table
☐ **ELECTRONIC** Pull Tab Device		

APPROVALS

Attorney General	Date
Signature of City/County Official	Date: 8/13/18
PRINT Name and official position of person signing on behalf of city/county above: Steven Sprague/City Auditor	

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original**, **signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

RETURN ALL DOCUMENTS TO:

Office of Attorney General
Licensing Section
600 E Boulevard Ave, Dept. 125
Bismarck, ND 58505-0040
Telephone: 701-328-2329 **OR** 800-326-9240

$25.00 Cash 7-31-18

APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2016)

7a

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

Name of Non-profit Organization	Date(s) of Activity	For a raffle, provide drawing date(s):
St. John Paul II Catholic Schools	to	04.27.2019

Person Responsible for the Gaming Operation and Disbursement of Net Income	Title	Business Phone Number
Lee Hoedl, Shanley Deacon Dinner Auction Director	Auc Director	701.306.1266

Business Address	City	State	Zip Code
5600 25th Street South	Fargo	ND	58104

Mailing Address (if different)	City	State	Zip Code

Name of Site Where Game(s) will be Conducted	Site Address
Fargo Holiday Inn	3803 13th Avenue South

City	State	Zip Code	County
Fargo	ND	58104	Cass

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

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

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
Raffle	School Tuition	$6000

Game Type	Description of Prize	Retail Value of Prize

(Limit $12,000 per year)

Total: $ 6000

Intended uses of gaming proceeds: Benefit annual operating budget of the St. John Paul II Catholic Schools

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

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

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

Signature of Organization's Top Executive Official	Date	Title	Business Phone Number
	07.23.18	Auction Director	701.306.1266

76

APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2016)

Application for: [x] Local Permit *[ ] Charity Local Permit (one event per year)

Name of Non-profit Organization: Solberg Family Benefit	Date(s) of Activity: 9-16-18 to 9-16-18	For a raffle, provide drawing date(s): 9-16-18	
Person Responsible for the Gaming Operation and Disbursement of Net Income: Judi Woroniecki	Title:	Business Phone Number:	
Business Address:	City:	State:	Zip Code:
Mailing Address (if different): 1944 Co Hwy 39	City: Perley	State: MN	Zip Code: 56574
Name of Site Where Game(s) will be Conducted: El Zagel	Site Address: 1429 3rd St No		
City: Fargo	State: ND	Zip Code: 58102	County: Cass

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

[ ] Bingo [x] Raffle [ ] Raffle Board [ ] Calendar Raffle [ ] Sports Pool [ ] Poker * [ ] Twenty-one * [ ] Paddlewheels *

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
Raffle	Laptop	$500.00

Game Type	Description of Prize	Retail Value of Prize

Total: (Limit $12,000 per year) $ 500.00

Intended uses of gaming proceeds: Medical Expences

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

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

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

Signature of Organization's Top Executive Official	Date	Title	Business Phone Number
[signature]	7-20-18		218-790-4884

(10)

Cc 8/7/18
25.00

APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2016)

Application for: [x] Local Permit *[ ] Charity Local Permit (one event per year)

Name of Non-profit Organization	Date(s) of Activity	For a raffle, provide drawing date(s):
Ywca Cass Clay	9/6/2018 to 9/6/2018	09/06/2018
Person Responsible for the Gaming Operation and Disbursement of Net Income	**Title**	**Business Phone Number**
Erin Prochnow	Ceo	(701) 232-2547
Business Address	**City**	**State / Zip Code**
3100 12th Ave N	Fargo	ND 58102-3070
Mailing Address (if different)	**City**	**State / Zip Code**
Name of Site Where Game(s) will be Conducted	**Site Address**	
Delta by Marriott	1635 42nd St. Sw	
City	**State / Zip Code**	**County**
Fargo	ND 58103-3323	Cass County

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

[ ] Bingo [x] Raffle [ ] Raffle Board [ ] Calendar Raffle [ ] Sports Pool [ ] Poker * [ ] Twenty-one * [ ] Paddlewheels *

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
Raffle	Liquor Wagon	$300.00
Raffle	Bison Tickets	$204.00
Raffle	Travel Cert.	$800.00
Raffle	Auto Start Cert.	$550.00
Raffle	Kids Gator	$450.00

Game Type	Description of Prize	Retail Value of Prize

(Limit $12,000 per year)

Total: $ 2,304.00

Intended uses of gaming proceeds: All proceeds benefit YWCA emergency shelter programs and operations.

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

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

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

Signature of Organization's Top Executive Official	Date	Title	Business Phone Number
	8/8/2018	Ceo	(701) 232-2547

7d

APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2016)

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

Name of Non-profit Organization: Fargo South High School	Date(s) of Activity: Aug 24 to Sept 28	For a raffle, provide drawing date(s):	
Person Responsible for the Gaming Operation and Disbursement of Net Income: Nivilla Floan	Title: Bookkeeper	Business Phone Number: 701-446-2022	
Business Address: 1840 15th Ave. S.	City: Fargo.	State: ND	Zip Code: 58103
Mailing Address (if different): Same	City:	State:	Zip Code:
Name of Site Where Game(s) will be Conducted: Fargo Dome	Site Address: 1800 N. University Dr.		
City: Fargo, ND	State: ND	Zip Code: 58102	County: Cass

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

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

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
50/50 Raffle	1/2 of money Collected	1500.00

Game Type	Description of Prize	Retail Value of Prize

Total: (Limit $12,000 per year) $ 1500.00

Intended uses of gaming proceeds: Student travel needs

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

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

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

Signature of Organization's Top Executive Official	Date	Title	Business Phone Number
T Bertsch	8-17-18	Principal	701-446-2000

(12)

APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2016)

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

Name of Non-profit Organization: Fargo South High School	Date(s) of Activity: Aug 28 to Feb 23	For a raffle, provide drawing date(s):	
Person Responsible for the Gaming Operation and Disbursement of Net Income: Twilla Flora	Title: 2018 2019 Bookkeeper	Business Phone Number: 701-446-2022	
Business Address: 1840 15th Ave. S.	City: Fargo.	State: ND	Zip Code: 58103
Mailing Address (if different): Same	City:	State:	Zip Code:
Name of Site Where Game(s) will be Conducted: Fargo South High School	Site Address: 1840 15th Ave. S.		
City: Fargo	State: ND	Zip Code: 58103	County: Cass

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

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

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
50/50 Raffle	½ of money collected	3000.00

Game Type	Description of Prize	Retail Value of Prize

Total: (Limit $12,000 per year) $ 3000.00

Intended uses of gaming proceeds: _____

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

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

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30? ☐ No ☒ Yes - If "Yes," indicate the total value of all prizes previously awarded: $ 1500.00. *This amount is part of the total prize limit of $12,000 per year.*

Signature of Organization's Top Executive Official	Date	Title	Business Phone Number
T Bakke	8-07-18	Principal	701-446-2000

(7f)

APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2016)

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

Name of Non-profit Organization: Fargo South High School	Date(s) of Activity: Dec 7 to Feb 5	For a raffle, provide drawing date(s):	
Person Responsible for the Gaming Operation and Disbursement of Net Income: Dwilla Sloan	Title: 2018 2019 Bookkeeper	Business Phone Number: 701-446-2022	
Business Address: 1840 15th Ave S.	City: Fargo	State: ND	Zip Code: 58103
Mailing Address (if different): Same	City:	State:	Zip Code:
Name of Site Where Game(s) will be Conducted: Scheels Arena	Site Address: 5225 31st Ave. So.		
City: Fargo	State: ND	Zip Code: 58104	County: Cass

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

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

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
50/50 Raffle	1/2 of money collected	4500.00

Game Type	Description of Prize	Retail Value of Prize

Total: (Limit $12,000 per year) $ 4500.00

Intended uses of gaming proceeds: Student travel needs

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

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

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30? ☐ No ☒ Yes - If "Yes," indicate the total value of all prizes previously awarded: $ 3000.00 . *This amount is part of the total prize limit of $12,000 per year.*

Signature of Organization's Top Executive Official	Date	Title	Business Phone Number
T Ritchie	8-7-18	Principal	701-446-2000

19

$25.00
CC 9319
8-7-18

APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2018)

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

Name of Non-profit Organization	Date(s) of Activity	For a raffle, provide drawing date(s):
Dakota Medical Foundation-lend A Hand Up		9-8-18
Person Responsible for the Gaming Operation and Disbursement of Net Income	Title	Business Phone Number
Mary Moen	Ambassador	(701) 271-0263
Business Address	City	State / Zip Code
4141 28th Ave S	Fargo	ND 58103
Mailing Address (if different)	City	State / Zip Code
Name of Site Where Game(s) will be Conducted	Site Address	
Elks Lodge	3435 Broadway	
City	State / Zip Code	County
Fargo	ND 58102	Cass

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

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

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
Irish Raffle	Gift Cards	$600.00
Irish Raffle	Artwork	$405.00
Irish Raffle	Crafted Items	$600.00
Irish Raffle	Sports Tickets	$282.00
Irish Raffle	Electronics	$40.00
Irish Raffle	Health & Beauty	$800.00
Irish Raffle	Clothing/Acces	$370.00
Irish Raffle	Edibles/Beverage	$115.00
Irish Raffle	Children's Bskts	$213.00

Game Type	Description of Prize	Retail Value of Prize
Irish Raffle	Hotel Stay	$150.00
Irish Raffle	Escape Room	$104.00
Irish Raffle	3M Basket	$250.00
Raffle Board	Twins Bball Bsk	$210.00
Raffle Board	Shannon Bskt	$200.00

(Limit $12,000 per year)
Total: $ 4,339.00

Intended uses of gaming proceeds: ~~Proceeds will be donated to DMF to benefit the Lend A Hand Up program.~~

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

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

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

Signature of Organization's Top Executive Official	Date	Title	Business Phone Number
[signature]	8/5/18	Exec. Dir.	701.271.0263

7h

$25.00
9-8-18
V1056

APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2016)

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

Name of Non-profit Organization	Date(s) of Activity	For a raffle, provide drawing date(s):
Diamond in the Ruff Pet Rescue	9/8/18 to 9/8/18	9/8/18
Person Responsible for the Gaming Operation and Disbursement of Net Income	**Title**	**Business Phone Number**
Deborah Ulmstad	Director	701-720 3753
Business Address	**City**	**State / Zip Code**
PO Box 6464	Fargo	ND 58109
Mailing Address (if different)	**City**	**State / Zip Code**
Name of Site Where Game(s) will be Conducted	**Site Address**	
FM Curling Club	4300 23rd Ave S	
City	**State / Zip Code / County**	
Fargo	ND 58104 Cass	

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

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

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
Raffle Board	50" TV	$500
Raffle	Bissell	$150
Raffle	Base	$100
Raffle	Alexa	$50
Raffle	Yeti Cooler	$300
Raffle	Weekend trip	$1000
50/50	Cash	$1,000
50/50	Cash	$1,000

Game Type	Description of Prize	Retail Value of Prize

(Limit $12,000 per year)

Total: $ ~~2100~~ 4100

Intended uses of gaming proceeds: Animal rehabilitation & Veterinary care.

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

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

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

Signature of Organization's Top Executive Official	Date	Title	Business Phone Number
Deborah Ulmstad	8/8/18	Director	701-720-3753

(7i)

$25.00
V2797
8-9-18

APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2016)

Application for: [x] Local Permit * [x] Charity Local Permit (one event per year)

Name of Non-profit Organization	Date(s) of Activity	For a raffle, provide drawing date(s):
El Zagal Escort Motor Patrol	to	10-1-18

Person Responsible for the Gaming Operation and Disbursement of Net Income	Title	Business Phone Number
Pat Jones	Director	(701) 238-6607

Business Address	City	State	Zip Code
1429 3rd St N	Fargo	ND	58102

Mailing Address (if different)	City	State	Zip Code
18900 175 St	Audubon	MN	56511

Name of Site Where Game(s) will be Conducted	Site Address
EL ZAGAL	1429 3rd St N

City	State	Zip Code	County
Fargo	ND	58102	Cass

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

[ ] Bingo [x] Raffle [ ] Raffle Board [ ] Calendar Raffle [ ] Sports Pool [ ] Poker * [ ] Twenty-one * [ ] Paddlewheels *

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
60 $10 Raffle tickets	Bean Bag Game with bags incl.	$600

Game Type	Description of Prize	Retail Value of Prize

Total: (Limit $12,000 per year) $ 600

Intended uses of gaming proceeds: Expenses for Fund Raisers - Escort Motor Patrol

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

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

Ballard 5 Raffle

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30? [ ] No [x] Yes - If "Yes," indicate the total value of all prizes previously awarded: $ 2400 . *This amount is part of the total prize limit of $12,000 per year.*

Signature of Organization's Top Executive Official	Date	Title	Business Phone Number
	8/7/18	Director	701-238-6607

1

$25.00
V21359
8-9-18

APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2016)

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

Name of Non-profit Organization	Date(s) of Activity	to	For a raffle, provide drawing date(s):
Farso Air Museum		9-8-18	
Person Responsible for the Gaming Operation and Disbursement of Net Income	Title	Business Phone Number	
1609 19th Ave	City	State	Zip Code
Business Address			
Jackie Williams	City	State	Zip Code
Mailing Address (if different)			
Name of Site Where Game(s) will be Conducted	Site Address		
Farso Air Musem	ND	58102	
City	State / Zip Code	County	

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

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

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
raffle	$500 cash	$ 500 cash
raffle	$1000 cash	$1000
raffle	$ 100	$100 cash
raffle	$ 200	$200 cash
"	2500	2500 cash
"	3000	3000
"	1200	1200
"	1200	1200
"	500	500

Game Type	Description of Prize	Retail Value of Prize

Multi Raffle on 9-8-2018 at Farso Air Museum

(Limit $12,000 per year)
Total: $ 10,200

Intended uses of gaming proceeds: Operations / Veteran's Coffee Hour

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

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

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

Signature of Organization's Top Executive Official	Date 7-27-18	Title Ex Dir	701 293-8043 Business Phone Number

cell 701 212 5704

(TK)

V11742
25.00
8/9/18

APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2016)

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

Name of Non-profit Organization	Date(s) of Activity	For a raffle, provide drawing date(s):
Nativity Church of Fargo	11-4-18 to 11-4-18	11-4-18

Person Responsible for the Gaming Operation and Disbursement of Net Income	Title	Business Phone Number
Karen L. Donahue	Treasurer	701-232-2414

Business Address	City	State	Zip Code
1825 11th Street S.	Fargo	ND	58103

Mailing Address (if different)	City	State	Zip Code

Name of Site Where Game(s) will be Conducted	Site Address
Nativity Church	1825 11th St. S.

City	State	Zip Code	County
	ND	58103	Cass

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

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

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize
Raffle	Cash	500.00
"	"	500.00
"	"	100.00
"	"	100.00
"	"	100.00
"	"	100.00
"	"	50.00
"	"	50.00
"	"	50.00

Game Type	Description of Prize	Retail Value of Prize
Raffle	Cash	50.00
"	"	50.00
"	"	50.00
"	Frozen Turkey	10 @ 20.00
Bingo	Cash/Giftcards	250.00

Total: (Limit $12,000 per year) $ 2150.00

Intended uses of gaming proceeds: Charitable Causes & Facility Needs

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

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

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

Signature of Organization's Top Executive Official	Date	Title	Business Phone Number
Karen L Donahue	8-9-18	Fall Festival Treasurer	701-361-4263

CITY OF Fargo

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

(8)

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor SS

SUBJECT: Merchant Credit Card Processing RFP (RFP 18207)

DATE: August 6, 2018

The City of Fargo advertised for a Merchant Credit Card Processing RFP. We received eight proposals. Three of the proposals did not meet the minimum requirements of the RFP, lacking references or company financial statements. Two of the proposals concentrated on Counties and Courts and were not a good fit. The remaining three proposals were considered and evaluated; Heartland Payment systems is our current provider, Wells Fargo is our financial institution and Automated Merchant Systems is integrated with our financial software provider.

The Finance department requested assistance evaluating the RFPs from Eide Bailly consulting. There was very little difference in pricing between the three proposals. Discussions with the consultants revealed the majority of the City of Fargo merchant card processing volume is coming from the web and IVR payments and it made sense to combine the merchant card, web and IVR payments together. In February 2018, the City extended the agreement for web and IVR payments with Paymentus until November 2022. Finance staff feel it would be in the best interest of the City to extend our contract with Heartland until November 2022 and at that time conduct an RFP search that would include merchant processing, web and IVR.

Recommended Motion:

Extend the Merchant Credit Card Processing Contract with Heartland Payment Systems for a term expiring November 16, 2022.

Printed on Recycled paper.

CITY OF Fargo

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

9

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Duncan Solutions Contract Extension to Dec 31, 2018

DATE: August 9, 2018

The City of Fargo conducted a Parking Services RFP and through that process selected Passport to be our provider moving forward. The City has used Duncan Solutions for the past decade and will need some time to make the transition. In order to facilitate the Parking Services contract transition from Duncan Solutions to Passport, the Auditor's office would like to extend the current Duncan Solutions contract to December 31, 2018. Both companies involved feel this is a good idea. It is anticipated that we should be able to make a smooth transition to Passport within that period.

Recommended Motion:

Move to extend the current contact with Duncan Solutions to December 31, 2018.

Printed on Recycled paper.

ADDENDUM #4
BETWEEN
CITATION MANAGEMENT, A DIVISION OF PROFESSIONAL ACCOUNT MANAGEMENT LLC, A DUNCAN SOLUTIONS COMPANY AND THE CITY OF FARGO, ND
FOR
PROCESSING AND COLLECTION OR PARKING CITATIONS

The City of Fargo, a North Dakota Municipal Corporation (City) and Professional Account Management, LLC (Contractor) have entered into the Agreement for Processing Parking Citations as of the 20th day of December 2007 (Agreement), addendum #1 executed on the 10th day of March 2008 (Addendum 1), Addendum #2 executed on the 1st day of September 2013 (Addendum #2), and Addendum #3 executed on the 15th day of December 2015 with each amending the original agreement. This amendment (Amendment) to the Agreement is made effective this 13TH day of AUGUST 2018 (Amendment Effective Date) by and between the City and the Contractor. Both City and Contractor may be referred to herein individually as Party and collectively as Parties.

WHEREAS, the City wishes to continue to receive under the Agreement and the Contractor wishes to continue to provide services thereunder; and

WHEREAS, the Parties wish to amend the Agreement to include the changes documented herein.

NOW, THEREFORE, the parties agree as follows:

1. The Agreement is further extended until December 31, 2018.

ALL OTHER TERMS AND CONDITIONS OF THE AGREEMENT REMAIN UNCHANGED.

IN WITNESS WHEREOF, the Parties' authorized representatives have executed this Amendment as of the dates last set forth below.

CITY OF FARGO, NORTH DAKOTA

Signature:

Printed Name:

Title:

Date:

PROFESSIONAL ACCOUNT MANAGEMENT, LLC

Signature:

Printed Name:

Title:

Date:

CITY OF Fargo

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

(10)

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor SS

SUBJECT: Parking Services Contract with Passport

DATE: August 9, 2018

The Auditors Office along with Fargo Police and Interstate Parking conducted an RFP for Parking Services to include parking enforcement for on street, off street, permit management and collections processes. The RFP award was approved at the July 30, 2018 City Commission meeting.

Presented to you today is the contract for citation management and parking services with Passport Labs, Inc. Approval of this contract will allow staff to take the steps necessary to transition parking enforcement and citation management to Passport Labs, Inc.

Recommended Motion:

Move to approve the contract for citation management and parking services with Passport Labs, Inc. until December 31, 2023, subject to final legal review.

Printed on Recycled paper.

SOFTWARE LICENSE AND SERVICE AGREEMENT

This Software License and Service Agreement (the "Agreement") is entered into as of the Effective Date set forth below by and between Passport Labs, Inc. ("Passport) and the party named below ("Provider"). This Agreement includes and incorporates the terms and conditions found in this document, the Terms and Conditions found in Exhibit A, and the terms and conditions found in all other Exhibits hereto, which represent the full and complete understanding and agreement of Passport and Provider with respect to the subject matter hereof. In exchange for the mutual covenants herein and other good and valuable consideration, the Parties agree and intend to be bound as follows:

I. GENERAL TERMS

Provider Legal Name: City of Fargo, ND	**Contact:** Steve Sprague
Email: ssprague@fargond.gov	**Phone:** 701-241-1301
Provider Contact Address 200 N. 3 St. Fargo, ND 58102	**Provider Billing Contact Address** 200 N. 3 St. Fargo, ND 58102
Effective Date:	
Services: Passport will provide services (the "Services") and license all software, including all web and mobile applications and related documentation, (the "Software") necessary for Provider to operate a citation management platform ("CMP") which allows Provider's parking enforcement officers in any or all parking facilities owned or managed by Provider the ability to issue parking citations that may be paid online through Passport's payment portal.	
Governing State Law:	North Dakota
Term: This Agreement shall commence on the Effective Date and continue until it is terminated (the "Term"). Either Party may terminate this Agreement by providing sixty (60) days' written notice to the non-terminating Party.	

(continued on next page)

II. CITATION MANAGEMENT PLATFORM TERMS

Equipment:

a) Provider must purchase a sufficient number of Android-based handheld devices for each parking enforcement officer to have access to one device while conducting parking enforcement activities
b) Passport will provide custom setup for Android devices, including installing and configuring the Software and pairing the device with a Bluetooth-enabled printer for an additional fee of $300.00
c) Provider must maintain at its sole cost one wireless data plan for each Android device
d) Provider must possess at least one Bluetooth-enabled printer per Android device described above
e) If Provider chooses to purchase additional Bluetooth-enabled printers through Passport, the price for a Zebra zq320 (or substantial equivalent) is $600.00 with charger; provided, however, Provider shall purchase twelve (12) Zebra zq320 printers from Passport at a total cost of $3,600.00
f) In addition to the unit costs per Bluetooth-enabled printer above, Provider will be responsible for paying all shipping costs and printer paper costs
g) If Provider orders custom printer paper through Passport, Provider will be responsible for paying the costs of creating, printing, and shipping such custom paper plus a 12% service fee to Passport. Passport is unable to provide estimated costs until specific details of Provider's order have been confirmed due to the variable costs of its 3rd party

Collections Support (Passport will Provide the Selected Services):

a) Passport will provide an online payment portal through which parking violators may pay outstanding parking citations
b) After fifteen(15) days, parking citations issued by Provider will escalate in price and Passport will automatically generate and send a letter to each parking citation owner for which Passport has necessary state licensure authorization to perform a driver record lookup informing such parking violator that they have an outstanding parking citation and that the citation amount has increased
c) Passport will send a second letter forty-five (45) days after issuance for each applicable unpaid citation owner
d) Passport will send a third letter seventy-five (75) days after issuance for each applicable unpaid citation owner

State Licensure Authorizations:

Passport will provide a list of states in which Passport has the authority to do driver record lookups upon request by Provider.

(continued on next page)

III. FEES

CMP Service and License Fee Per Ticket Paid			$2.50
Additional CMP Service and License Fee Per Ticket Paid After Citation Amount Escalation			15% of escalated citation amount
Cost Per Notification Letter Sent by Passport			$1.49
DPP Service and License Fee			$3.00 per active permit per month
Merchant Processing Costs: Provider will be responsible for paying all merchant processing costs, including, without limitation, settlement fees, payment gateway fees, chargeback fees, and interchange reimbursement fees.			
Merchant of Record for Transactions:	X	Passport	Provider
Passport Merchant Processing Rate Per Transaction:			2.9% + $0.25
Payment Gateway Provider:	X	Passport	Other
Passport Gateway Fee Per Transaction:		$0.05	

Passport Labs, Inc:

By: _____

Name: _____

Title: _____

Provider:

By: _____

Name: _____

Title: _____

Exhibit A
Terms and Conditions

1. Services

Passport shall perform the services in a competent, professional, and workmanlike manner consistent with industry practices. Passport will maintain all permits, certificates and licenses required by applicable law and Passport's employees performing the services will be fully qualified, licensed as required, and skilled to perform the services. Passport warrants that it has the power to enter into and perform this Agreement and that it will at all times during the term of this Agreement be, duly organized, validly existing and in good standing under the laws of the state of Delaware.

2. Compliance with Laws and Codes

In providing the services under this Agreement, Passport will comply at its sole cost and expense with all applicable federal, state, county, and municipal laws, statutes, rules, regulations and ordinances. If requested by Provider while performing services at Provider's place of business, Passport will comply with Provider's dress and conduct codes and security protocols.

3. PCI Certification

For the duration of the term of this Agreement, Passport will maintain Payment Card Industry – Data Security Standard certification.

4. Product Updates

Any system-wide improvements or modifications made by Passport to the Software will, when available, be provided to Provider at no charge to Provider and will automatically be subject to the terms of this Agreement.

Provider may request new features or functionality to be built into the system, and, to the extent that Passport plans to incorporate such requested new features or functionality into the Software, Passport will develop such features and functionality at no cost to the Provider pursuant to Passport's development timeline. If the Provider desires to expedite such development, Passport may, in its sole discretion, charge Provider an expedite fee of two hundred dollars ($200.00) per development hour necessary to develop the requested features or functionality, provided, however, that Passport shall first notify Provider and receive written approval from Provider to proceed. If the Provider's requested features or functionality are created for the Provider's use and Passport does not plan to incorporate such requested features into the Software, Passport may, in its sole discretion, charge Provider a custom development fee of two hundred and fifty dollars ($250.00) per hour for the development of such features or functionality, provided, however, that Passport shall first notify Provider and receive written approval from Provider to proceed.

In addition to or in lieu of the fees set forth in this section, the parties may establish a monthly software license or maintenance fee that will be mutually agreed between the parties in a separate written addendum to this Agreement.

5. Changes

Any changes to the scope of services provided under this Agreement shall be set forth in a written change order or amendment signed by both parties setting forth the scope of the change(s) and any applicable fees.

6. Additional Passport Services

Passport provides all of the following software platforms as part of its overall technology portfolio: mobile payments for parking, citation management, digital permits, and mobile payments for transit. Provider may request the addition of any of these platforms to the extent not provided by Passport to Provider as of the Effective Date, and any additional platforms developed by Passport from and after the Effective Date, which shall be memorialized in an addendum to this Agreement including the fees applicable to such platform(s) and any additional applicable service or legal terms.

7. Scheduled Maintenance

If Passport plans to perform any scheduled maintenance during business hours, Passport will provide notice to Provider at least twenty-four (24) hours in advance of the commencement of such scheduled maintenance. For the purpose of this section, "business hours" means Monday through Friday between 9 am 5 pm EDT. In the event that Passport determines that unscheduled maintenance is necessary, Passport will give Provider as much advance notice as is reasonably practicable, unless such unscheduled maintenance is necessitated by emergency circumstances for which it would be unfeasible or impossible to notify Provider in advance.

8. System Uptime; Billing Credits

Passport will provide the Software with uptime of at least ninety-nine percent (99.0%) calculated over a rolling six-month period ("Uptime Guarantee"). For any month during which system uptime drops below the Uptime Guarantee, Passport will provide a billing credit in an amount equal to the percentage difference between a) the lowest uptime reached at any point during the month (calculated on a rolling six month period) and b) the Uptime Guarantee, multiplied by the total fees payable to Passport for such month. For example, if during a given month the software uptime falls to ninety-five percent (95.0%) and if during that month the fees payable to Passport were one hundred dollars ($100.00), Passport will issue a billing credit of four dollars ($4.00). For the purposes of this agreement, uptime is defined as any period of time during which end users of the Software can use the Software.

9. Service Levels

Subject to the uptime guarantee set forth in Section 8, Passport's sole and exclusive obligation in the event of an error or interruption of the Software is to use its best efforts to restore or repair the Software as quickly as practicable.

10. Technical Support

Provider will field all support calls and emails from end users. Passport will provide second tier technical support to end users where Provider's support representative is unable to provide a satisfactory resolution to an end user support inquiry and escalated technical support from Passport is required to resolve such inquiry. In this capacity as Provider's escalated technical support resource, Passport will provide live telephone support Monday through Friday from 9am-5pm EDT. Passport will also provide email support. All email support inquiries will be answered within two (2) hours during business hours and within twenty-four (24) hours during non-business hours. These hours apply on all Passport holidays.

11. Data Rights

This Section shall govern the rights of Passport and Provider, as the case may be, with respect to the data that is subject to this Agreement. Passport will, by provisions in its Privacy Policy or otherwise, procure

from such end users all such lawful consents and rights necessary to grant to Provider the rights in such data as stated in this Section. Passport's Privacy Policy, as it may be amended from time to time in Passport's sole discretion, can be viewed at https://www.passportinc.com/privacy-policy.

A. Operational data is data specific to the Provider's operation that is provided by Provider to Passport to be used in the providing of services. Operational data is specific to the Provider's operation, which is not available to Passport publicly or by other means. Operational data may include, but is not limited to, zone information, rate information, operational schedules, business metrics, relevant details of partner agreements. In each case, Operational data may refer to past, present, or future states of such items.

Operational data is the sole and exclusive property of the Provider. The Provider grants Passport a perpetual, irrevocable, royalty-free, non-exclusive, non-assignable, and non-transferrable license to Operational data, provided that, Passport may assign or transfer such license to a successor in connection with the transfer or sale of all or substantially all of its assets or business related to this agreement, or in the event of its merger, consolidation, change in control or similar transaction.

B. Payment Card Industry-Data Security Standard Information ("PCI-DSS Information") consists of the following items, each as defined by the then-current Payment Card Industry Data Security Standards ("PCI-DSS"): Account Data; Cardholder Data; Primary Account Number; and Sensitive Authentication Data.

Passport acquires a license or sublicense to the PCI-DSS Information from end users who share such data with Passport in connection with their use of the Software. Passport must secure such data in accordance with PCI-DSS. As such, Passport may not grant Provider derivative rights to such PCI-DSS Information and Passport shall not be required to disclose such PCI-DSS Information to Provider.

C. Personal identifiable information ("PII") is any representation of information that permits the identity of an individual to whom the information applies to be reasonably determined or inferred by either direct or indirect means. Name, address, social security number or other identifying number or code, telephone number, or email address directly identify individuals. Certain data elements—including gender, race, birth date, geographic indicator (such as zip code or postal code), and other descriptors—can be used in conjunction or with other data elements to indirectly identify individuals. Information permitting the physical or online contacting of a specific individual (e.g., IP address) is also personally identifiable information. End users of Passport's Software own PII and license it to Passport pursuant to Passport's Privacy Policy, as it may be amended from time to time in Passport's sole discretion. Passport may sublicense PII to the Provider under certain conditions (including but not limited to the Provider's compliance with information security controls and applicable regulations) that shall be memorialized separately if and when applicable.

D. Activity data is any data generated in the providing of services under this agreement by Passport to Provider and by end users' interactions with the services or with Passport directly that is not otherwise PCI-DSS information or PII as defined above. Activity data may include, but is not limited to, user interaction data, geolocation data, opt-in/opt-out status (including compliance logs), purchase and session data, application diagnostic data, service performance data, and support data. Data that is derived from Activity data is also Activity data.

Activity data is the sole and exclusive property of Passport. Passport grants the Provider an irrevocable, royalty-free, non-exclusive, non-assignable, and non-transferrable license to Activity data for the duration of the term of this Agreement and only to the extent and in the format that Passport chooses in its sole discretion to expose such data through its administrative portal or as otherwise agreed upon with the

Provider and only for the Provider's internal use in connection with the services provided under this agreement.

12. Privacy Policy; Terms of Use

End users' use of the Services shall at all times be governed by (a) Passport's Privacy Policy, as it may be amended from time to time in Passport's sole discretion, which can be viewed at https://passportinc.com/privacy-policy/, and (b) Passport's Terms and Conditions, as they may be amended from time to time in Passport's sole discretion, which can be viewed at https://passportinc.com/terms-and-conditions/.

13. Intellectual Property

A. Passport grants Provider a revocable, non-exclusive, non-assignable, non-transferrable, and non-subleaseable right and license to use and access the Software only for its internal business purposes for the duration of the Term. All intellectual property rights including, without limitation, trade names, source code, trademarks, copyrights, patents, and trade secrets, not explicitly granted to Provider in this agreement are reserved to Passport.

B. Provider will not, directly, indirectly, alone, or with another party, (I) copy, disassemble, reverse engineer, or decompile the software or any subpart thereof; (ii) modify, create derivative works based upon, or translate the software or source code; (iii) transfer or otherwise grant any rights in the software or source code in any form to any other party; (iv) attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder.

14. Publicity; Use of Names and Marks

Subject to the provisions of Section 19 (Confidentiality) below, the parties will have the right to publicly disclose that Passport is Provider's provider of the Software as set forth herein by means of, by way of illustration and not limitation, news releases, public announcements, or other forms of publicity.
Passport may use the name or marks of Provider, or reference the fact that Provider is a client of Passport, for business development purposes, as part of a portfolio or work, or in an illustrative list of clients.

15. Payment Gateway

Provider must supply a payment gateway for the payment of all fees by end users. Passport can provide payment gateway services and Exhibit B contains a list of other payment gateways supported by Passport. For any unsupported payment gateway selected by Provider, Passport will charge a two hundred and fifty dollar ($250.00) per development hour necessary to perform necessary integrations. Provider will bear all costs associated with payment gateway services, including all per transaction costs. Provider may elect to use Passport's payment gateway at any time (which shall be reflected in a written amendment to this Agreement) at the rate of $0.05 per transaction.

16. Payment Terms

If Passport is the Merchant of Record ("MOR"), Passport will remit the funds to Provider from the preceding month within fifteen (15) days of the conclusion of the month after netting out Passport's fees and merchant processing fees.

If Provider is the MOR, Passport will send monthly invoices to Provider for all fees payable to Passport that accrued during the preceding month. If Provider fails to remit payment according to such invoices

within thirty (30) days after the date on the invoice, Passport will have the right to suspend Provider's access to the software and/or assess interest at the rate of 18% per annum on the delinquent balance, or the maximum rate permitted by state law, if lower, until such delinquent balance is paid.

17. Refunds

Passport agrees to forgo or return, as applicable, its per transaction fees for any refund granted by Provider. Provider will be responsible for reimbursing Passport for all merchant processing fees, including without limitation payment gateway fees, settlement fees, and interchange reimbursement fees, if any, incurred by Passport for all transactions, including refunded transactions.

18. Capacity

Provider represents and warrants that it has obtained or will obtain all applicable governmental approvals, authorizations, or licenses necessary to enter into this Agreement. Provider further represents and warrants its signatory is duly authorized to bind Provider to the terms herein.

19. Confidentiality

A. Provider and Passport agree to treat this Agreement and all information furnished, or to be furnished, by or on behalf of the other party and information analyses, summaries and other work product derived from such information (collectively, the "Confidential Information") in accordance with the provisions of this section and to take, or abstain from taking, all actions set forth herein. Each party, as a receiving party, will do the following things with regard to the Confidential Information of the other party:

i. Prevent the disclosure of the Confidential Information by the receiving party and each of the receiving party's employees, agents, and/or professionals to any third party other than as permitted under this Agreement;
ii. Use, and permit the use of, the Confidential Information only for the purposes of providing, or enjoying the benefit of, the goods, services, and/or software provided for in this Agreement (the "Purpose");
iii. Disclose the Confidential Information only to such of the receiving party's employees, agents, and professionals as have a bona fide need to possess or know the Confidential Information in the course of accomplishing, or advising the disclosing party with regard to, the Purpose;
iv. Cause each employee, agent, or professional to whom the receiving party discloses the Confidential Information to be bound by an obligation of confidentiality that is at least as rigorous as the obligations contained in this Agreement; and
v. Return or destroy all written or other tangible copies of Confidential Information in the receiving party's possession or direct or indirect control, including all extracts and copies thereof, within a reasonable time after, and in accordance with, the disclosing party's request.

B. Nothing in this Agreement will prevent the receiving party from disclosing or using Confidential Information to the extent that:

i. It is or becomes readily ascertainable by proper means by the public without any breach of a confidentiality obligation of the receiving party;
ii. It is received from a third party that is not under an obligation of confidentiality of which the receiving party knew or had reason to know;
iii. It was independently developed by the receiving party without use of the Confidential Information; or

iv. It is required by law to be disclosed, provided that the receiving party provides to the disclosing party as much notice as is practicable under the circumstances of such requirement prior to disclosure and provides to the disclosing party, at the disclosing party's expense, such reasonable assistance as the disclosing party requests in seeking confidential treatment, protective orders, nondisclosure, and/or similar measures.

For the avoidance of doubt, none of the requirements of this Section shall prohibit Provider from disclosing Confidential Information to the extent that such information is required to be disclosed pursuant to any open records law, open meetings law, or any other local public disclosure law applicable to Provider.

20. Cooperative Purchasing

Provider will allow any public agency located in the United States to purchase, and Passport to offer to such public agency or agencies, the Software at the same price and under the same conditions agreed upon in this Agreement without any competitive bidding on the part of such public agency or agencies, to the extent permitted by law. Each such public agency will execute its own contract directly with Passport and Provider shall not incur any responsibility—financial or otherwise—in connection therewith.

21. Force Majeure

Neither Passport nor Provider will be held liable for any delay or omission in performance of their duties under this Agreement resulting from causes beyond their reasonable control, including, for the sake of illustration and not limitation, delays or omissions attributable to third-party vendors, suppliers, or integration partners, labor strikes, acts of god, acts of the public enemy, fires, natural disasters, wars, or riots.

22. Disclaimer of Warranties

The Software is provided to Provider by Passport "as is" and with all faults. Provider acknowledges and agrees that Passport bears no liability for any error, omission, defect, deficiency, or nonconformity within the Software except as expressly provided in this Agreement. Other than as specifically set forth herein, Passport does not make any representations, warranties, or guarantees, express or implied, directly or indirectly, including, without limitation, any warranty of condition, merchantability, or fitness for a particular purpose or use, with respect to, arising out of, or in connection with the Software and related services to be performed pursuant to this Agreement.

23. Severability

If any provision of the agreement is found to violate applicable law, the violating provision will be ineffective only to the extent that it violates the law, without invalidating the remainder of the section containing the violating provision or any other provisions or sections of this Agreement. Any court or arbitrator adjudicating the matter of the invalidity of a provision shall, to the extent permitted by law, reform any such illegal or unenforceable provision such as to give it the maximum effect.

24. Assignment

This Agreement and all of its provisions will be binding upon and inure to the benefit of the parties and their respective permitted successors and assignees. Neither Passport nor Provider may assign any rights, interests, or obligations hereunder without prior written consent of the other party, provided, however, that Passport may, without such written consent, assign this agreement and its rights and delegate its obligations hereunder in connection with the transfer or sale of all or substantially all of its assets or business related to this agreement, or in the event of its merger, consolidation, change in control or similar transaction. Any

permitted assignee shall assume all assigned obligations of its assignor under this agreement. Any purported assignment in violation of this section shall be void and of no effect.

25. Contractual Silence

To the extent this Agreement fails to address a condition, obligation, benefit, or other term necessary to sufficiently define the relationship between the parties or a disagreement or conflict regarding the interpretation or construction of this Agreement arises, the parties agree to reasonably cooperate to draft a mutually agreeable amendment that clarifies the duties, rights, and obligations of the parties under this Agreement.

26. Amendments

The parties may not amend or modify this agreement except by a written instrument signed by an authorized signatory of each party.

27. Currency

Unless otherwise specified in the Agreement, all fees and other monetary amounts are in U.S. Dollars. If a currency other than the U.S. Dollar is specified, the exchange rate will be fixed at the foreign exchange rate published by the United States Federal Reserve on the date the payment of remittance is transmitted from Provider to Passport, or vice versa, as the case may be.

28. Cooperate

If either Provider or Passport has a claim, dispute, or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this agreement, the parties agree to cooperate in good faith to achieve a satisfactory resolution of such matter. If after sixty (60) days the dispute remains unresolved, the parties may pursue other remedies available at law or in equity. Notwithstanding the foregoing, either party shall have the right to immediately seek any applicable remedies available at law or in equity for a breach or threatened breach of the confidentiality obligations as set forth in Section 19.

29. Independent Contractor

Passport is an independent contractor and not an agent or employee of Provider. No agency, partnership, franchise, joint venture, or employment relationship exists between Passport and Provider. Passport's employees and agents will not be employees or agents of Provider. Passport shall be fully and solely responsible for the supervision, control, performance, compensation, benefits (including, without limitation, all forms of insurance) withholdings, health and safety of all of its employees and agents. Provider will not be responsible or liable for any withholding taxes or contributions to state worker's compensation, unemployment or other funds or programs.

30. Limitation of Liability

In no event will Passport be liable to Provider for any lost profits, lost savings, or punitive, incidental, indirect, special, or consequential damages arising out of Provider's use or inability to use the Software or the breach of this agreement, even if Passport has been advised of the possibility of such damages.

31. Notices

All notices, consents, and communications required hereunder shall be given in writing and delivered via electronic mail or mail, shall be deemed to be given upon receipt thereof, and shall be sent to the address below:

If to Passport:

Passport Labs, Inc.
Attn: Khristian Gutierrez
128 S. Tryon St., Suite 2200
Charlotte, NC 28202
Fax: (888) 804-1783
khristian.gutierrez@passportinc.com

With a hard copy to General Counsel and by email to jason.Idilbi@passportinc.com

If to Provider at the contact information provided on the "General Terms" page.

32. Construction

No rule of law that requires that any part of the Agreement be construed against the party drafting the language will be used in interpreting this Agreement.

33. Waiver

Any failure or delay by Passport to enforce the provisions of this Agreement shall in no way constitute a waiver by Passport of any contractual right hereunder, unless such waiver is in writing and signed by Passport.

34. Entire Agreement

This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous communications, representations or agreements between the parties, whether verbal or written, including any printed terms and conditions which may appear on either Party's purchase orders, releases, invoices or other forms to the extent such terms are different from or inconsistent with this Agreement.

Exhibit B
Supported Payment Gateways

1. Authorize.net
2. Cash Net
3. Chase Paymentech (Orbital) - US / Canada
4. Converge (Elavon)
5. DataCash - United Kingdom
6. Desjardins - Canada
7. FirstData Rapid Connect
8. FIS Pay
9. Heartland
10. Internet Secure
11. Moneris - US / Canada
12. Point and Pay
13. TD Beanstream/Bambora
14. Vantiv
15. WorldPay (Securenet)

CITY OF Fargo

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

(11)

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Firebox Liquor License Extension

DATE: August 3, 2018

The Auditor's office received a request to extend the Firebox Class A alcoholic beverage license. This license was secured from the Olive Garden and the original intent was to open a bar in the Meadowlark building, the licensee decided not to open a bar and has been actively pursuing selling the license since that time.

The request is a six-month extension of ordinance 25-1512 on liquor license to allow time to sell and transfer the license to a new entity.

Recommended Motion:

Approve a six-month extension of ordinance 25-1512 until February 28, 2019 for the Firebox class A liquor license.

Printed on Recycled paper.

CONMY ◆ FESTE
Attorneys

CONMY FESTE LTD.
406 Main Avenue, Suite 200
P.O. Box 2686
Fargo, ND 58108-2686

Telephone
701-293-9911
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Ryan C. McCamy*
Bruce D. Govig
Paul M. Hubbard, Retired
E.T. Conmy, Jr. (1912-2006)
Charles A. Feste (1928-2013)

*Also Licensed in Minnesota

† Certified Civil Trial Specialist - National Board of Trial Advocacy

July 30, 2018

Via Hand Delivery
Fargo City Commission
Fargo City Hall
200 3rd Street North
Fargo, ND 58102

RE: Firebox LLC Class A Alcoholic Beverage License No. 10

Dear Mayor Mahoney and Commissioners Piepkorn, Gehrig, Grindberg, and Strand:

I am writing to request an extension of the provisions of FMC § 25-1512(A)(2) requiring that alcohol be sold at the licensed premises for the Class A Alcoholic Beverage License No. 10 (the "License") owned by Firebox LLC ("Firebox"). Section 25-1512(A) addresses termination, suspension, and revocation of licenses and requires the following:

A. Any license issued under the provisions of this article shall automatically terminate:

2. When the licensee, for any reason, ceases business at the licensed premises, except as permitted in accordance with § 25-1507(H) of this article. Business shall be deemed to have ceased upon occurrence of any of the following:

a. When no sale of alcoholic beverages occurs on the licensed premises for a period of at least 30 consecutive business days; or

b. When alcoholic beverages are not sold on the licensed premises on at least 15 of any 60 consecutive business days; or

c. When the licensed premises are not open for normal business for at least 180 hours in any 60 consecutive business days;

provided, however, upon written request of the licensee, the commission, in its discretion and for good cause shown, may extend the date upon which business shall be deemed to have ceased.

This is Firebox's third extension request. At its February 26, 2018, meeting, the City Commission granted a six-month extension to Firebox until August 31, 2018.

Firebox purchased the License in October 2015. When it purchased the License, Firebox intended to operate a business at the Meadowlark Building in downtown Fargo, 503 7th Street North. After acquiring the License, Firebox decided that a bar at that location would not be economical. It began trying to transfer the License to a new licensee.

In January 2016, Firebox entered into an agreement to sell the License. That sale failed to close in June 2016. I provided the City Commission information regarding Firebox's efforts to sell the license from June 2016 to August 2017 in my August 2, 2017, letter to the City Commission and Firebox's efforts to sell the license from August 2017 to February 2018 in my February 21, 2018, letter to the City Commission.

Since February 2018, Firebox has continued its efforts to sell the License. In February, Firebox was negotiating a sale to a potential buyer. In March, Firebox successfully reached terms with the buyer and drafted purchase documents. The buyer continued to work on its financing. Unfortunately, the buyer's financing for the entire project, which included purchasing real estate and making significant improvements to the real estate, fell through in June.

Firebox also expressed interest to a new business being developed in Fargo about transferring its license as a capital investment in the business. However, the new business has opted to purchase a different form of license that will suit its purposes.

Firebox continues other marketing efforts for the license. These efforts include discussions with existing Fargo business owners, Goldmark Commercial Real Estate, Inc., and City Auditor Steve Sprague. I have attended Liquor Control Board meetings in case an interested buyer attends that meeting. Firebox is also advertising the license in The Forum and on Inforum.com.

Firebox requests the date upon which business is deemed to have ceased be extended for a six-month period until February 28, 2019. Firebox has shown good cause for the extension. It had a bona fide intent to operate a bar at the Meadowlark Building but concluded it was not economical. It has continually tried to sell the License and has had two sales of the License fall through. Since those sales fell through, Firebox has continued trying to sell the License.

Sincerely,

Douglas Murch

Douglas Murch

CITY OF Fargo

ASSESSMENT DEPARTMENT

12a

July 31, 2018

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 1706 1 St. N as submitted by Lisa Marie Wiley. 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 2017, 2018, 2019, 2020, & 2021.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about $310 with the City of Fargo's share being $55.

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 LISA WILEY ARTZ Phone No. 701-361-5360
2. Address of Property 1706 1 ST N

   City FARGO State ND Zip Code 58102
3. Legal description of the property for which the exemption is being claimed.

   S 75 FT OF LTS 3 & 4, BLK 4 MCDERMOTTS ADDN
4. Parcel Number 01-1890-00810-000 Residential ■ Commercial ☐ Central Business District ☐
5. Mailing Address of Property Owner 1706 1 ST N

   City FARGO State ND Zip Code 58102

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). MAIN FLOOR REMODEL
7. Building Permit No. _____ 8. Year Built 1951
9. Date of Commencement of making the improvement 01/01/2016
10. Estimated market value of property before improvement $178,900
11. Cost of making the improvement (all labor, material and overhead) $30,000+/-
12. Estimated market value of property after improvement $203,200

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 Lisa Wiley Artz Date 7-20-18

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 7/31/18

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

126

August 3, 2018

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 105 Woodland Dr. N as submitted by Charie J. & Desiree J. Wilson. 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 $480 with the City of Fargo's share being $80.

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 Charlie & Desiree Wilson Phone No. _____
2. Address of Property 105 Woodland Dr N
   City FARGO State ND Zip Code 58102
3. Legal description of the property for which the exemption is being claimed. Lt 4 Blk 4 Ridgewood Addn
4. Parcel Number 01-2360-00050-000 Residential ☒ Commercial ☐ Central Business District ☐
5. Mailing Address of Property Owner 105 Woodland Dr N
   City Fargo State ND Zip Code 58102

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). All new flooring on main level, removed some walls on main level, prev. bath remodel
7. Building Permit No. 189028 8. Year Built 1956
9. Date of Commencement of making the improvement 6-15-18
10. Estimated market value of property before improvement $ 305,300
11. Cost of making the improvement (all labor, material and overhead) $ 6,000 +/-
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 Charlie Wilson Date 8-1-18

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 _____ Date 8/2/18

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

(12C)

August 3, 2018

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 3005 9 St. N as submitted by Roy V. Jr. & Lisa A. Sander. 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 $190 with the City of Fargo's share being $30.

Sincerely,

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 Roy V. Jr. & Lisa A. Sander Phone No. _____
2. Address of Property 3005 9 St. N.

   City FARGO State ND Zip Code 58102
3. Legal description of the property for which the exemption is being claimed. _____

   N 65' of Lt 10 & S 10' of Lt 11 Blk 3 Knollbrook Addn.
4. Parcel Number 01-1600-00370-000 Residential ☒ Commercial ☐ Central Business District ☐
5. Mailing Address of Property Owner 3005 9 St. N.

   City Fargo State ND Zip Code 58102

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). Basement Remodel, Windows & Doors.
7. Building Permit No. 189019 8. Year Built 1962
9. Date of Commencement of making the improvement 2000 basement; 2005 windows
10. Estimated market value of property before improvement $ 201,200
11. Cost of making the improvement (all labor, material and overhead) $ 15,000
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 Roy V Sander, Jr Date 6/19/18

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 8/3/18

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

12d

August 3, 2018

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 910 12 St. N as submitted by Paul D. & Linda S. Kegel. 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 $770 with the City of Fargo's share being $130.

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 Paul & Linda Kegel Phone No. 701-237-3901
2. Address of Property 910 12 St N

   City FARGO State ND Zip Code 58102
3. Legal description of the property for which the exemption is being claimed. Lot 8 Blk 1 Sterns
4. Parcel Number 01-2900-00100-000 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 / Finish lower level
7. Building Permit No. 180139/180393 8. Year Built 1908
9. Date of Commencement of making the improvement February 2018
10. Estimated market value of property before improvement $ 137,400
11. Cost of making the improvement (all labor, material and overhead) $ 60,000
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 Paul Kegel Date 6-26-18

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 _____ Date 8/3/18

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

12e

August 3, 2018

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 2308 Willow Rd. N as submitted by BSAR Enterprises. 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 $1065 with the City of Fargo's share being $180.

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 BSAR Enterprises Phone No. 701-866-0003
2. Address of Property 2308 Willow Rd N

   City FARGO State ND Zip Code 58102
3. Legal description of the property for which the exemption is being claimed.

   Lot 25 Block 8 Woodcrest 2nd
4. Parcel Number 01-4050-00350-000 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). See Attached
7. Building Permit No. BL 20172498 8. Year Built 1966
9. Date of Commencement of making the improvement 1-5-18
10. Estimated market value of property before improvement $ 283,000.00
11. Cost of making the improvement (all labor, material and overhead) $ 83,000.00
12. Estimated market value of property after improvement $ 366,000.00

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 BSAR Enterprises Date 7-25-18

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 Date 8/3/18

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

Updates to 2308 Willow Rd

Electrical:

New breaker panel and breakers

All new wire to kitchen to meet current codes

Hardwired new smoke detectors

New light fixtures and added dimmable can lights in dinning room and living room

Many new outlets, switches and covers

Plumbing:

Upstairs master bath- new shower and plumbing

Basement master- all new bathroom

New sump pit and pump

Flooring:

New, Solid Hardwood Hickory, in Livingroom, hallway, front office/bedroom, and master bedroom

New Carpet throughout

New LVT tile in Dinning, Kitchen, Sunroom

New vinyl in upper master bath and lower master bath

Kitchen:

New Stainless steel appliances and range hood.

Cupboards repaired and new knobs placed

New High Definition Laminate countertops

Garbage disposal added

Front Office/Bedroom: Mural was painted by local house painter's dad. Can be painted over if you want it done

Laundry:

New Washer/Dryer

Room was created in basement but the plumbing in the kitchen closet still accessible to move back up stairs if desired

Fireplaces:

Both living room and family room wood burning fireplaces converted to gas and custom mantle built.

Basement Master Bedroom:

Demo of rooms in basement and made a master suite with huge walk in closet and full bath

Added egress window

Woodwork:

Replaced many base and casing that were damaged throughout house.

Exterior:

New tree in front

Water main was located in boulevard and new grass planted

Cement repair by garage

Paint:

All fresh paint most of interior of house with touchups to be completed soon

New Garage Side entry Door

CITY OF Fargo

ASSESSMENT DEPARTMENT

12f

August 3, 2018

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 244 30 Ave. N as submitted by Randy S. & Kendra Ball. 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 $230 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 Ball, Randy S & Kendra Phone No. 701-212-4627
2. Address of Property 244 30 Ave N
   City FARGO State ND Zip Code 58102
3. Legal description of the property for which the exemption is being claimed. LOT 1
   BLK 9 EDGEWOOD 2nd
4. Parcel Number 01-0730-00790-000 Residential ☒ Commercial ☐ Central Business District ☐
5. Mailing Address of Property Owner 244 30 Ave N
   City Fargo State ND Zip Code 58102

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 kitchen. Incl flooring, cabinets, and elec.
7. Building Permit No. 171406/172489 8. Year Built 1970
9. Date of Commencement of making the improvement 07/31/17
10. Estimated market value of property before improvement $ 188200
11. Cost of making the improvement (all labor, material and overhead) $ 26,000
12. Estimated market value of property after improvement $ 17,900 → value added

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 Randy Ball Date 7-20-18

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 NONE
    Assessor's Signature [signature] Date 8/3/18

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 _____

Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

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

(13)

MEMORANDUM

TO: **BOARD OF CITY COMMISSIONERS**

FROM: **RUTH ROMAN**
DIRECTOR OF PUBLIC HEALTH

DATE: **AUGUST 2, 2018**

RE0: **AGREEMENT FOR SERVICES WITH FARGO PUBLIC LIBRARY FOR $500.00**

The attached agreement for services is for breastfeeding friendly environment support for the Fargo Public Library.

No budget adjustment is required for this contract.

Suggested Motion: Move to approve the contract agreement with the Fargo Public Library.

RR/LA
Enclosure

CONTRACT AGREEMENT

THIS AGREEMENT, effective the 1st day of August, 2018, by and between Fargo Cass Public Health ("FCPH"); and Fargo Public Library.

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

A. **Term of Agreement:** Project plans must be implemented by December 31, 2018 after funds are received.

B. **Statement of Work:** Support worksites in their efforts to provide a breastfeeding friendly environment for their employees. Provided the activities authorized under the statement of work and contract signed by the Recipient are eligible expenditures of Fargo Cass Public Health, the City agrees to provide an amount not to exceed $500.00. Funds shall be disbursed upon a presentation of a signed agreement.

C. **Termination:** This agreement may be terminated by either party upon the giving of thirty (30) days written notice.

D. **Accounts and Records:** The grant partner shall establish and maintain accurate and complete account and financial or other record in relation to the receipt and expenditure of all grant funds for the project so they adequately show that the grant funds were used exclusively for the purposes described in this agreement.

Special Considerations:

A. It is understood and agreed that the relationship created by this Agreement shall be that of grant partner and shall not be deemed an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this contract agreement. I hereby certify that the above assurances and provisions of responsibility have been reviewed and our agency has agreed upon the conditions as set forth.

C. It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

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

FARGO CASS PUBLIC HEALTH

By Ruth Roman

Ruth Roman
Director of Public Health

Date 8/1/18

GRANT PARTNER – Fargo Public Library

By Betsy Dauer

Betsy Dauer
Principal Office Associate

Date 8-1-18

By _____

Timothy J. Mahoney
Mayor, City of Fargo

Date _____

Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

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

14

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: RUTH ROMAN RR
DIRECTOR OF PUBLIC HEALTH

DATE: JULY 30, 2018

RE0: AGREEMENT FOR SERVICES WITH WEEKARE CHILDKARE FOR $500.00

The attached agreement for services is for breastfeeding friendly environment support for WeeKare ChildKare.

No budget adjustment is required for this contract.

Suggested Motion: Move to approve the contract agreement with WeeKare ChildKare.

RR/LA
Enclosure

CONTRACT AGREEMENT

THIS AGREEMENT, effective the 27th day of July, 2018, by and between Fargo Cass Public Health ("FCPH") and WeeKare ChildKare Center.

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

A. **Term of Agreement:** Project plans must be implemented by December 31, 2018 after funds are received.

B. **Statement of Work:** Support worksites in their efforts to provide a breastfeeding friendly environment for their employees. Provided the activities authorized under the statement of work and contract signed by the Recipient are eligible expenditures of Fargo Cass Public Health, the City agrees to provide an amount not to exceed $500.00. Funds shall be disbursed upon a presentation of a signed agreement.

C. **Termination:** This agreement may be terminated by either party upon the giving of thirty (30) days written notice.

D. **Accounts and Records:** The grant partner shall establish and maintain accurate and complete account and financial or other record in relation to the receipt and expenditure of all grant funds for the project so they adequately show that the grant funds were used exclusively for the purposes described in this agreement.

Special Considerations:

A. It is understood and agreed that the relationship created by this Agreement shall be that of grant partner and shall not be deemed an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this contract agreement. I hereby certify that the above assurances and provisions of responsibility have been reviewed and our agency has agreed upon the conditions as set forth.

C. It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

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

FARGO CASS PUBLIC HEALTH

By Ruth Roman

Ruth Roman
Director of Public Health

Date 7/31/18

GRANT PARTNER - WeeKare ChildKare

By _____

Amy Friend
Director

Date 7/27/18

By _____

Timothy J. Mahoney
Mayor, City of Fargo

Date _____

Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

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

(15)

MEMORANDUM

TO: **BOARD OF CITY COMMISSIONERS**

FROM: **RUTH ROMAN**
DIRECTOR OF PUBLIC HEALTH

DATE: **AUGUST 3, 2018**

RE0: **AGREEMENT FOR SERVICES WITH SAMANTHA-NIENOW FOR $4,500.00**

The attached agreement is for services to build an online training module for the Child Care Physical Activity.

No budget adjustment is required for this contract.

Suggested Motion: Move to approve the agreement with Samantha Nienow for online training.

RR/la
Enclosure

AGREEMENT FOR SERVICES

THIS AGREEMENT, effective the 15th day of August 2018, by and between Fargo Cass Public Health ("FCPH"); and Samantha Nienow, President of Red Zest Design, Inc.

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

A. **Term of Agreement:** The parties entered into a written agreement for the period of August 15, 2018, through September 30, 2018.

B. **Services to be provided by independent contractor:** To build the online training module Promoting Physical Activity for Infants and Toddlers in Child Care, which will include:

- Incorporating graphics from the "Level 2 Training PowerPoint new updates v2.pptx" file.
- Recording the audio for the training (voice-over talent will be Samantha Nienow). FCPH staff will help in writing and confirming the voice-over script.
- Editing soft music under voice recordings.
- Adding quizzes in each section of the course, FCPH staff will help with writing quiz questions and answers.
- Copy editing the script and online course text (including quizzes) by a professional copy editor to make sure there are no grammar mistakes in the recorded audio or written text.
- Testing the new online course as a student to make sure it works properly.

The Designer, will set up these elements in the Thinkific platform and then provide full access to FCPH to change or edit the materials. The administration of the online course and management will be FCPH's responsibility.

C. **Reimbursement:** The contracting independent contractor shall be reimbursed $4,500.00 for online module and submit an invoice, not to exceed $4,500.00.

D. **Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.

E. **Confidentiality:** The contracting independent contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

A. It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee shall not be deemed an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this service agreement.

I hereby certify that the above assurances and provisions of service have

been reviewed and our agency has agreed upon the conditions as set forth.

C. It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date executed below.

FARGO CASS PUBLIC HEALTH

By Ruth Roman
Ruth Roman
Director of Public Health

Date 8/6/18

By _____
Timothy J. Mahoney
Mayor, City of Fargo

Date _____

RED ZEST DESIGN, INC.

By _____
Samantha Nienow
EIN: 81-4041914

Date August 2, 2018

Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

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

16

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: RUTH ROMAN
DIRECTOR OF PUBLIC HEALTH

DATE: AUGUST 6, 2018

RE0: AGREEMENT FOR SERVICES WITH ANCHOR INGREDIENTS FOR $500.00

The attached agreement for services is for breastfeeding friendly environment support for Anchor Ingredients.

No budget adjustment is required for this contract.

Suggested Motion: Move to approve the contract agreement with Anchor Ingredients.

RR/LA
Enclosure

CONTRACT AGREEMENT

THIS AGREEMENT, effective the 1st day of August, 2018, by and between Fargo Cass Public Health ("FCPH"); and Anchor Ingredients.

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

A. **Term of Agreement:** Project plans must be implemented by December 31, 2018 after funds are received.

B. **Statement of Work:** Support worksites in their efforts to provide a breastfeeding friendly environment for their employees. Provided the activities authorized under the statement of work and contract signed by the Recipient are eligible expenditures of Fargo Cass Public Health, the City agrees to provide an amount not to exceed $500.00. Funds shall be disbursed upon a presentation of a signed agreement.

C. **Termination:** This agreement may be terminated by either party upon the giving of thirty (30) days written notice.

D. **Accounts and Records:** The grant partner shall establish and maintain accurate and complete account and financial or other record in relation to the receipt and expenditure of all grant funds for the project so they adequately show that the grant funds were used exclusively for the purposes described in this agreement.

Special Considerations:

A. It is understood and agreed that the relationship created by this Agreement shall be that of grant partner and shall not be deemed an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this contract agreement. I hereby certify that the above assurances and provisions of responsibility have been reviewed and our agency has agreed upon the conditions as set forth.

C. It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.

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

FARGO CASS PUBLIC HEALTH

By Ruth Roman
Ruth Roman
Director of Public Health

Date 8/2/18

GRANT PARTNER – Anchor Ingredients

By Sarah Lundblad
Sarah Lundblad
HR Manager

Date August 2, 2018

By _____
Timothy J. Mahoney
Mayor, City of Fargo

Date _____

Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

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

(17)

MEMORANDUM

TO: **BOARD OF CITY COMMISSIONERS**

FROM: **RUTH ROMAN**
DIRECTOR OF PUBLIC HEALTH

DATE: **AUGUST 6, 2018**

RE: **UNIVERSITY OF NORTH DAKOTA COMMUNITY FACULTY CONTRACT FOR $8,625**

The attached contract with the University of North Dakota School of Medicine and Health Sciences for $8,625 per year is for medical school student training in the clinic.

No budget adjustment is required for this contract.

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

Suggested Motion: Move to approve the medical student training for the 2018-2019 school year.

RR/la
Enclosure

UNIVERSITY OF UND NORTH DAKOTA

SCHOOL OF MEDICINE & HEALTH SCIENCES
DEPARTMENT OF OBSTETRICS/GYNECOLOGY
1919 NORTH ELM STREET
FARGO, NORTH DAKOTA 58102
(701) 293-4110
FAX: (701) 293-4109

COMMUNITY FACULTY CONTRACT
(Hospital/Clinic with Single Contract)

The parties to this Contract are the University of North Dakota School of Medicine and Health Sciences (hereafter "UND"), and **Fargo Cass Public Health** (hereafter "Service Provider").

1. **Agreement:** UND herby contracts with Service Provider, and Service Provider agrees to provide to UND the services as outlined in Section 2: Scope of Services of this Contract. UND and Service Provider agree that Provider(s) provided pursuant to the Scope of Services will devote sufficient time to fulfill the requirements as outlined in the Scope of Services. Provider(s), however, will continue their employment with Service Provider and may be assigned other duties and responsibilities deemed necessary by Service Provider.

2. **Scope of Services**. Service Provider, in exchange for the compensation paid by UND under this Contract, agrees to provide the following services:

   See attached.

3. **Qualifications.** During the entire term of this Contract, Provider(s) shall be licensed in North Dakota. Provider(s) shall obtain and maintain medical staff privileges as necessary to perform the required duties as set out above.

4. **Term of Contract.** The term of this Contract is for a period of 12 months, commencing on the 1st day of July, 2018, and terminating on the 30th day of June, 2019. This Contract will not renew and there is no promise of continued services beyond the term of this Contract. Any agreement for a subsequent term will require a new contract.

5. **Compensation.** In consideration for the services provided by the Provider(s) under this Contract, UND shall pay to Service Provider an amount of $75 per one hour lecture and $150 per week for precepting, to be paid after each eight-week clerkship rotation. The Parties agree that the compensation set forth is the result of arms-length negotiations and is consistent with the fair market value for the services to be provided by the Provider(s). The compensation has not been determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the Parties which may be reimbursed under Medicare or any state healthcare program. Service Provider and Provider(s) shall be under no obligation to refer any business or patients to UND.

6. **Professional Charges**. UND agrees that it shall not bill any patient, third party payor, or any other party for any charges associated with any professional services provided by Provider. Service Provider shall have the sole right to bill and receive payment for any professional services provided by Provider(s).

7. **Independent Contractor**. Service Provider shall perform as an independent contractor under this Contract. The Provider(s) shall not be an employee of UND for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Contribution Act, the North Dakota Unemployment Compensation Law, and the North Dakota Worker's Compensation Act. Service Provider will retain sole and absolute discretion in the manner and means of carrying out the activities and responsibilities under this Contract, except to the extent specified in this Contract.

8. **Termination of Contract.**

   A. Termination without cause. This Contract may be terminated by either party upon 30 days' written notice.

   B. Termination for lack of authority. This Contract may be terminated if any license or certificate required by law, rule, or terms of this Contract, or necessary privileges, is for any reason denied, revoked, suspended or not renewed.

   C. Termination for cause. UND by written notice of default to Service Provider may terminate the whole or any part of this Contract if Provider(s) fails to provide services required by this Contract within the time specified or any extension agreed to by UND, or in a manner acceptable to UND. The rights and remedies of UND provided in this section 7 related to defaults by Service Provider are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

   Termination of this Contract under this section is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

9. **Professional Liability Insurance.** Subject to applicable deductibles or self-insured retention, each party agrees that throughout the term of this Contract it shall maintain professional liability coverage. UND shall maintain coverage with minimum limits of $1,000,000 per occurrence and $5,000,000 annual aggregate for its students and medical residents. The Parties shall provide for at least 30 days notice of any cancellation or change in professional liability insurance coverage. Service Provider's professional liability insurance shall provide coverage for Provider's activities under this Contract.

10. **Notice.** All notices or other communications required under this Contract shall be given by registered or certified mail and are complete on the date mailed when addressed to the Parties at the following addresses:

Hospital/Clinic:	UND:
Fargo Cass Public Health	Department of Obstetrics/Gynecology
1240 25th Street S	1919 North Elm Street
Fargo, ND 58103	Fargo, ND 58102

The provisions of this section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court govern.

11. **Confidentiality.** Except as may be required or permitted by applicable law, patient authorization, court order, or subpoena, each party agrees not to release confidential patient information. Service Provider and UND agree that each is a "covered entity" as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and HIPAA's implementing privacy regulations, 45 C.F.R. §165.500, *et seq.* ("Privacy Regulations") and each party shall comply with all requirements with respect to protected health information as defined in HIPAA. The provisions of this paragraph shall survive the termination of this Contract.

12. **Nondiscrimination and Compliance with Laws.** The Parties agree to comply with all applicable laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. Therefore, there will be no discrimination on the basis of race, religion, age, color, sex, disability, sexual orientation, gender identity, genetic information, national origin, marital status, veterans' status, political belief or affiliation, or the receipt of public assistance. Service Provider shall have and keep current at all times during the term of this Contract all licenses and permits required by law.

13. **FERPA**. For purposes of this Contract, pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA), UND hereby designates the Provider as a school official with a legitimate educational interest in the educational records of the students who participate in the clinical program to the extent that access to the records are required by the Provider to carry out the clinical program. The Provider agrees to maintain the confidentiality of the educational records in accordance with the provisions of FERPA.

14. **Miscellaneous.**

    A. This Contract contains the entire understanding of the parties and all prior negotiations and understandings are superseded hereby and merged into this Contract.
    B. Any term or provision of this Contract which now or hereafter is determined to be invalid or unenforceable shall not impair the validity of the remainder of the Contract.

C. Service Provider may not assign or otherwise transfer or delegate any right or duty without UND's express written consent.

D. Service Provider shall promptly notify UND of all potential claims which arise of result from this Contract.

E. This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be brought in the Northeast Central Judicial District Court of Grand Forks County, North Dakota.

F. This Contract may be amended only by the written agreement of both parties hereto.

15. **Effectiveness of Contract.** This Contract is not effective until fully executed by both Parties.

UND:
University of North Dakota School of Medicine and Health Sciences

By: Dennis J. Lutz, M.D.
Dennis J. Lutz, M.D.
Its: Professor & Chair
Date: 22 June 2018

Fargo Cass Public Health
1240 25th Street S
Fargo, ND 58103

By: Ruth Roman
Ruth Roman, M.S., R.N.
Its: Director of Public Health
Date: 8/6/18

UND:
University of North Dakota School of Medicine and Health Sciences

By:
Its: Assoc Dean Admin
Date: 7/24/18

By:
Timothy Mahoney, M.D.
Its: Mayor, City of Fargo
Date:

UNIVERSITY OF UND NORTH DAKOTA

SCHOOL OF MEDICINE & HEALTH SCIENCES
DEPARTMENT OF OBSTETRICS/GYNECOLOGY
1919 NORTH ELM STREET
FARGO, NORTH DAKOTA 58102
(701) 293-4110
FAX: (701) 293-4109

2018-2019

Fargo Cass Public Health

Audrey A. Eckes, WHNP
Lori L. Ellingson, WHNP

SCOPE OF SERVICES

1. Accept students from the University of North Dakota School of Medicine & Health Sciences without discrimination as to age, race, color, creed, sex, or handicap.

2. Counsel, advise, assist, and instruct the medical students as the need, request, and/or opportunity arises.

3. The Fargo Cass Public Health/Family Planning staff will provide our medical students with an orientation prior to seeing patients in clinic, preceptorship guidance during clinic hours, clinical exposure involving colposcopy experience, as well as assist in the utilization of computer and manikin teaching opportunities.

4. Provide scheduled lectures and seminars as negotiated with the Chair of the Department of Obstetrics and Gynecology or his designated representative in the areas of *STD's (1 hour), Contraception (1 hour), and Pelvic Exam (1 hour)* during the student scheduled orientation time.

5. Unless otherwise designated, each medical student will be assigned two full days of clinic on a **Tuesday** at the Fargo Cass Public Health adhering to the Title X regulations and guidelines of the Family Planning Program.

6. Provide a timely and thoughtful evaluation of the medical students at the end of their clerkship or elective rotation that will be 20% of their final preceptor grade.

CITY OF Fargo

PUBLIC WORKS
OPERATIONS

(18)

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

August 13, 2018

Honorable Board of City Commissioners
City Hall
200 North Third Street
Fargo, ND 58102

Commissioners:

Four RFP's were received July 27, 2018 for our 2019 spring tree order. Urban Forestry Programs Manager Allen Lee, Arborist Supervisory Tracy Zablotney, and I reviewed these.

Company	Proposed Tree Cost
Bailey Nurseries, Inc.	$66,513.65
Chestnut Ridge Nursery	$69,919.25
Swedberg Nursery	$46,141.13
Grove Nursery	$39,760.00

Funding is currently proposed in the 2019 forestry department tree budget. The Bailey Nurseries, Inc. proposal was the most complete.

Most companies are able to provide volume discounts. To maximize this possibility, this is a combined order between the City of Fargo and the Fargo Park District. The park district will cover approximately $10,300 of the total cost.

Recommended motion:
Based on overall prices, size, current availability, and to secure the order as soon as possible, move to award the 2019 request for proposals (RFP18240) tree order to Bailey Nurseries, Inc.

Your approval of this request is appreciated. Thank you.

Sincerely,

Scott Liudahl
City Forester

Cc: Ben Dow
Bruce Grubb
Kent Costin

Commission2019 Tree Order.doc

CITY OF Fargo

PLANNING AND DEVELOPMENT
200 Third Street North
Fargo, North Dakota 58102
Phone: (701) 241-1474
Fax: (701) 241-1526
E-Mail: planning@FargoND.gov
www.FargoND.gov

19

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR

DATE: AUGUST 12, 2018

RE: DESIGNATING SIGNATORY FOR HUD ENVIRONMENTAL REVIEWS - COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) & HOME FUNDS

Environmental review of all HUD/CDBG funded activities are conducted each year in accordance with HUD regulations. As an example, properties participating in the single family home rehabilitation loan program must be checked for historic significance, flood plain status, lead-based paint, and wetlands, among other items.

HUD has recently converted the environmental review process to an online system (HEROS). Fargo's Community Development staff conducts the environmental review process for the City of Fargo. HEROS requires either the Mayor or his designee to certify to HUD that the environmental review process has been conducted appropriately, citizen participation requirements have been met, and to request HUD to release funds when an environmental review indicates such a release is needed.

The attached resolution appoints Tia Braseth, Planning Coordinator and Nicole Crutchfied, Planning Director as designees on behalf of the Mayor. Both Ms. Braseth and Fargo's staff have experience with conducting environmental reviews.

RECOMMENDED MOTION: Staff recommends Tia Braseth, Planning Coordinator for the Community Development Division and Nicole Crutchfield, Planning Director act as the Certifying Officer for Fargo's HUD environmental review process.

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RESOLUTION APPROVING
DESIGNATING SIGNATORY FOR HUD ENVIRONMENTAL REVIEWS -
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) & HOME FUNDS

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

WHEREAS, the United States Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) program requires for each CDBG activity prior to expenditure of funds, the completion of an environmental review, a public comment period, and depending on the results of the environmental review, a Request for Release of Funds (RROF).

WHEREAS, environmental reviews are prepared by the City of Fargo Community Development staff ("Preparer") and the Mayor or his designee must certify to HUD that the environmental review process has been conducted appropriately, citizen participation requirements have been met, and to request HUD to release funds when an environmental review indicates such a release is needed.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Fargo, North Dakota that the Mayor designate the Planning Coordinator of the Community Development Division and the Planning Director to act as Certifying Officer for environmental review purposes.

CERTIFICATE

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

I, Timothy J. Mahoney, the duly elected, qualified and acting Mayor of the City of Fargo, North Dakota; and

I, Steven Sprague, the duly appointed, qualified and acting City Auditor of the City of Fargo, North Dakota,

DO HEREBY CERTIFY:

That the foregoing is a full, true and correct copy of the original Resolution, and the whole thereof approving the designation of a signatory for HUD environmental reviews for the Community Development Block Grant (CDBG) & HOME funds as described in the foregoing Resolution; which Resolution was duly adopted by the Board of City Commissioners of the City of Fargo, North Dakota, at the meeting of the Board held August 12, 2018 at which Regular Meeting all members present voted in favor of the adoption of the Resolution; and

That such Resolution is now a part of the permanent records of the City of Fargo, as such records are now filed in the office of the City Auditor.

(SEAL)

_____
Timothy J. Mahoney, Mayor of the
City of Fargo, North Dakota

ATTEST:

_____
Steven Sprague, City Auditor

On this ____ day of _____, 2018, before me, _____, a Notary Public in and for Cass County, in the State of North Dakota, personally appeared Timothy J. Mahoney, known to me to be the Mayor of the City of Fargo, North Dakota, and Steven Sprague, City Auditor of the City of Fargo, a municipal corporation under the laws of the State of North Dakota, and they acknowledged to me that they executed the foregoing instrument.

_____
Notary Public
Cass County, North Dakota

CITY OF Fargo

PLANNING AND DEVELOPMENT
200 Third Street North
Fargo, North Dakota 58102
Phone: (701) 241-1474
Fax: (701) 241-1526
E-Mail: planning@FargoND.gov
www.FargoND.gov

20

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR

DATE: AUGUST 3, 2018

SUBJECT: CONTRACT FOR PARKING FACILITY RESTORATION

At your last meeting, the City of Fargo awarded a contract to Western Specialty Contractors for restoration repairs of parking facilities. The contract is prepared and attached for your approval.

RECOMMENDED MOTION: Approve a contract with Western Specialty Contractors for parking facility restoration repairs.

Attachment

EQUAL HOUSING OPPORTUNITY

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AIA® Document A101™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 6th day of August in the year 2018
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

City of Fargo
Represented by:
City Administration Office
200 3rd St. N.
Fargo, North Dakota 58102

and the Contractor:
(Name, address and other information)

Western Specialty Contractors
111 Lowry Ave., NE
Minneapolis, MN 55418

for the following Project:
(Name, location and detailed description)

City of Fargo, Civic Center Ramp, GTC Parking Garage, & Island Park Ramp, 2018 Restoration Repairs

The Architect:
(Name, address and other information)

WGI
1920 South Highland Ave., Suite 210
Lombard, IL 60148
630-307-3800
Reference Article 8.6.1

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.
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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

The date of the Owner's signature to this agreement or the date will be fixed in a notice to
(Paragraphs deleted)
proceed.

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than forty-six (46) days from the date of commencement, or as follows:

(Table deleted)
, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Paragraph deleted)
Liquidated damages of amount in accordance with Section 00 2113, Instructions to Bidders.

Init.
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ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be $486,077.00 ($), subject to additions and deductions as provided in the Contract Documents.

The sum is comprised as follows:

Civic Center Ramp	$238,788.00
GTC Parking Garage	$101,732.00
Island Park Ramp	$145,557.00

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

No Alternates were Accepted

§ 4.3 Unit prices, if any:

4.3.1 See attached Bid Form, spreadsheet summary of Section 00 4100 (Exhibit A).

§ 4.4 Allowances included in the Contract Sum, if any:

Included within the Bid Form.

4.3.1 See attached Bid Form, spreadsheet summary of Section 00 4100 (Exhibit A).

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the seventh day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the seventh day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty-two (42) days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the quantity completed of each portion of the Work by the unit cost allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%) . Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%) ;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)

.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:
(Paragraph deleted)
There is no reduction until Final Completion

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment..

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.
(Paragraphs deleted)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Init.
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[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

1% per month

§ 8.3 The Owner's representative:

James Gilmour
Director of Strategic Planning and Research
City of Forgo Planning and Development Department
200 3rd St. N.
Fargo, North Dakota 58102

§ 8.4 The Contractor's representative:
(Name, address and other information)

Mike Trip
Branch Manager
Western Specialty Contractors
111 Lowry Ave., NE
Minneapolis, MN 55418

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

8.6.1 Carl Walker, Inc. is referred to in this Agreement as "Architect" for consistency of reference among this Agreement, the General Conditions of the Contract for Construction and other Construction Documents. For the purpose of this Agreement, the term "Architect" shall mean "Engineer" and does not imply that Carl Walker, Inc. is practicing architecture or providing architectural services.
8.6.2 In accordance with the Owner's Agreement with the Architect, the Owner shall be permitted to backcharge the Contractor as an offset to payment under this Agreement for the Architect's cost of Additional Services caused by the Contractor for the following:

8.6.2.1 Architect and their Consultant's performing Contract Administration services beyond the following limits:

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User Notes: (1850945614)

.1 up to two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.
.2 up to one (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
.3 up to one (1) inspection for any portion of the Work to determine final completion.

8.6.2.2 review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;

8.6.2.3 responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation;

8.6.2.4 providing consultation concerning replacement of rejected Work;

8.6.2.5 evaluation of an extensive number of claims submitted by the Contractors;

8.6.2.6 evaluation of substitutions or voluntary alternates proposed by the Contractors and making subsequent revisions to Instruments of Service resulting therefrom.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction, with the City of Fargo 2009 Supplement to "General Conditions of the Contract of Construction'" Exhibit B.

§ 9.1.3 The Supplementary and other Conditions of the Contract:
None added.
(Table deleted)

§ 9.1.4 The Specifications:

As listed in the Table of Contents, Section 00 0110, for the City of Fargo Civic Center Ramp, GTC Parking Garage, and Island Park Ramp, 2018 Restoration Repairs; Issued for Construction dated July 31, 2018. Exhibit C.

(Table deleted)
§ 9.1.5 The Drawings:
(Paragraphs deleted)
As listed in the Sheet Index, Sheet G001, for the City of Fargo Civic Center Ramp, GTC Parking Garage, and Island Park Ramp, 2018 Restoration Repairs; Issued for Construction dated July 31, 2018. Exhibit D.

§ 9.1.6 The Addenda, if any:

Solicitation Addendum No. 1,

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

.1
(Paragraphs deleted)
None.

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ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

Insurance as stipulated in Specification "Instruction to Bidders," Section 00 2113.

Contract Bond as stipulated in Specification "Instruction to Bidders," Section 00 2113.

(Table deleted)

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
(Printed name and title)	Mike Tripp Branch Manager *(Printed name and title)*

Init.
/

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Additions and Deletions Report for
AIA® Document A101™ – 2007

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PAGE 1

AGREEMENT made as of the 6th day of August in the year 2018
(In words, indicate day, month and ~~year.~~)year)

...

(Name, ~~legal status,~~ address and other information)

City of Fargo
Represented by:
City Administration Office
200 3rd St. N.
Fargo, North Dakota 58102

...

(Name, ~~legal status,~~ address and other information)

Western Specialty Contractors
111 Lowry Ave., NE
Minneapolis, MN 55418

...

City of Fargo, Civic Center Ramp, GTC Parking Garage, & Island Park Ramp,
2018 Restoration Repairs

...

(Name, ~~legal status,~~ address and other information)

WGI
1920 South Highland Ave., Suite 210
Lombard, IL 60148
630-307-3800
Reference Article 8.6.1

PAGE 2

~~(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that~~
The date of the Owner's signature to this agreement or the date will be fixed in a notice to ~~proceed.~~)

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~~If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:~~
proceed.

...

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than forty-six (46) days from the date of commencement, or as follows:
~~(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)~~

...

~~Portion of Work~~	~~Substantial Completion Date~~

~~*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*~~

Liquidated damages of amount in accordance with Section 00 2113, Instructions to Bidders.
PAGE 3

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be $486,077.00 ($), subject to additions and deductions as provided in the Contract Documents.

The sum is comprised as follows:

Civic Center Ramp	$238,788.00
GTC Parking Garage	$101,732.00
Island Park Ramp	$145,557.00

...

~~(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)~~
No Alternates were Accepted

...

~~*(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)*~~

~~Item~~	~~Units and Limitations~~	~~Price Per Unit ($0.00)~~

4.3.1 See attached Bid Form, spreadsheet summary of Section 00 4100 (Exhibit A).

...

~~(Identify allowance and state exclusions, if any, from the allowance price.)~~
Included within the Bid Form.

4.3.1 See attached Bid Form, spreadsheet summary of Section 00 4100 (Exhibit A).

~~Item~~	~~Price~~

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...

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the seventh day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the seventh day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty-two (42) days after the Architect receives the Application for Payment.
~~(Federal, state or local laws may require payment within a certain period of time.)~~
PAGE 4

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the ~~percentage completion~~ quantity completed of each portion of the Work by the ~~share of the Contract Sum~~ unit cost allocated to that portion of the Work in the schedule of values, less retainage of ~~percent (%).~~ ten percent (10%) . Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ~~percent (%);~~ten percent (10%) ;

...

~~*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*~~

There is no reduction until Final Completion

...

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for ~~Payment, or as follows:~~

Payment..

...

~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

PAGE 5

[X] Litigation in a court of competent jurisdiction

...

~~(Insert rate of interest agreed upon, if any.)~~

~~%~~ 1% per month

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...

~~(Name, address and other information)~~
James Gilmour
Director of Strategic Planning and Research
City of Forgo Planning and Development Department
200 3rd St. N.
Fargo, North Dakota 58102

...

Mike Trip
Branch Manager
Western Specialty Contractors
111 Lowry Ave., NE
Minneapolis, MN 55418

...

8.6.1 Carl Walker, Inc. is referred to in this Agreement as "Architect" for consistency of reference among this Agreement, the General Conditions of the Contract for Construction and other Construction Documents. For the purpose of this Agreement, the term "Architect" shall mean "Engineer" and does not imply that Carl Walker, Inc. is practicing architecture or providing architectural services.
8.6.2 In accordance with the Owner's Agreement with the Architect, the Owner shall be permitted to backcharge the Contractor as an offset to payment under this Agreement for the Architect's cost of Additional Services caused by the Contractor for the following:

8.6.2.1 Architect and their Consultant's performing Contract Administration services beyond the following limits:

.1 up to two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.

.2 up to one (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.

.3 up to one (1) inspection for any portion of the Work to determine final completion.

8.6.2.2 review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;

8.6.2.3 responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation;

8.6.2.4 providing consultation concerning replacement of rejected Work;

8.6.2.5 evaluation of an extensive number of claims submitted by the Contractors;

8.6.2.6 evaluation of substitutions or voluntary alternates proposed by the Contractors and making subsequent revisions to Instruments of Service resulting therefrom.

PAGE 6

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for ~~Construction.~~Construction, with the City of Fargo 2009 Supplement to "General Conditions of the Contract of Construction'" Exhibit B.

...

None added.

~~Document~~	~~Title~~	~~Date~~	~~Pages~~

...

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~~*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*~~

As listed in the Table of Contents, Section 00 0110, for the City of Fargo Civic Center Ramp, GTC Parking Garage, and Island Park Ramp, 2018 Restoration Repairs; Issued for Construction dated July 31, 2018. Exhibit C.

~~Section~~	~~Title~~	~~Date~~	~~Pages~~

...

~~*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*~~

As listed in the Sheet Index, Sheet G001, for the City of Fargo Civic Center Ramp, GTC Parking Garage, and Island Park Ramp, 2018 Restoration Repairs; Issued for Construction dated July 31, 2018. Exhibit D.

~~Number~~	~~Title~~	~~Date~~

...

Solicitation Addendum No. 1,

~~Number~~	~~Date~~	~~Pages~~

...

.1 ~~AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:~~

.2 ~~Other documents, if any, listed below:~~
~~*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*~~

None.

PAGE 7

~~(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)~~

Insurance as stipulated in Specification "Instruction to Bidders," Section 00 2113.

Contract Bond as stipulated in Specification "Instruction to Bidders," Section 00 2113.

~~Type of insurance or bond~~	~~Limit of liability or bond amount ($0.00)~~

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CITY OF Fargo

FARGO POLICE DEPARTMENT

222 Fourth Street North, Fargo, North Dakota 58102

(21)

Aug 9, 2018

Board of City Commissioners
City Hall
Fargo, ND 58102

RE: Fargo Police Department RFQ 18-172 – Architect Contract Approval

Dear Commissioners:

In July 2018, the Fargo Police Department submitted to the commission its recommendation for architect services relative to the renovation of the Border States Electric building, and the commission approved the recommendation.

Shultz and Associates Architects have prepared a standard form of agreement between the City of Fargo and Shultz and Associates Architects. City Attorney Erik Johnson reviewed this agreement to ensure the provisions of the agreement are in the best interest of the city.

Recommended Motion:

I recommend the approval of the standard form of agreement between the City of Fargo and Shultz and Associates Architects.

Please contact me if you have any questions or concerns.

Sincerely,

David E. Todd
Chief of Police

ADMINISTRATION
Phone: 701-241-1427
Fax: 701-297-7789

INVESTIGATIONS
Phone: 701-241-1405
Fax 701-241-1407

RECORDS
Phone: 701-241-1420
Fax: 701-241-8272

NON EMERGENCY
Phone: 701-235-4493

www.fargopolice.com

AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the thirtieth day of July in the year Two Thousand Eighteen
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Fargo
200 Third Street North
Fargo, ND 58102

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

and the Architect:
(Name, legal status, address and other information)

Shultz & Associates, Ltd
612 1/2 Main Avenue
Fargo, ND 58103

for the following Project:
(Name, location and detailed description)

Fargo Police Department – BSE Building Phase II
Fargo, North Dakota

The Owner and Architect agree as follows.

Init.
/

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TABLE OF ARTICLES

1 INITIAL INFORMATION

2 ARCHITECT'S RESPONSIBILITIES

3 SCOPE OF ARCHITECT'S BASIC SERVICES

4 SUPPLEMENTAL AND ADDITIONAL SERVICES

5 OWNER'S RESPONSIBILITIES

6 COST OF THE WORK

7 COPYRIGHTS AND LICENSES

8 CLAIMS AND DISPUTES

9 TERMINATION OR SUSPENSION

10 MISCELLANEOUS PROVISIONS

11 COMPENSATION

12 SPECIAL TERMS AND CONDITIONS

13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Preliminary Planning has been shared. Architect will develop the program with the Owner.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Border States Electric Facility, 105 25th Street North, Fargo, North Dakota 58102

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

Approximately $2M Project Cost, to be validated.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

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Planning: Complete by September 30, 2018
Construction Documents: Complete by November 30, 2018
Bid Date: December 22, 2018

.2 Construction commencement date:

TBD – As early as January 15, 2019

.3 Substantial Completion date or dates:

TBD – Estimated 6 month construction

.4 Other milestone dates:

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Bidding

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Deputy Chief, Joe Anderson
Administrative Services Division
Fargo Police Department
222 4th Street North
Fargo, ND 58102

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

N/A

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

~~.1 Geotechnical Engineer:~~

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~~.2 Civil Engineer:~~

.3 Other, if any:
(List any other consultants and contractors retained by the Owner.)

N/A

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

David R. Shultz
Shultz & Associates, Ltd.
612 ½ Main Avenue
Fargo, ND 58103
P) 701.476.0714
E) david@thearchitectfirm.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Heyer Engineering, PC
1020 36th Street South, Suite A
Fargo, ND 58103

.2 Mechanical Engineer:

MBN Engineering, Inc.
503 7th Street North, Suite 200
Fargo, ND 58102

.3 Electrical Engineer:

MBN Engineering, Inc.
503 7th Street North, Suite 200
Fargo, ND 58102

.4 Civil Engineer:

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MBN Engineering, Inc.
503 7th Street North, Suite 200
Fargo, ND 58102

§ 1.1.11.2 Consultants retained under Supplemental Services:

N/A

§ 1.1.12 Other Initial Information on which the Agreement is based:

N/A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than Two Million Dollars ($ 2,000,000) for each occurrence and Four Million Dollars ($ 4,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than Two Million Dollars ($ 2,000,000) per accident for bodily injury, death of any person, and

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User Notes:

property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory ~~limits.~~limits plus Stop Gap Liability.

§ 2.5.5 Employers' Liability with policy limits not less than ($) each accident, ($) each employee, and ($) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars ($ 2,000,000) per claim and Two Million Dollars ($ 2,000,000) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

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§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

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§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

.1 facilitating the distribution of Bidding Documents to prospective bidders;
.2 organizing and conducting a pre-bid conference for prospective bidders;
.3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
.4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

~~**§ 3.5.3 Negotiated Proposals**~~

~~**§ 3.5.3.1** Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~

~~**§ 3.5.3.2** The Architect shall assist the Owner in obtaining proposals by:~~

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~~.1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;~~
~~.2 organizing and participating in selection interviews with prospective contractors;~~
~~.3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,~~
~~.4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

~~§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the ~~Work.~~ Work, and request in writing within ten (10) working days the Contractor plan of action to remedy the known deviation(s). The Architect shall advise the Owner in writing on the status of the completion of the corrective work prior to substantial completion of the project

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

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§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

.1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;

.2 issue Certificates of Substantial Completion;

.3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,

.4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are ~~not included in Basic Services~~ included in Basic Services, where indicated to be the responsibility of the Architect, but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility *(Architect, Owner, or not provided)*
§ 4.1.1.1 Programming	Architect
§ 4.1.1.2 Multiple preliminary designs	Not Provided
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Architect
§ 4.1.1.5 Site evaluation and planning	Not Provided
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Not Provided
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Architect
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.21 Telecommunications/data design	Architect
§ 4.1.1.22 Security evaluation and planning	Architect
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

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(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

N/A

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.
(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

N/A

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services
The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

.2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

.3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, ~~or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;~~

~~.4~~ or.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

~~.5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;~~

~~.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;~~

~~.7 Preparation for, and attendance at, a public presentation, meeting or hearing;~~

.8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

~~.9 Evaluation of the qualifications of entities providing bids or proposals;~~

.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,

~~.11 Assistance to the Initial Decision Maker, if other than the Architect.~~

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

~~.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;~~

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~~.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;~~

~~.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~

.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,

.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

.1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

~~.2 ( ) visits to the site by the Architect during construction~~

~~.3~~ .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 Two (2) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty Four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of

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determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 authorize rebidding or renegotiating of the Project within a reasonable time;
.3 terminate in accordance with Section 9.5;
.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
.5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate

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contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 8.3 of this Agreement

[x] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

~~**§ 8.3 Arbitration**~~

~~**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~**§ 8.3.2** The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

~~§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:~~
~~*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*~~

~~.1 Termination Fee:~~

~~.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:~~

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§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum
(Insert amount)

Stipulated Sum Planning Compensation in the amount of Twenty Thousand Dollars and Zero Cents ($20,000.00), to be credited to the total compensation, calculated below.

.2 ~~Percentage Basis~~Stipulated Sum
(Insert ~~percentage value)~~amount)

~~( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~
Full Project Compensation to be a stipulated sum calculated upon the Owner's project budget approval based on the following percentages:

Estimated Construction Cost	Fee % Factor
$1.0M to $1.5M	8.0%
$1.5M to $2.0M	7.5%
$2.0M and up	7.0%

.3 Other
(Describe the method of compensation)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Negotiated if required

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Negotiated if required

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

Negotiated if required

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase Ten percent (10 %)

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Design Development Phase	Fifteen	percent (	15	%)
Construction Documents Phase	Thirty Five	percent (	35	%)
Procurement Phase	Ten	percent (	10	%)
Construction Phase	Thirty	percent (	30	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

2018 Hourly Rates, attached.

Employee or Category	Rate ($0.00)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

~~.1 Transportation and authorized out-of-town travel and subsistence;~~

~~.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~

.3 Permitting and other fees required by authorities having jurisdiction over the Project;

.4 Printing, reproductions, plots, and standard form documents;

.5 Postage, handling, and delivery;

~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~

~~.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;~~

~~.8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;~~

~~.9 All taxes levied on professional services and on reimbursable expenses;~~

~~.10 Site office expenses;~~

~~.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,~~

~~.12 Other similar Project-related expenditures.~~

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred. Reimbursable expenses will be invoiced at cost.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

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User Notes:
(1278227782)

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

Negotiated if required

§ 11.10 Payments to the Architect
§ 11.10.1 Initial Payments
§ 11.10.1.1 An initial payment of Zero Dollars ($ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of Zero Dollars ($ 0) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments
§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

1 % Monthly

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT
§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect

~~.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

~~*(Insert the date of the E203–2013 incorporated into this agreement.)*~~

.3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

~~[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:~~
~~(Insert the date of the E204–2017 incorporated into this agreement.)~~

Init. /

AIA Document B101™ – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. **All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 08:18:16 on 08/09/2018 under Order No.4641984147 which expires on 10/10/2018, and is not for resale.
User Notes: (1278227782)

[x] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

A. 2018 Hourly Rates

~~.4 Other documents:~~
~~*(List other documents, if any, forming part of the Agreement.)*~~

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*	**ARCHITECT** *(Signature)*
Timothy J. Mahoney, Mayor, City of Fargo	David R. Shultz, President
(Printed name and title)	*(Printed name, title, and license number, if required)*

Init.
/

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User Notes: (1278227782)

SHULTZ+ASSOCIATES
ARCHITECTS

612 1/2 Main Avenue
Fargo, ND 58103

Phone: 701.476.0714
Fax: 701.476.0709

www.thearchitectfirm.com

EXHIBIT 'A'

Project: Fargo Police Department – BSE Building Phase II

Project #: 1826

Location: Fargo, North Dakota

2018 HOURLY RATES

Shultz + Associates Architects

RATE	TITLE
$160.00	Principal Architect
$125.00	Principal Architect
$90.00	Intern Architect
$75.00	Drafter
$75.00	Student Intern
$75.00	Administrative

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/9/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Tom Johnson
TRJ Professional Group, Inc. P.O. Box 9067 Rapid City, SD, 57709	PHONE (A/C, No, Ext): (605)-716-6547 FAX (A/C, No): (605)-716-6534 E-MAIL ADDRESS: tom@trjprofessional.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Travelers	
INSURER B : Berkley Insurance Co.	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
SHULTZ & ASSOCIATES, LTD
612 1/2 Main Avenue
Fargo, ND 58103

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [X] CLAIMS-MADE [ ] OCCUR [X] Stop Gap liab ND GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:	Y	Y	680-2J287650-18-47	6/24/2018	6/24/2019	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG [ ]	$ 2,000,000 $ 300,000 $ 5,000 $ 2,000,000 $ 4,000,000 $ 4,000,000 $
A	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY	Y	Y	680-2j287650-18-47	6/24/2018	6/27/2019	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) [ ]	$ 2,000,000 $ $ $ $
A	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10,000	Y	Y	CUP-0D696275-18-47	6/24/2018	6/24/2019	EACH OCCURRENCE AGGREGATE [ ]	$ 1,000,000 $ 1,000,000 $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N [ ] If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					[ ] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $
B	Professional Liability	N	Y	AES-9024764	6/24/2018	6/24/2020	Per Claim Pol Yr Agg.	$2,000,000 $2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

City of Fargo
200 Third St. North
Fargo, ND, 58102

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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WSI
North Dakota Workforce Safety & Insurance

CERTIFICATE OF PREMIUM PAYMENT
WORKFORCE SAFETY & INSURANCE
EMPLOYER SERVICES
SFN 4920 (04/2007)

1600 EAST CENTURY AVENUE, SUITE 1
PO BOX 5585
BISMARCK ND 58506-5585
Telephone 1-800-777-5033
Toll Free Fax 1-888-786-8695
TTY (hearing impaired) 1-800-366-6888
Fraud and Safety Hotline 1-800-243-3331
www.WorkforceSafety.com

DAVID SHULTZ
SHULTZ & ASSOCIATES LTD
612 1/2 MAIN AVE
FARGO ND 58103-

Employer Account Number: 1270173
Issued Date: 12/11/2017
Expiration Date: 01/14/2019

CERTIFICATE OF PREMIUM PAYMENT

This is to certify that North Dakota Workers Compensation coverage is effective for the employer named on this certificate. Employees of the named employer are entitled to apply for the rights and benefits of Workforce Safety and Insurance(WSI).

Coverage under this certificate extends to North Dakota based employers for their North Dakota exposure. Limited coverage extends beyond the physical boundaries of North Dakota. Contact the Policyholder Services Department of WSI at 1-800-777-5033 for further information on coverage issues or to inquire into the status of the holder of this certificate.

North Dakota Century Code § 65-04-04 requires that each employer post this Certificate of Premium Payment in a conspicuous manner at the workplace. A penalty of $250 may apply for failure to comply with this requirement.

A Certificate of Premium Payment may be revoked for failure to make required premium payments.

Barry Schumacher

Barry Schumacher
Chief of Employer Services

Class	Classification Description
5603 8747	Consulting Engineers Professional/Business Reps

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE (22)

Project No. FM-15-J0 Type: Contract Amendment #3

Location: Belmont Area Phase 1 & 2 Date of Hearing: 8/6/2018

Routing	Date
City Commission	8/13/2018
PWPEC File	X
Project File	Jody Bertrand

The Committee reviewed the accompanying correspondence from Division Engineer, Jody Bertrand, related to a Contract Amendment submitted by HDR Engineering in the amount of $91,683.05 bringing the total contract amount to $1,028,280.05.

Staff is recommending approval of Contract Amendment #3.

On a motion by Steve Sprague, seconded by Nicole Crutchfield, the Committee voted to recommend approval of the Contract Amendment #3.

RECOMMENDED MOTION
Approve Contract Amendment #3 to HDR Engineering in the amount of $91,683.05, bringing the total contract amount to $1,028,280.05.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Flood Sales Tax (460)

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

COMMITTEE	Present	Yes	No	Unanimous ☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

Item A3

CITY OF Fargo

Memorandum

To: Members of PWPEC

From: Jody Bertrand, Division Engineer

Cc: Brenda Derrig

Date: August 6, 2018

Re: Project FM-15-J0, Lift Station #13 – Belmont Area Phase 1
Lindenwood Park Entrance
Contract Amendment #3 Request

Background:

This contract amendment covers two main items for which HDR Engineering has incurred additional costs during the performance of their duties. The first is the additional staff time required for the increased inspection and engineering time due to the completion date not being met per contract at the end of 2017. The project was suspended on November 15th, 2017 and was restarted the following spring in March. Inspection services and construction oversight was provided by HDR for several months until substantial completion was attained in May of 2018. Liquidated damages assessed to ICS were in the amount of $56,000.00, to offset some of these additional costs. The cost for this work is $83,913.30.

The second component of services provided through HDR by Braun Intertec was for the added materials testing required for the change in materials of the pavement from asphalt to concrete. This allowed for paving work to be completed prior to the asphalt plant openings, which typically take place during the first part of May. This facilitated the opening of the Lindenwood Park access road for use by the requested date of May 1st, 2018 for the normal park opening timelines. The cost for this work is $7,769.75.

The proposed contract amendment #3 provided by HDR totals $91,683.05, which is a sufficient amount to cover the additional design and engineering costs of the above identified items.

A letter provided by HDR Engineering is attached to this memo.

Recommended Motion:

Approve Contract Amendment #3 with HDR Engineering in the amount of $91,683.05 for additional work associated with the additional engineering and inspection work along with additional material testing efforts as described above.

JRB/klo
Attachment

HDR

Engineering Services Agreement Amendment No. 3
City of Fargo Project No. FM-15-J0

Project: Belmont Park Area (S. River Road & 3rd Street South) City of Fargo Project No. FM-15-J0
HDR Project No. 10026296

Client: City of Fargo (Engineering Department)
Attn: Jody Bertrand, PE – Division Engineer, Storm Water

Background/Description of Work:
HDR Engineering was hired by the City of Fargo to provide professional engineering services and construction services for the above project. This Amendment No. 3 request is for additional work outside the scope associated with construction services for the replacement of Lift Station #13.

As a result of contractor delays during construction of Lift Station #13, HDR was required to provide additional construction observation and material testing to ensure the project was built in compliance with the plans and specifications. The contract substantial completion date with the contractor was October 31, 2018. Due to contractor delays, the substantial completion date was May 22, 2018.

During the period from November 1, 2017 through May 22, 2018 HDR provided construction oversight of Lift Station #13. Time associated with this change order includes on-site inspection, review and approval of RFIs, additional survey and engineering. The breakdown of total hours associated with construction support are as follows:

Month	Total Hours
November	207
December	59
January	32
February	0
March	9
April	203
May	83
June	32

Braun Intertec also provided additional material testing during this period in the amount of $7,769.75. Work included excavation observations related to the storm sewer subgrade, An additional 5 trips to the site to test utility backfill operations, pavement subgrade and pavement base testing were also not part of the original scope.

- Braun was called out for excavation observations related to the storm sewer

subgrade and pavement subgrade as opposed to just the lift station.

- Lift station and associated utility backfill was estimated at 19 trips and 24 trips were requested and completed.
- Pavement subgrade and pavement base testing was not originally a part of our proposed estimate and amounted to 19 trips for nuclear density tests.
- It was estimated 4 cylinders per set for concrete but 6 cylinders per set were cast to meet project specifications.
- It was estimated that the lift station would be poured in 8 pours with 8 total sets of concrete but it was done in 8 pours with 14 total sets of concrete.
- The manhole inlet pours (4 pours) were not included in our estimate.
- Estimated 1 pour for curb & gutter and 1 pour for lift station driveway but repaving parts of Lindenwood and Roger Maris Drive were not a part of the original concrete testing estimate.
- Paving, curb & gutter and sidewalk pours amounted to 18 sets of concrete tests instead of the estimated 2 sets.
- Additional project management and reporting time associated with the additional work described above.

Fee Amendment Request:
The total fee for the work described as part of this Amendment No. 3 = $91,683.05.

Contract Terms and Conditions:
HDR Engineering ("Consultant") hereby proposes, and the City of Fargo ("City") hereby authorizes the above described Amendment No. 3 and additional services described herein to be completed under the same terms and conditions of the Original Agreement signed by both parties approved by the City of Fargo on August 3, 2015.

City of Fargo Authorization:

Signature:_____
Timothy J. Mahoney

Title:_____

Date:_____

Consultant:

Signature: Jason L Kjenstad
Jason Kjenstad

Title: Vice President

Date: 8-1-18

(23)

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-14-5 (6261) Type: El Zagal Flood Mitigation Project Update

Location: El Zagal Date of Hearing: 8/6/2018

Routing	Date
City Commission	8/13/2018
PWPEC File	X
Project File	Nathan Boerboom

The Committee reviewed a communication from Division Engineer, Nathan Boerboom, regarding a status update on the two El Zagal flood mitigation projects that were completed by the City and Diversion Authority in 2014, 2015 & 2016.

Both projects have been successfully completed. We have also recently learned that this project has been accredited by FEMA, which will remove properties from the 1% annual chance floodplain and the mandate of these properties to purchase high-risk flood insurance. Accreditation becomes official on September 18, 2018.

On a motion by Bruce Grubb, seconded by Steve Dirksen, the Committee voted to receive and file the El Zagal project update.

RECOMMENDED MOTION
Receive and file.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: N/A

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

FOR Brenda E. Derrig, P.E.
City Engineer

Item 1

Memorandum

To: PWPEC

From: Nathan Boerboom, Division Engineer

Date: 7/31/2018

Re: El Zagal Flood Mitigation Project Update

This memo is to provide a quick status update on the two El Zagal flood mitigation projects that were completed by the City and Diversion Authority in 2014, 2015 and 2016. Both of these projects have been successfully completed for a couple of years now and is a levee system that the City can rely on for many upcoming spring floods.

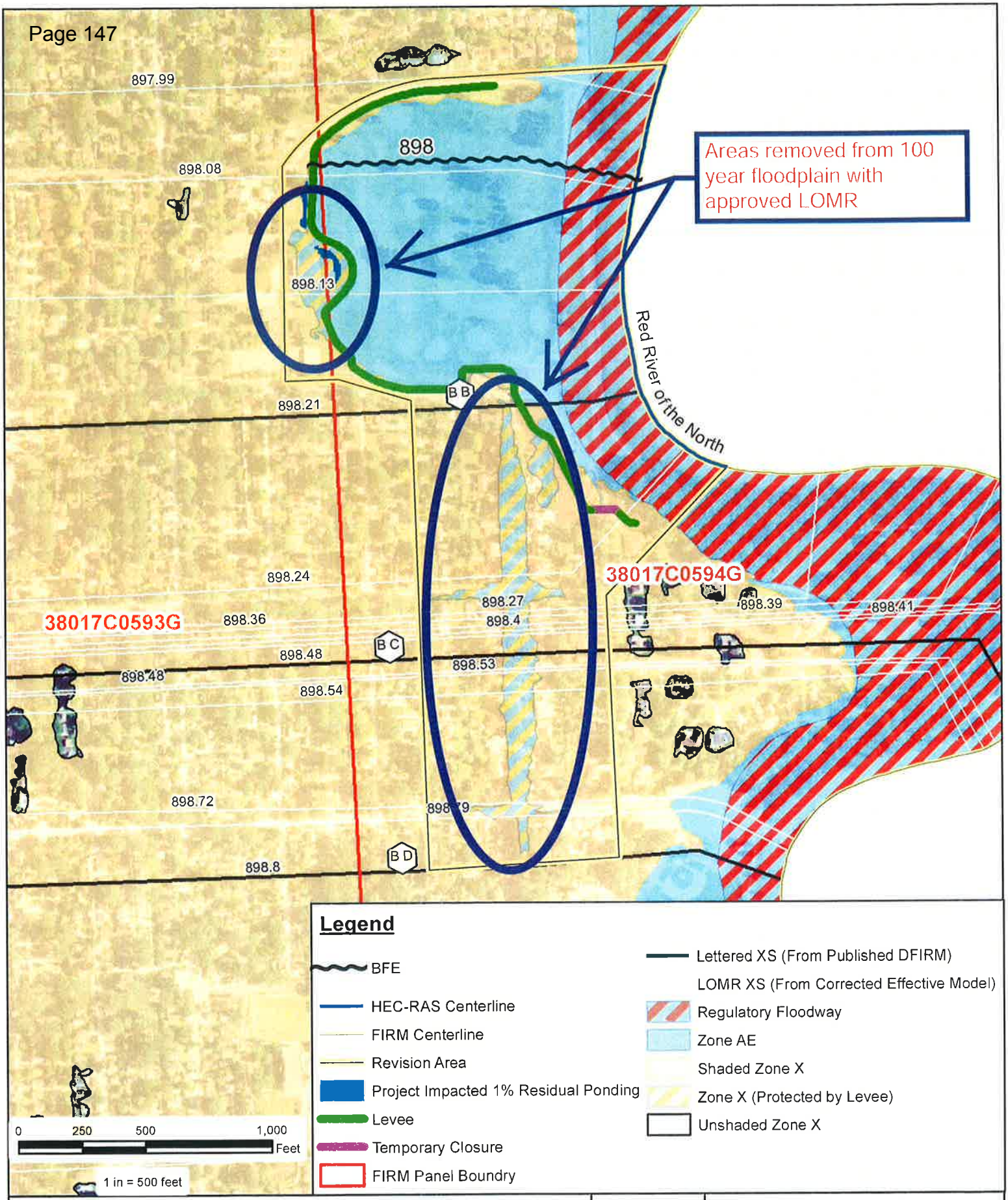
In additional to providing this protection, we have also recently learned that this project has been accredited by FEMA, which will remove properties from the 1% annual chance floodplain and the mandate of these properties to purchase high-risk flood insurance. See attached map.

This accreditation becomes official on September 18, 2018.

Attachment

200 North 3rd Street
Fargo, ND 58102

Phone: (701) 241-1545
FAX: (701) 241-8101



EL ZAGAL IN-TOWN LEVEES
CERTIFIED TOPOGRAPHIC WORK MAP
FARGO, NORTH DAKOTA

Created By: GIS Date Saved: 07/13/17 Date Exported: 07/17/17
Plotted By: Paul.bervik Aerial Image: 2016 County NAIP SIDS
Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet Vertical Datum: NAVD1988
T:\Projects\183001\183701\FIRM Map_PBB_NEW.mxd

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HMG

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE (24)

Type: Acquisitions and In-Town Levees Diversion Authority's Plan B Project

Location: Riverwood, Royal Oaks, Woodcrest, Elm Circle, Oak Grove

Date of Hearing: 8/6/2018

Routing	Date
City Commission	8/13/2018
PWPEC File	X
Project File	Nathan Boerboom

The Committee reviewed a letter from Division Engineer, Nathan Boerboom, regarding a request to secure appraisals and negotiate the acquisition of 28 properties potentially affected by 37-foot in-town projects.

On July 16, 2018 an informational meeting was held to update the Commissioners on the potential of additional flood mitigation projects needed within the City to accommodate 37-foot flow through town with the proposed Diversion in place. At this meeting, staff indicated they would not be seeking approval from City Commission to move forward with any of these new projects, including acquisitions, until a decision on the Diversion Authority's Plan B project application was made by the MN DNR.

Since that meeting, potential impacted property owners have been reaching out to staff to discuss options available to them and if they could sell their property sooner than the City originally planned. Even though the 37-foot projects are not a certainty yet, staff would recommend that the City send letters to the 28 property owners to notify them that, if requested, the City would be willing to secure an appraisal and negotiate to acquire these properties if an agreement can be reached. Staff feel like this option should be made available to allow property owners the flexibility to move forward with any life changes they may have during this period of uncertainty. Should the 37-foot projects not move forward, the properties would be evaluated for flood protection needs and may result in re-sale.

Staff is recommending approval to secure appraisals and negotiate the acquisition of the 28 properties for owners who wish to sell in advance.

On a motion by Ben Dow, seconded by Bruce Grubb, the Committee voted to move to City Commission to consider authorizing staff to, as requested by the property owners, secure appraisals and negotiate the acquisition of the 28 properties potentially affected by 37-foot in-town projects for owners who wish to sell in advance of project authorization.

RECOMMENDED MOTION

Concur with PWPEC and move to City Commission to consider authorizing Engineering staff to secure appraisals, as requested by the property owners, and negotiate the acquisition of properties potentially affected by the 37-foot-in-town projects.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax & State Water Commission

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

PWPEC ROA
Acquisitions and In-Town Levees
8/6/2018 -- Page 2

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

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

Item 2

CITY OF Fargo

Memorandum

To: PWPEC

From: Nathan Boerboom, Division Engineer

Date: 8/1/2018

Re: Acquisitions and In-Town Levees Associated with Diversion Authority's Plan B Project

---

A City Commission informational meeting was held on July 16, 2018 to update the Commissioners on the potential of additional flood mitigation projects needed within the City to accommodate 37-foot flow through town with the proposed Diversion in place. The conceptual projects shown at this meeting included the potential acquisitions of 28 properties, which can be seen on the attached maps.

At this meeting, staff indicated that they would not be seeking approval from City Commission to move forward with any of these new projects, including acquisitions, until a decision on the Diversion Authority's Plan B project application was made by the Minnesota DNR. Since that meeting, potential impacted property owners have been reaching out to staff to discuss options available to them and if they could sell their property sooner than the City actually planned on seeking it. In the discussions with these property owners, there are various reasons why some of them want to move forward with the acquisitions today. Some are health related, vacant estate owned property or would like to be proactive (concern is that they don't want to miss an opportunity on a replacement home that meets their needs today since a similar property may not be available when the City is officially looking to acquire the property).

Even though the 37-foot conceptual projects are not a certainty that they will be constructed yet, staff would recommend that the City send a letter to the 28 property owners notifying them that the City would be willing to acquire these properties if an agreement can be reached. Staff feels like this option should be made available to these property owners to allow property owners the flexibility to move forward with any life changes they may have during this period of uncertainty.

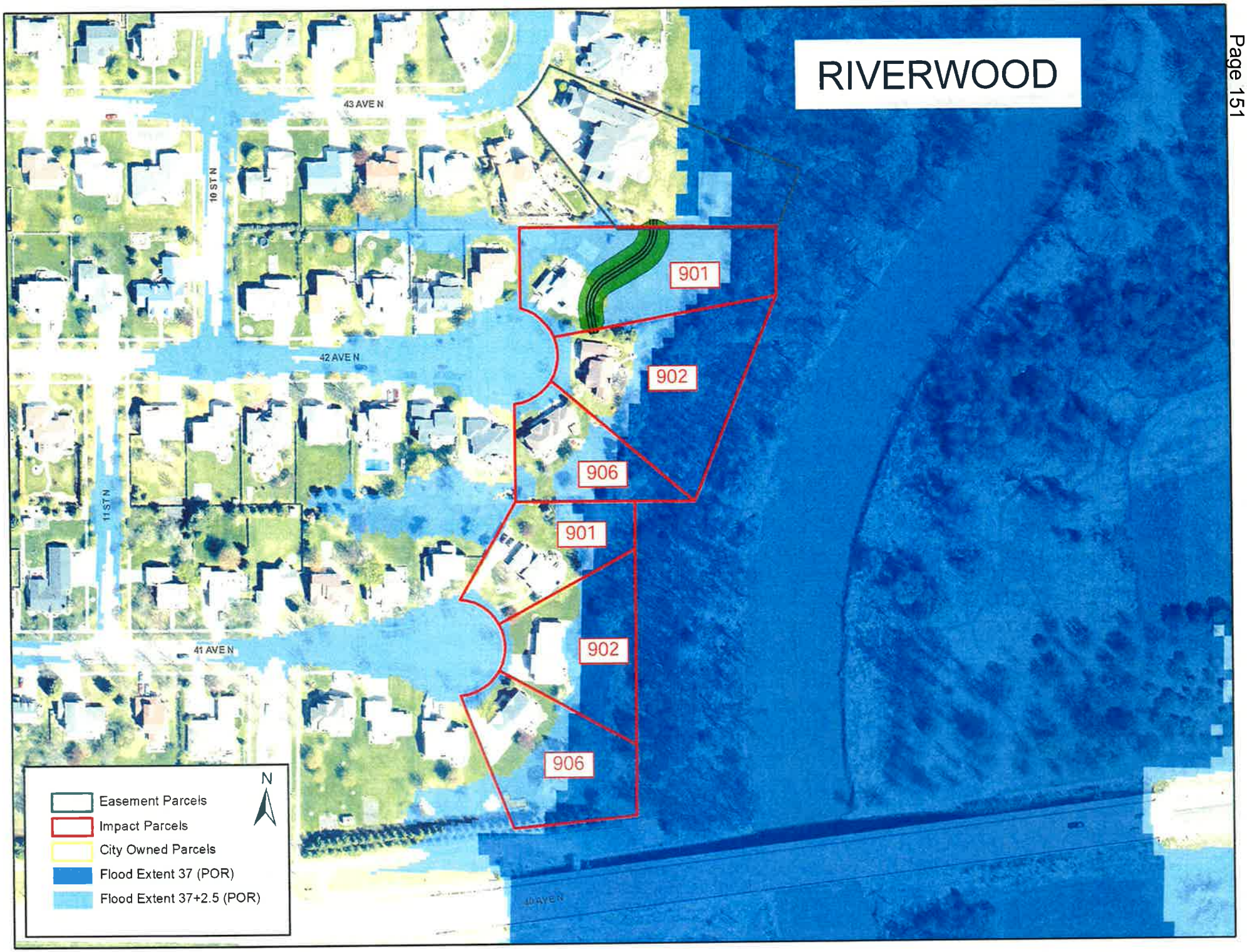
For any requests received as a result of this letter, the City would have an appraisal completed on the property to begin the discussions with the property owner. If an agreement cannot be made between the City and the property owner, the acquisition of that property would be put on hold until the City is officially moving forward with the 37-foot in-town projects. If for some reason these projects do not move forward, the properties acquired would be evaluated for flood protection needs and may result in re-sale. It should also be known that in addition to the purchase price of the property, the property owners would be eligible for moving relocation benefits as identified in North Dakota Century Code. Also, if the property owner does not wish to start the process, then no appraisal or acquisition discussion would be completed on that property prior to any further development on the 37-foot projects.

Recommended Motion

Authorize staff to secure appraisals and negotiate the acquisition of the 28 properties potentially affected by 37-foot in-town projects for Owners who wish to sell in advance of project authorization.

200 North 3rd Street
Fargo, ND 58102

Phone: (701) 241-1545
FAX: (701) 241-8101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10 ST N
42 AVE N
11 ST N
41 AVE N
40 AVE N
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902
906
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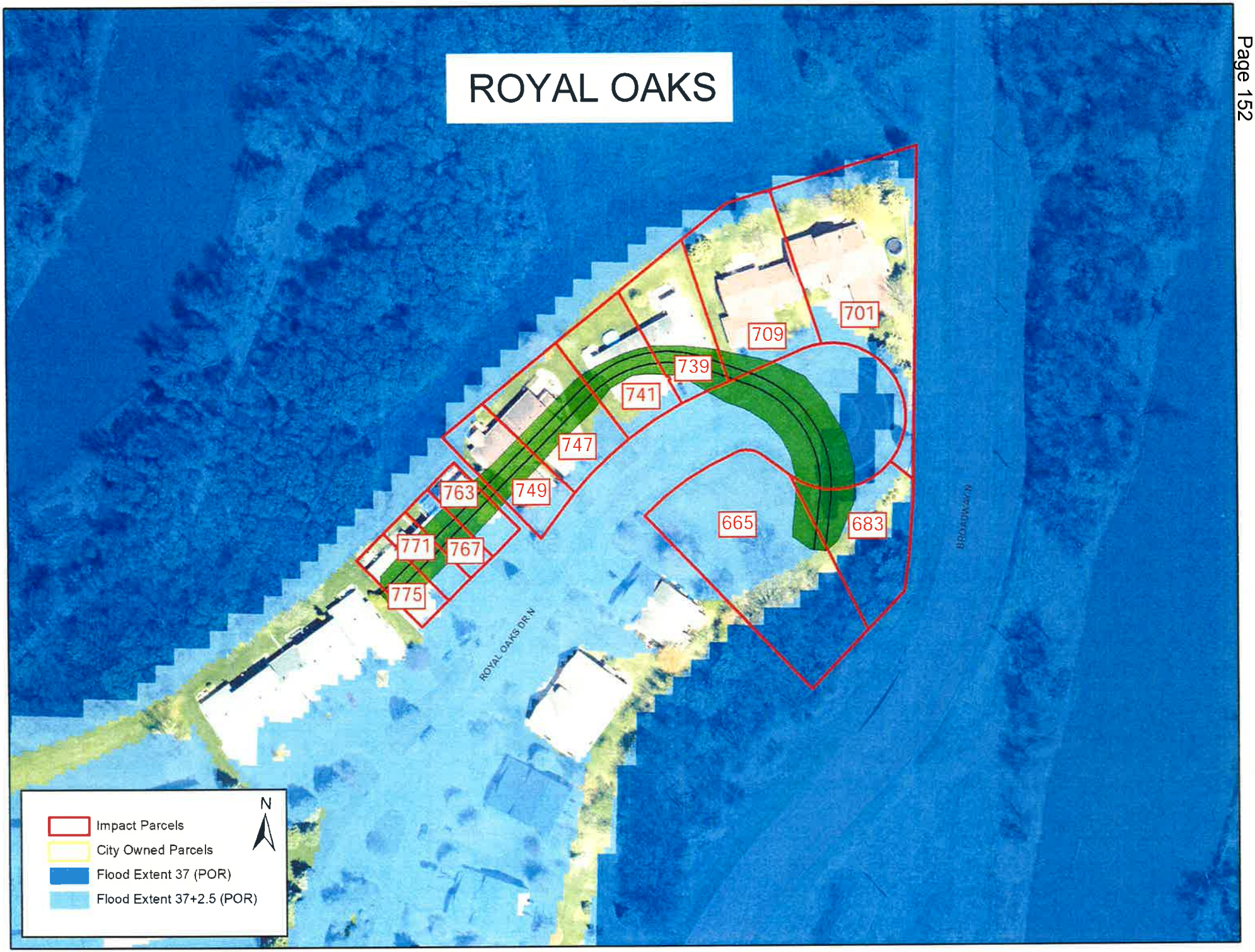
Impact Parcels
City Owned Parcels
Flood Extent 37 (POR)
Flood Extent 37+2.5 (POR)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741
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749
763
771
767
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665
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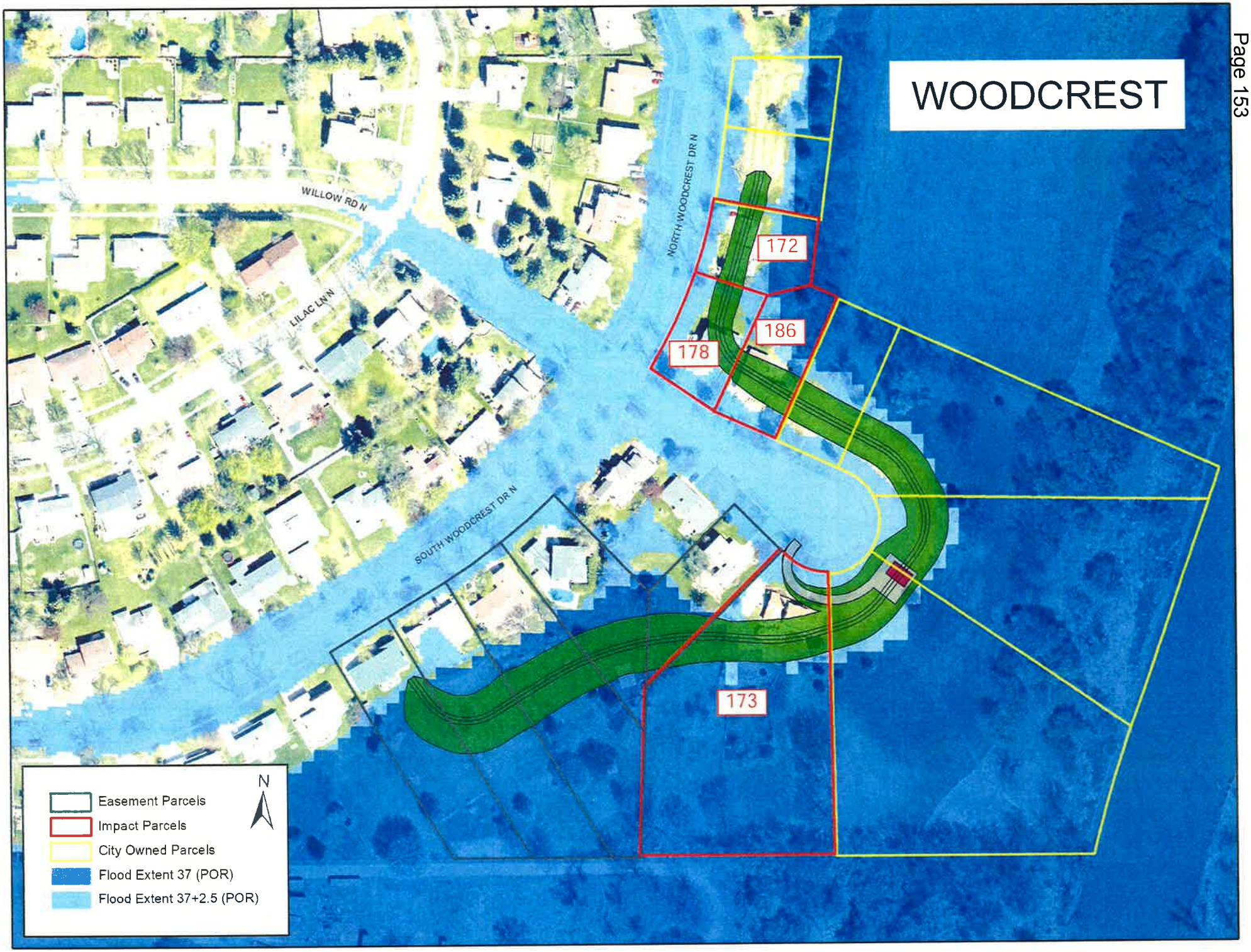
Impact Parcels
City Owned Parcels
Flood Extent 37 (POR)
Flood Extent 37+2.5 (POR)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WILLOW RD N
LILAC LN N
NORTH WOODCREST DR N
SOUTH WOODCREST DR N
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City Owned Parcels
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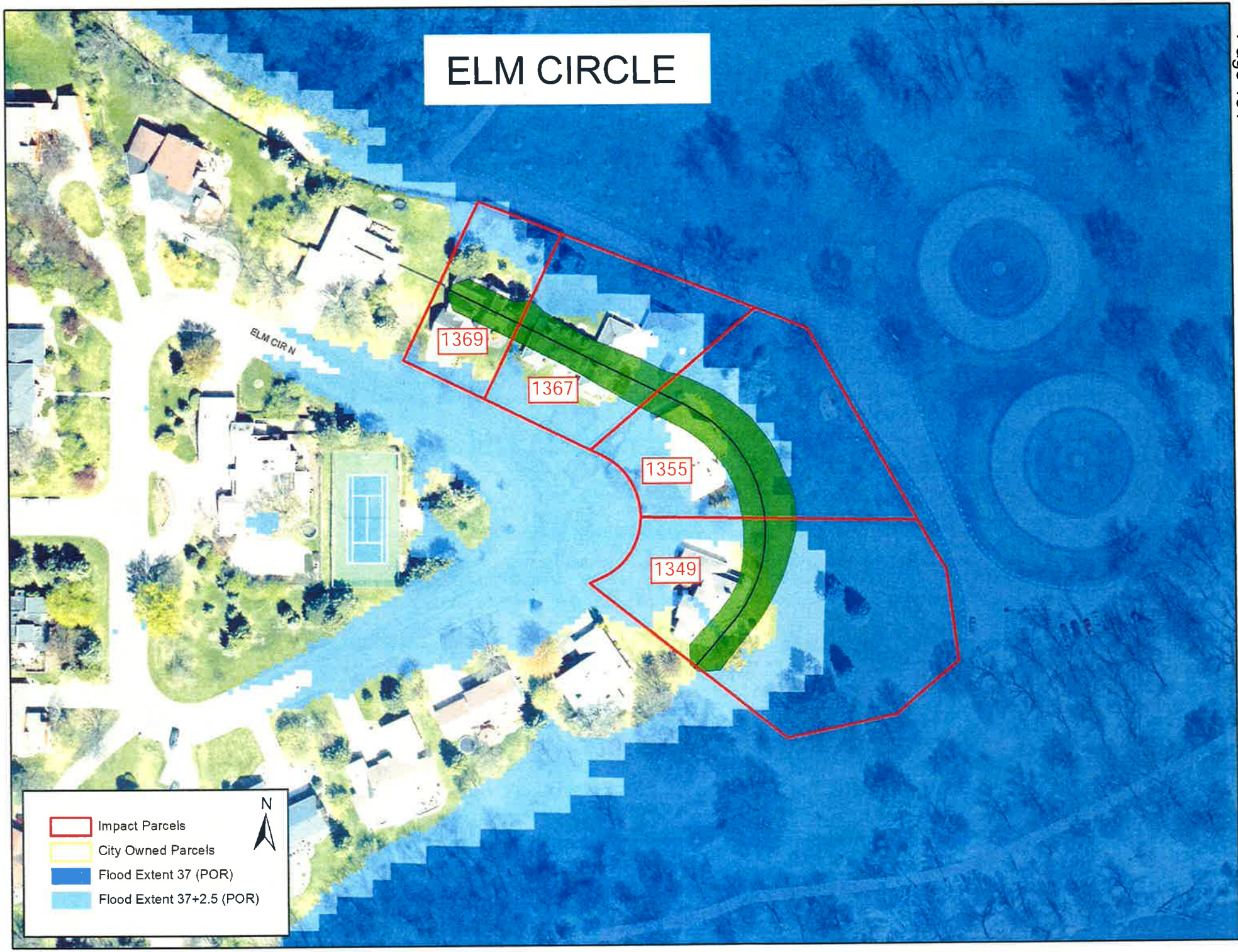
Flood Extent 37+2.5 (POR)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Impact Parcels
City Owned Parcels
Flood Extent 37 (POR)
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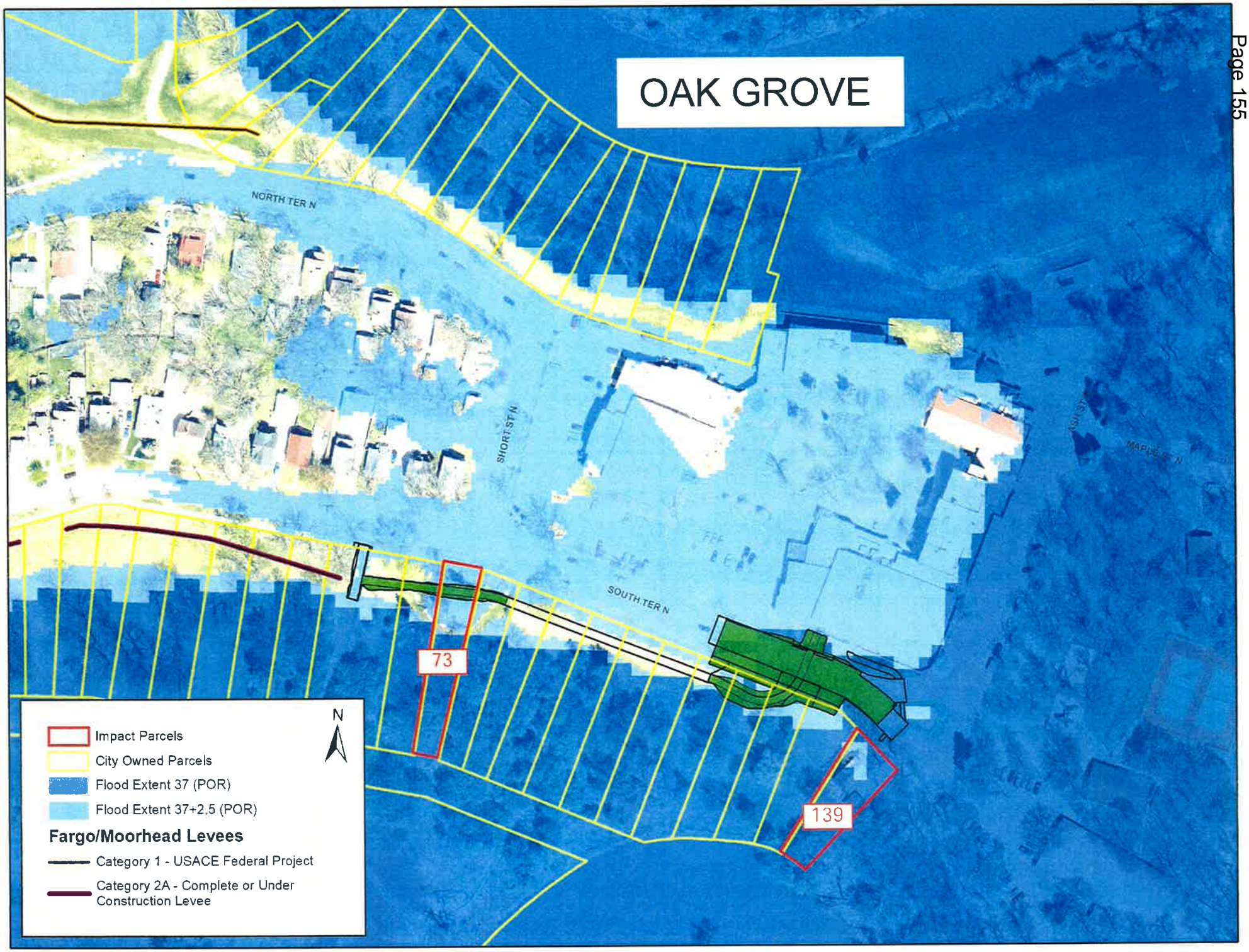
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NORTH TER N
SHORT ST N
SOUTH TER N
MAPLE ST N
73
139
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Impact Parcels
City Owned Parcels
Flood Extent 37 (POR)
Flood Extent 37+2.5 (POR)
Fargo/Moorhead Levees
Category 1 - USACE Federal Project
Category 2A - Complete or Under Construction Levee

25

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. | Type: Easement Requests

Location: Laverne's Addition | Date of Hearing: 8/6/2018

Routing	Date
City Commission	8/13/2018
PWPEC File	X
Project File	Brenda Derrig

The Committee reviewed a communication from City Engineer, Brenda Derrig, regarding four easements and a utility permit with Southeast Cass Water Resource District. The following are needed to support the Laverne's Addition Plat:

- Street Easement for 19th Avenue North
- Street Easement for 45th Street North
- Street Easement for 28th Avenue North
- Levee Easement for levee east of the Drain
- Utility Easement for the Storm Sewer Outfall

On a motion by Ben Dow, seconded by Bruce Grubb, the Committee voted to recommend approval of the easements and utility permit.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the easements and utility permit with Southeast Cass Water Resource District to support Laverne's Addition Plat.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessments

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
Division Engineer

C: Kristi Olson

CITY OF Fargo

Memorandum

To: PWPEC Committee

From: Brenda Derrig, Division Engineer

Date: August 6, 2018

Re: Easements and Utility Permit to support Laverne's Addition

---

Attached please find four easements and a utility permit with Southeast Cass Water Resource District that are needed to support the Laverne's Addition Plat.

- Street Easement for 19th Avenue North
- Street Easement for 45th Street North
- Street Easement for 28th Avenue North
- Levee Easement for levee east of the Drain
- Utility Easement for the Storm Sewer Outfall

These have all been reviewed by the Assistant City Attorney and we are recommending approval.

Recommended Motion:

Approved the attached four easements and utility permit with Southeast Cass Water Resource District.

ACCESS EASEMENT
(Street Easement)

THIS EASEMENT is made this ____ day of _____, 2018, by the Southeast Cass Water Resource District, a North Dakota political subdivision, whose post office address is 1201 Main Avenue West, West Fargo, North Dakota 58078-1301 (the "District"); and the City of Fargo, a North Dakota municipal corporation, whose post office address is 200 3rd Street North, Fargo, North Dakota 58102 (the "City").

RECITALS

A. The District owns, operates, and maintains Cass County Drain No. 40 ("Drain 40") a legal assessment drain.

B. A portion of Drain 40 is located within a residential subdivision known as "LaVerne's Addition" within the City's municipal boundaries; a copy of the recorded plat for LaVerne's Addition is attached as **Exhibit A**.

C. The City owns, operates, and maintains 19th Avenue North (the "City Street"); a portion of the City Street is within LaVerne's Addition, and intersects Drain 40 on property owned by the District.

D. The District has agreed to convey an easement to the City for purposes of the construction, operation, and maintenance of the City Street, subject to the terms and conditions contained in this Easement.

In consideration of the mutual covenants contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **The Easement Property**. The District grants and conveys to the City a non-exclusive permanent easement, including the easement rights described in this Easement, upon, over, across, and through the following real property in Cass County, North Dakota:

See attached **Exhibit B.**

The property described above is the "Easement Property." Attached to this Easement as **Exhibit C** is a map that depicts the Easement Property.

2. **Easement Rights**. The City's easement rights are limited to access, ingress, and egress rights upon, over, and across the Easement Property for the City and the City's officers, agents, representatives, employees, and contractors, and other invitees, including the rights to construct, operate, inspect, maintain, alter, repair, replace, reconstruct, and remove the City Street for the benefit of the City and, in the City's discretion, the public. The City may not use the Easement Property for any other purpose, and the City's use, access, ingress, and egress rights regarding the Easement Property and the City Street will not disrupt or interfere with the District's use of the Easement Property or with Drain 40 and will not affect the structural integrity of Drain 40. The City is solely responsible for the construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, and removal of the City Street, at the City's sole cost. The City's access under this Easement extends to for the City and the City's officers, agents, representatives, employees, and contractors, and other invitees, including the public's use of the City Street.

3. **Flood Protection Priority and Use**. The parties understand and agree that Drain 40 is a public facility that provides important public benefits to residents of Cass County, including residents of the City, and further agree the District's use of Drain 40, including the Easement Property, as a drainage facility takes priority over any other use of the Easement Property, including the City's use of the Easement Property for the purposes permitted under this Easement.

4. **No Unreasonable Interference**. The District will not unreasonably interfere with the City's easement rights under this Easement. However, the District's priority use of Drain 40 for flood protection or other emergency purposes may require and include temporary disruptions or interference with the City Street. The District will use reasonable care to avoid any damages to the City Street and related appurtenances; however, the District will not be liable or responsible for any damages resulting from any construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of Drain 40 by the District, its officers, agents, representatives, employees, or contractors.

5. **Improvements and Repairs to the Easement Property**. Any improvements or repairs to the Easement Property, including to the City Street, are subject to the following:

a. Prior to the City's construction, reconstruction, or other improvements of the City Street, the City must provide plans and specifications to the District, and the District must first give prior written consent to the design of any construction or improvements; the District will not unreasonably withhold consent.

b. The City will operate and maintain the City Street and related appurtenances at its sole cost.

c. The City will obtain the District's prior written consent prior to commencing any structural repairs, modifications, or improvements to the City Street on or adjacent to the Easement Property that require excavation; the District will not unreasonably withhold consent.

d. The City will design and construct any and all improvements and required maintenance on the City Street in a manner that ensures adequate drainage of the City Street, with a finished grade that drains the City Street and shoulders, and that does not result in ponding in or on Drain 40.

e. With the exception of the City Street and related appurtenances, the City will not construct any improvements in, upon, under, over, or across any portion of the Easement Property; the City will not place any fixtures, equipment, or other personal property on any portion of the Easement Property; the City will not construct or install, or allow construction or installation of, any utility facilities, lines, structures, or associated appurtenances on, over, in, under, through, or across the Easement Property; the City will not encumber any portion of the Easement Property; and the City will not otherwise alter any portion of the Easement Property without prior consent from the District; the District will not unreasonably withhold consent.

f. The City will repair the Easement Property and will repair or replace any of the District's structures, facilities, right of way, or any other property owned by the District damaged as a result of the City's construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, and removal of the City Street or otherwise damaged as a result of the City's use, access, ingress, and egress granted under this Easement; the City will otherwise repair and return the Easement Property as near as practicable to its original condition following any disturbance or damages, at the City's sole cost.

g. The City will promptly cease any activity and remove any structure or obstruction that interferes with Drain 40 or the District's use of the Easement Property, at the City's sole cost.

6. **Term**. The rights granted under this Easement are permanent and will only terminate if necessary to protect the integrity of Drain 40; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 40; or in the event of any default by the City not remedied within a reasonable time. In the event of any termination, the District will record an Affidavit of Termination with the Cass County Recorder's Office, and the City will remove any improvements to the City Street, at the City's sole cost.

7. **Indemnity**. The City will release, defend, indemnify, protect, and hold harmless the District and the District's officers, agents, representatives, employees, and contractors from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, arising out of or as a result of the construction, inspection, maintenance, operation, alteration, repair, replacement, reconstruction, removal, or use of the Levee by the City or the City's officers, agents, representatives, employees, and contractors, and other invitees; any entry upon, use of, or access, ingress, and egress upon, over, or across the Easement Property by the City or the City's officers, agents, representatives, employees, and contractors, and other invitees; or any act, error, or omission of the City or the City's officers, agents, representatives, employees, and contractors, and other invitees, including any failure to perform under this Easement.

8. **Compliance with Laws**. The City, at its own cost, is solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations, and obtaining all necessary licenses, permits, registrations, and/or approvals, from all applicable federal, state, county, and municipal governments and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers, regarding the City Street or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the Easement Property.

9. **Forbearance.** The failure or delay of either party to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

10. **Governing Law.** This Easement will be construed and enforced in accordance with North Dakota law.

11. **Interpretation.** This Easement will be construed as if prepared by both parties.

12. **Severability.** If any court of competent jurisdiction finds any provision or part of this Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Easement, and all remaining terms and provisions of this Easement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Easement is invalid, illegal, or unenforceable.

13. **Entire Agreement.** This Easement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Easement, and this Easement supersedes all other previous oral or written agreements between the parties.

14. **Assignment.** Neither party may transfer or assign this Easement, or any rights or obligations under this Easement, without the express written consent of the other party.

15. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Easement, or in any amendment, will be binding upon the parties' heirs, successors, and permitted assigns.

16. **Modifications.** Any modifications or amendments of this Easement must be in writing and signed by the District and the City, and must be recorded in the Cass County Recorder's Office.

17. **Headings.** Headings in this Easement are for convenience only and will not be used to interpret or construe its provisions.

[Signatures appear on the following pages.]

SOUTHEAST CASS WATER
RESOURCE DISTRICT

By: _____
Dan Jacobson, Chairman

ATTEST:

_____
Carol Harbeke Lewis
Secretary-Treasurer

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

On this ____ day of _____, 2018, before me, a Notary Public in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Southeast Cass Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Southeast Cass Water Resource District.

_____
Notary Public, Cass County, ND
My Commission Expires:

(SEAL)

CITY OF FARGO

By: _____
Timothy Mahoney, Mayor

ATTEST:

_____
Steven Sprague, City Auditor

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

On this ____ day of _____, 2018, before me, a Notary Public in and for said County and State, personally appeared Timothy Mahoney and Steven Sprague, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

_____
Notary Public, Cass County, ND
My Commission Expires:

(SEAL)

The legal description contained in this document was drafted by:

Jim Schlieman, PLS
Houston Engineering, Inc.
1420 - 21st Avenue North
Fargo, ND 58102

EXHIBIT A

Plat of LaVerne's Addition

Cass County Document No. _____

(2 pages attached)

EXHIBIT B

Legal Description of the Easement Property

That part of Lot 1, Block 1, Laverne's Addition to the City of Fargo, Cass County, North Dakota, described as follows:

A 200.00 foot wide strip of land, lying within 65.00 feet southerly of and 135.00 feet northerly of the following described line:

Commencing at the southwest corner of said Lot 1; thence North 02°25'27" West, along the westerly line of said Lot 1, for a distance of 584.63 feet to the true point of beginning of the line to be described; thence North 87°33'07" East for a distance of 180.00 feet to a point of intersection with the easterly line of said Lot 1, said line there terminating. Said strip shall be lengthened or shortened as necessary to intersect the westerly line of said Lot 1 on the west, and to intersect the easterly line of said Lot 1 on the east.

EXCEPTING THEREFROM that part of said strip lying within the West 33.00 feet of said Lot 1.

Said strip contains 0.675 acres, more or less.

EXHIBIT C

Map of the Easement Property

ACCESS EASEMENT
(Street Easement)

THIS EASEMENT is made this ____ day of _____, 2018, by the Southeast Cass Water Resource District, a North Dakota political subdivision, whose post office address is 1201 Main Avenue West, West Fargo, North Dakota 58078-1301 (the "District"); and the City of Fargo, a North Dakota municipal corporation, whose post office address is 200 3rd Street North, Fargo, North Dakota 58102 (the "City").

RECITALS

A. The District owns, operates, and maintains Cass County Drain No. 40 ("Drain 40") a legal assessment drain.

B. A portion of Drain 40 is located within a residential subdivision known as "LaVerne's Addition" within the City's municipal boundaries; a copy of the recorded plat for LaVerne's Addition is attached as **Exhibit A**.

C. The City owns, operates, and maintains 45th Street (the "City Street"); a portion of the City Street is within LaVerne's Addition, and intersects Drain 40 on property owned by the District.

D. The District has agreed to convey an easement to the City for purposes of the construction, operation, and maintenance of the City Street, subject to the terms and conditions contained in this Easement.

In consideration of the mutual covenants contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **The Easement Property**. The District grants and conveys to the City a non-exclusive permanent easement, including the easement rights described in this Easement, upon, over, across, and through the following real property in Cass County, North Dakota:

See attached **Exhibit B**.

The property described above is the "Easement Property." Attached to this Easement as **Exhibit C** is a map that depicts the Easement Property.

2. **Easement Rights**. The City's easement rights are limited to access, ingress, and egress rights upon, over, and across the Easement Property for the City and the City's officers, agents, representatives, employees, and contractors, and other invitees, including the rights to construct, operate, inspect, maintain, alter, repair, replace, reconstruct, and remove the City Street for the benefit of the City and, in the City's discretion, the public. The City may not use the Easement Property for any other purpose, and the City's use, access, ingress, and egress rights regarding the Easement Property and the City Street will not disrupt or interfere with the District's use of the Easement Property or with Drain 40 and will not affect the structural integrity of Drain 40. The City is solely responsible for the construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, and removal of the City Street, at the City's sole cost. The City's access under this Easement extends to for the City and the City's officers, agents, representatives, employees, and contractors, and other invitees, including the public's use of the City Street.

3. **Flood Protection Priority and Use**. The parties understand and agree that Drain 40 is a public facility that provides important public benefits to residents of Cass County, including residents of the City, and further agree the District's use of Drain 40, including the Easement Property, as a drainage facility takes priority over any other use of the Easement Property, including the City's use of the Easement Property for the purposes permitted under this Easement.

4. **No Unreasonable Interference**. The District will not unreasonably interfere with the City's easement rights under this Easement. However, the District's priority use of Drain 40 for flood protection or other emergency purposes may require and include temporary disruptions or interference with the City Street. The District will use reasonable care to avoid any damages to the City Street and related appurtenances; however, the District will not be liable or responsible for any damages resulting from any construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of Drain 40 by the District, its officers, agents, representatives, employees, or contractors.

5. **Improvements and Repairs to the Easement Property**. Any improvements or repairs to the Easement Property, including to the City Street, are subject to the following:

   a. Prior to the City's construction, reconstruction, or other improvements of the City Street, the City must provide plans and specifications to the District, and the District must first give prior written consent to the design of any construction or improvements; the District will not unreasonably withhold consent.

b. The City will operate and maintain the City Street and related appurtenances at its sole cost.

c. The City will obtain the District's prior written consent prior to commencing any structural repairs, modifications, or improvements to the City Street on or adjacent to the Easement Property that require excavation; the District will not unreasonably withhold consent.

d. The City will design and construct any and all improvements and required maintenance on the City Street in a manner that ensures adequate drainage of the City Street, with a finished grade that drains the City Street and shoulders, and that does not result in ponding in or on Drain 40.

e. With the exception of the City Street and related appurtenances, the City will not construct any improvements in, upon, under, over, or across any portion of the Easement Property; the City will not place any fixtures, equipment, or other personal property on any portion of the Easement Property; the City will not construct or install, or allow construction or installation of, any utility facilities, lines, structures, or associated appurtenances on, over, in, under, through, or across the Easement Property; the City will not encumber any portion of the Easement Property; and the City will not otherwise alter any portion of the Easement Property without prior consent from the District; the District will not unreasonably withhold consent.

f. The City will repair the Easement Property and will repair or replace any of the District's structures, facilities, right of way, or any other property owned by the District damaged as a result of the City's construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, and removal of the City Street or otherwise damaged as a result of the City's use, access, ingress, and egress granted under this Easement; the City will otherwise repair and return the Easement Property as near as practicable to its original condition following any disturbance or damages, at the City's sole cost.

g. The City will promptly cease any activity and remove any structure or obstruction that interferes with Drain 40 or the District's use of the Easement Property, at the City's sole cost.

6. **Term**. The rights granted under this Easement are permanent and will only terminate if necessary to protect the integrity of Drain 40; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 40; or in the event of any default by the City not remedied within a reasonable time. In the event of any termination, the District will record an Affidavit of Termination with the Cass County Recorder's Office, and the City will remove any improvements to the City Street, at the City's sole cost.

7. **Indemnity**. The City will release, defend, indemnify, protect, and hold harmless the District and the District's officers, agents, representatives, employees, and contractors from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, arising out of or as a result of the construction, inspection, maintenance, operation, alteration, repair, replacement, reconstruction, removal, or use of the Levee by the City or the City's officers, agents, representatives, employees, and contractors, and other invitees; any entry upon, use of, or access, ingress, and egress upon, over, or across the Easement Property by the City or the City's officers, agents, representatives, employees, and contractors, and other invitees; or any act, error, or omission of the City or the City's officers, agents, representatives, employees, and contractors, and other invitees, including any failure to perform under this Easement.

8. **Compliance with Laws**. The City, at its own cost, is solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations, and obtaining all necessary licenses, permits, registrations, and/or approvals, from all applicable federal, state, county, and municipal governments and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers, regarding the City Street or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the Easement Property.

9. **Forbearance.** The failure or delay of either party to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

10. **Governing Law.** This Easement will be construed and enforced in accordance with North Dakota law.

11. **Interpretation.** This Easement will be construed as if prepared by both parties.

12. **Severability.** If any court of competent jurisdiction finds any provision or part of this Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Easement, and all remaining terms and provisions of this Easement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Easement is invalid, illegal, or unenforceable.

13. **Entire Agreement.** This Easement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Easement, and this Easement supersedes all other previous oral or written agreements between the parties.

14. **Assignment.** Neither party may transfer or assign this Easement, or any rights or obligations under this Easement, without the express written consent of the other party.

15. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Easement, or in any amendment, will be binding upon the parties' heirs, successors, and permitted assigns.

16. **Modifications.** Any modifications or amendments of this Easement must be in writing and signed by the District and the City, and must be recorded in the Cass County Recorder's Office.

17. **Headings.** Headings in this Easement are for convenience only and will not be used to interpret or construe its provisions.

[Signatures appear on the following pages.]

SOUTHEAST CASS WATER
RESOURCE DISTRICT

By: _____
Dan Jacobson, Chairman

ATTEST:

_____
Carol Harbeke Lewis
Secretary-Treasurer

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

On this ____ day of _____, 2018, before me, a Notary Public in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Southeast Cass Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Southeast Cass Water Resource District.

_____
Notary Public, Cass County, ND
My Commission Expires:

(SEAL)

CITY OF FARGO

By: _____
Timothy Mahoney, Mayor

ATTEST:

_____
Steven Sprague, City Auditor

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

On this ____ day of _____, 2018, before me, a Notary Public in and for said County and State, personally appeared Timothy Mahoney and Steven Sprague, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

_____
Notary Public, Cass County, ND
My Commission Expires:

(SEAL)

The legal description contained in this document was drafted by:

Jim Schlieman, PLS
Houston Engineering, Inc.
1420 - 21st Avenue North
Fargo, ND 58102

EXHIBIT A

Plat of LaVerne's Addition

Cass County Document No. _____

(2 pages attached)

EXHIBIT B

Legal Description of the Easement Property

The West 33.00 feet of Lot 1, Block 1, Laverne's Addition to the City of Fargo, Cass County, North Dakota.

Said strip contains 2.036 acres, more or less.

EXHIBIT C

Map of the Easement Property

ACCESS EASEMENT
(Street Easement)

THIS EASEMENT is made this ____ day of _____, 2018, by the Southeast Cass Water Resource District, a North Dakota political subdivision, whose post office address is 1201 Main Avenue West, West Fargo, North Dakota 58078-1301 (the "District"); and the City of Fargo, a North Dakota municipal corporation, whose post office address is 200 3rd Street North, Fargo, North Dakota 58102 (the "City").

RECITALS

A. The District owns, operates, and maintains Cass County Drain No. 40 ("Drain 40") a legal assessment drain.

B. A portion of Drain 40 is located within a residential subdivision known as "LaVerne's Addition" within the City's municipal boundaries; a copy of the recorded plat for LaVerne's Addition is attached as **Exhibit A**.

C. The City owns, operates, and maintains 28th Avenue North (the "City Street"); a portion of the City Street is within LaVerne's Addition, and intersects Drain 40 on property owned by the District.

D. The District has agreed to convey an easement to the City for purposes of the construction, operation, and maintenance of the City Street, subject to the terms and conditions contained in this Easement.

In consideration of the mutual covenants contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **The Easement Property**. The District grants and conveys to the City a non-exclusive permanent easement, including the easement rights described in this Easement, upon, over, across, and through the following real property in Cass County, North Dakota:

See attached **Exhibit B.**

The property described above is the "Easement Property." Attached to this Easement as **Exhibit C** is a map that depicts the Easement Property.

2. **Easement Rights**. The City's easement rights are limited to access, ingress, and egress rights upon, over, and across the Easement Property for the City and the City's officers, agents, representatives, employees, and contractors, and other invitees, including the rights to construct, operate, inspect, maintain, alter, repair, replace, reconstruct, and remove the City Street for the benefit of the City and, in the City's discretion, the public. The City may not use the Easement Property for any other purpose, and the City's use, access, ingress, and egress rights regarding the Easement Property and the City Street will not disrupt or interfere with the District's use of the Easement Property or with Drain 40 and will not affect the structural integrity of Drain 40. The City is solely responsible for the construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, and removal of the City Street, at the City's sole cost. The City's access under this Easement extends to for the City and the City's officers, agents, representatives, employees, and contractors, and other invitees, including the public's use of the City Street.

3. **Flood Protection Priority and Use**. The parties understand and agree that Drain 40 is a public facility that provides important public benefits to residents of Cass County, including residents of the City, and further agree the District's use of Drain 40, including the Easement Property, as a drainage facility takes priority over any other use of the Easement Property, including the City's use of the Easement Property for the purposes permitted under this Easement.

4. **No Unreasonable Interference**. The District will not unreasonably interfere with the City's easement rights under this Easement. However, the District's priority use of Drain 40 for flood protection or other emergency purposes may require and include temporary disruptions or interference with the City Street. The District will use reasonable care to avoid any damages to the City Street and related appurtenances; however, the District will not be liable or responsible for any damages resulting from any construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of Drain 40 by the District, its officers, agents, representatives, employees, or contractors.

5. **Improvements and Repairs to the Easement Property**. Any improvements or repairs to the Easement Property, including to the City Street, are subject to the following:

a. Prior to the City's construction, reconstruction, or other improvements of the City Street, the City must provide plans and specifications to the District, and the District must first give prior written consent to the design of any construction or improvements; the District will not unreasonably withhold consent.

b. The City will operate and maintain the City Street and related appurtenances at its sole cost.

c. The City will obtain the District's prior written consent prior to commencing any structural repairs, modifications, or improvements to the City Street on or adjacent to the Easement Property that require excavation; the District will not unreasonably withhold consent.

d. The City will design and construct any and all improvements and required maintenance on the City Street in a manner that ensures adequate drainage of the City Street, with a finished grade that drains the City Street and shoulders, and that does not result in ponding in or on Drain 40.

e. With the exception of the City Street and related appurtenances, the City will not construct any improvements in, upon, under, over, or across any portion of the Easement Property; the City will not place any fixtures, equipment, or other personal property on any portion of the Easement Property; the City will not construct or install, or allow construction or installation of, any utility facilities, lines, structures, or associated appurtenances on, over, in, under, through, or across the Easement Property; the City will not encumber any portion of the Easement Property; and the City will not otherwise alter any portion of the Easement Property without prior consent from the District; the District will not unreasonably withhold consent.

f. The City will repair the Easement Property and will repair or replace any of the District's structures, facilities, right of way, or any other property owned by the District damaged as a result of the City's construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, and removal of the City Street or otherwise damaged as a result of the City's use, access, ingress, and egress granted under this Easement; the City will otherwise repair and return the Easement Property as near as practicable to its original condition following any disturbance or damages, at the City's sole cost.

g. The City will promptly cease any activity and remove any structure or obstruction that interferes with Drain 40 or the District's use of the Easement Property, at the City's sole cost.

6. **Term**. The rights granted under this Easement are permanent and will only terminate if necessary to protect the integrity of Drain 40; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 40; or in the event of any default by the City not remedied within a reasonable time. In the event of any termination, the District will record an Affidavit of Termination with the Cass County Recorder's Office, and the City will remove any improvements to the City Street, at the City's sole cost.

7. **Indemnity**. The City will release, defend, indemnify, protect, and hold harmless the District and the District's officers, agents, representatives, employees, and contractors from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, arising out of or as a result of the construction, inspection, maintenance, operation, alteration, repair, replacement, reconstruction, removal, or use of the Levee by the City or the City's officers, agents, representatives, employees, and contractors, and other invitees; any entry upon, use of, or access, ingress, and egress upon, over, or across the Easement Property by the City or the City's officers, agents, representatives, employees, and contractors, and other invitees; or any act, error, or omission of the City or the City's officers, agents, representatives, employees, and contractors, and other invitees, including any failure to perform under this Easement.

8. **Compliance with Laws**. The City, at its own cost, is solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations, and obtaining all necessary licenses, permits, registrations, and/or approvals, from all applicable federal, state, county, and municipal governments and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers, regarding the City Street or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the Easement Property.

9. **Forbearance**. The failure or delay of either party to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

10. **Governing Law**. This Easement will be construed and enforced in accordance with North Dakota law.

11. **Interpretation**. This Easement will be construed as if prepared by both parties.

12. **Severability**. If any court of competent jurisdiction finds any provision or part of this Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Easement, and all remaining terms and provisions of this Easement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Easement is invalid, illegal, or unenforceable.

13. **Entire Agreement.** This Easement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Easement, and this Easement supersedes all other previous oral or written agreements between the parties.

14. **Assignment.** Neither party may transfer or assign this Easement, or any rights or obligations under this Easement, without the express written consent of the other party.

15. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Easement, or in any amendment, will be binding upon the parties' heirs, successors, and permitted assigns.

16. **Modifications.** Any modifications or amendments of this Easement must be in writing and signed by the District and the City, and must be recorded in the Cass County Recorder's Office.

17. **Headings.** Headings in this Easement are for convenience only and will not be used to interpret or construe its provisions.

[Signatures appear on the following pages.]

SOUTHEAST CASS WATER
RESOURCE DISTRICT

By: _____
Dan Jacobson, Chairman

ATTEST:

_____
Carol Harbeke Lewis
Secretary-Treasurer

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

On this ____ day of _____, 2018, before me, a Notary Public in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Southeast Cass Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Southeast Cass Water Resource District.

_____
Notary Public, Cass County, ND
My Commission Expires:

(SEAL)

CITY OF FARGO

By: _____
Timothy Mahoney, Mayor

ATTEST:

_____
Steven Sprague, City Auditor

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

On this ____ day of _____, 2018, before me, a Notary Public in and for said County and State, personally appeared Timothy Mahoney and Steven Sprague, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

_____
Notary Public, Cass County, ND
My Commission Expires:

(SEAL)

The legal description contained in this document was drafted by:

Jim Schlieman, PLS
Houston Engineering, Inc.
1420 - 21st Avenue North
Fargo, ND 58102

EXHIBIT A

Plat of LaVerne's Addition

Cass County Document No. _____

(2 pages attached)

EXHIBIT B

Legal Description of the Easement Property

The North 80.00 feet of Lots 1 and 2, Block 1, Laverne's Addition to the City of Fargo, Cass County, North Dakota, less the West 33.00 feet of said Lot 1.

Said strip contains 0.444 acres, more or less.

EXHIBIT C

Map of the Easement Property

ACCESS EASEMENT
(Levee Easement)

THIS EASEMENT is made this ____ day of _____, 2018, by the Southeast Cass Water Resource District, a North Dakota political subdivision, whose post office address is 1201 Main Avenue West, West Fargo, North Dakota 58078-1301 (the "District"); and the City of Fargo, a North Dakota municipal corporation, whose post office address is 200 3rd Street North, Fargo, North Dakota 58102 (the "City").

RECITALS

A. The District owns, operates, and maintains Cass County Drain No. 40 ("Drain 40"), a legal assessment drain.

B. A portion of Drain 40 is located within a residential subdivision known as "LaVerne's Addition" within the City's municipal boundaries; a copy of the recorded plat for LaVerne's Addition is attached as **Exhibit A**.

C. The District has agreed to convey an easement to the City for purposes of the City's construction, operation, and maintenance of a flood protection levee located along Drain 40 (the "Levee"), subject to the terms and conditions contained in this Easement.

In consideration of the mutual covenants contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **The Easement Property**. The District grants and conveys to the City a non-exclusive permanent easement, including the easement rights described in this Easement, upon, over, across, and through the following real property in Cass County, North Dakota:

See attached **Exhibit B**.

The property described above is the "Easement Property." Attached to this Easement as **Exhibit C** is a map that depicts the Easement Property.

2. **Easement Rights**. The City's easement rights are limited to access, ingress, and egress rights upon, over, and across the Easement Property for the City and the City's officers, agents, representatives, employees, and contractors, and other invitees, including the rights to construct, operate, inspect, maintain, alter, repair, replace, reconstruct, and remove the Levee. The City may not use the Easement Property for any other purpose, and the City's use, access, ingress, and egress rights regarding the Easement Property and the Levee will not disrupt or interfere with the District's use of the Easement Property or with Drain 40 and will not affect the structural integrity of Drain 40. The City is solely responsible for the construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, and removal of the Levee, at the City's sole cost. The City's access under this Easement extends to the City and the City's officers, agents, representatives, employees, and contractors, and other invitees.

3. **Priority and Use for Drainage and Flood Protection**. The parties acknowledge that the Easement Property and Drain 40 are public facilities that provide important public benefits to residents of Cass County, including residents of the City. The parties further acknowledge that the District's use of Drain 40, including the Easement Property, as a drainage facility takes priority over any other use of the Easement Property, including the City's use of the Easement Property for the purposes permitted under this Easement. The District may, in the District's sole discretion, impose restrictions or limitations on the City's access rights as necessary for drainage purposes or otherwise as necessary to protect the integrity of Drain 40 or the Easement Property.

4. **No Unreasonable Interference**. The District will not unreasonably interfere with the City's rights under this Easement. However, the District's priority use of Drain 40 for flood protection or other emergency purposes may require and include temporary disruptions or interference with the City's use or operation of the Levee. The District will use reasonable care to avoid any damages to the Levee and related appurtenances; however, the District will not be liable or responsible for any damages resulting from any construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of Drain 40 by the District, its officers, agents, representatives, employees, or contractors.

5. **Improvements and Repairs to the Easement Property**. Any improvements or repairs to the Easement Property, including to the Levee, are subject to the following:

a. The City is solely responsible for all costs arising from or associated with its access to, use of, or construction upon the Easement Property. This includes the cost of any construction, installation, operation, maintenance, inspection, alteration, repair, and replacement of the Levee. The District will bear no responsibility or cost for these costs or any cost associated with City's use of its rights under this Easement.

b. The City will construct the Levee substantially in conformance with the plans and specifications provided by the City during the bidding process for the improvements to the Laverne's Addition. Prior to the City's construction, reconstruction, or other improvements of the Levee, the City must provide plans and specifications to the District, and the District must first give prior written consent to the design of any construction or improvements; the District will not unreasonably withhold consent.

c. The City will obtain the District's prior written consent prior to commencing any structural repairs, modifications, or improvements to the Levee on or adjacent to the Easement Property that require excavation; the District will not unreasonably withhold consent.

d. With the exception of the improvements to the Easement Property required for the construction of the Levee, the City will not construct any improvements in, upon, under, over, or across any portion of the Easement Property without the prior written consent of the District. This includes: the placement of any fixtures, equipment, or other personal property on any portion of the Easement Property; the installation or construction of any utility facilities, lines, structures, or associated appurtenances on, over, in, under, through, or across the Easement Property by the City or another party; and any encumbrance of the Easement Property or any portion thereof by the City or another party. The City will not encumber any portion of the Easement Property, and the City will not otherwise alter any portion of the Easement Property without prior consent from the District. The District will not unreasonably withhold its consent.

e. The City will repair the Easement Property and will repair or replace any of the District's structures, facilities, right of way, or any other property owned by the District damaged as a result of the City's construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, and removal of the Levee or otherwise damaged as a result of the City's use, access, ingress, and egress granted under this Easement. The City will otherwise repair and return the Easement Property as near as practicable to its original condition following any disturbance or damages, at the City's sole cost.

f. The City will promptly cease any activity and remove any structure or obstruction that interferes with Drain 40 or the District's use of the Easement Property, at the City's sole cost.

6. **Term**. The rights granted under this Easement are permanent and will only terminate if necessary to protect the integrity of Drain 40; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 40; or in the event of any default by the City not remedied within a reasonable time. In the event of any termination, the District will record an Affidavit of Termination with the Cass County Recorder's Office, and the City will remove any improvements to the Levee, at the City's sole cost.

7. **Indemnity**. The City will release, defend, indemnify, protect, and hold harmless the District and the District's officers, agents, representatives, employees, and contractors from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, arising out of or as a result of the construction, inspection, maintenance, operation, alteration, repair, replacement, reconstruction, removal, or use of the Levee by the City or the City's officers, agents, representatives, employees, and contractors, and other invitees; any entry upon, use of, or access, ingress, and egress upon, over, or across the Easement Property by the City or the City's officers,

agents, representatives, employees, and contractors, and other invitees; or any act, error, or omission of the City or the City's officers, agents, representatives, employees, and contractors, and other invitees, including any failure to perform under this Easement.

8. **Compliance with Laws**. The City, at its own cost, is solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations, and obtaining all necessary licenses, permits, registrations, and/or approvals, from all applicable federal, state, county, and municipal governments and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers, regarding the Levee or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the Easement Property.

9. **Forbearance.** The failure or delay of either party to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

10. **Governing Law.** This Easement will be construed and enforced in accordance with North Dakota law.

11. **Interpretation.** This Easement will be construed as if prepared by both parties.

12. **Severability.** If any court of competent jurisdiction finds any provision or part of this Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Easement, and all remaining terms and provisions of this Easement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Easement is invalid, illegal, or unenforceable.

13. **Entire Agreement.** This Easement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Easement, and this Easement supersedes all other previous oral or written agreements between the parties.

14. **Assignment.** Neither party may transfer or assign this Easement, or any rights or obligations under this Easement, without the express written consent of the other party.

15. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Easement, or in any amendment, will be binding upon the parties' heirs, successors, and permitted assigns.

16. **Modifications.** Any modifications or amendments of this Easement must be in writing and signed by the District and the City, and must be recorded in the Cass County Recorder's Office.

17. **Headings.** Headings in this Easement are for convenience only and will not be used to interpret or construe its provisions.

[Signatures appear on the following pages.]

SOUTHEAST CASS WATER
RESOURCE DISTRICT

By: _____
Dan Jacobson, Chair

ATTEST:

_____
Carol Harbeke Lewis
Secretary-Treasurer

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

On this ____ day of _____, 2018, before me, a Notary Public in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Southeast Cass Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Southeast Cass Water Resource District.

_____
Notary Public, Cass County, ND
My Commission Expires:

(SEAL)

CITY OF FARGO

By: _____
Timothy Mahoney, Mayor

ATTEST:

_____
Steven Sprague, City Auditor

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

On this ____ day of _____, 2018, before me, a Notary Public in and for said County and State, personally appeared Timothy Mahoney and Steven Sprague, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

_____
Notary Public, Cass County, ND
My Commission Expires:

(SEAL)

The legal description contained in this document was drafted by:

Jim Schlieman, PLS
Houston Engineering, Inc.
1420 - 21st Avenue North
Fargo, ND 58102

EXHIBIT A

Plat of LaVerne's Addition

Cass County Document No. _____

(2 pages attached)

EXHIBIT B

Legal Description of the Easement Property

The East 40.00 feet of Lot 2, Block 1, Laverne's Addition to the City of Fargo, Cass County, North Dakota, less the South 825.00 feet thereof.

together with

That part of the East 40.00 feet of Lot 2, Block 1, Laverne's Addition to the City of Fargo, Cass County, North Dakota, lying southerly of a line which is parallel with and 65.00 feet southerly of the following described line:

> Beginning at the southeast corner of the Southwest Quarter of Section 27, Township 140 North, Range 49 West of the Fifth Principal Meridian; thence South 87°50'31" West, along the southerly line of said Southwest Quarter, for a distance of 1312.60 feet to a point of tangential curve to the right, having a radius of 710.00 feet; thence westerly and northwesterly, along said curve, for a distance of 649.30 feet, through a central angle of 52°23'51"; thence North 39°45'38" West, tangent to the last described curve, for a distance of 74.98 feet to a point of tangential curve to the left, having a radius of 640.00 feet; thence northwesterly and westerly, along said curve, for a distance of 588.52 feet, through a central angle of 52°41'15"; thence South 87°33'07" West, tangent to the last described curve, for a distance of 23.88 feet to the east line of Cass County Drain No. 40, said line there terminating.

Said tracts contain 2.185 acres, more or less.

EXHIBIT C

Map of the Easement Property

SOUTHEAST CASS WATER RESOURCE DISTRICT
UTILITY PERMIT

The City of Fargo, a North Dakota municipal corporation ("Applicant"), applies for this Permit to install and construct _____ and related appurtenances _____ on, through, and across Cass County Drain No. 40 (the "Drain") right of way, owned by the Southeast Cass Water Resource District (the "District"), as shown on the plans attached as **Exhibit A** ("Applicant's Utilities").

Applicant may install Applicant's Utilities _____ on, through, and across the Drain as specifically shown on **Exhibit A**. Installation, operation, and maintenance of Applicant's Utilities on the District's right of way will conform to the following provisions:

1. Applicant will complete construction and maintenance at Applicant's sole expense.

2. Applicant will place Applicant's Utilities at the designated depth below the original design grade as set forth in the plans attached as **Exhibit A**.

3. Within 30 days after construction, maintenance, relocation, or removal of Applicant's Utilities, Applicant will remove any right of way scars; Applicant will restore any disturbed areas to original condition; and Applicant will re-seed the vicinity disturbed by Applicant's activities. Applicant will maintain any disturbed areas for a period of one year from the date of completion.

4. Applicant will install marker posts at all the Drain crossings on the right of way line, or at any other point as designated by the District.

5. Applicant will complete installation, maintenance, relocation, and/or removal of Applicant's Utilities on the District's right of way in a manner satisfactory to the District.

6. The District will not be liable for any damages to Applicant's Utilities resulting from reconstruction or maintenance of the Drain or any of the District's facilities or right of way. Applicant will release, defend, indemnify, and hold harmless the District, and all of the District's employees, officers, agents, and representatives, from and against any and all claims, demands, causes of action, or demands for relief, including costs, expenses, and attorneys' fees, that may arise out of or result from any acts or omissions regarding this Permit or Applicant's installation or maintenance of Applicant's Utilities, or any accident, injury, or damage to

person, property, or equipment as a result of Applicant's entry upon or use of the District's right of way or property.

7. Applicant, at Applicant's own cost, will repair or replace the District's structures, facilities, right of way, or any other property owned by the District which may be damaged as a result of Applicant's installation and maintenance of Applicant's Utilities on the District's right of way, or otherwise as a result of Applicant's entry upon or use of the District's right of way.

8. Applicant will promptly remove Applicant's Utilities from the District's right of way, or will relocate or adjust Applicant's Utilities, all at Applicant's sole cost and expense upon notice from the District, as necessary for purposes of constructing, cleaning, inspecting, reconstructing, modifying, operating, maintaining, repairing, or improving the Drain.

9. Applicant will be solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations of any other federal, state, county, or local governments or governmental entities which may be applicable regarding Applicant's Utilities or Applicant's activities. Further, Applicant will be solely responsible for obtaining all applicable licenses, permits, or other approvals necessary, if any, regarding Applicant's Utilities or Applicant's activities under this Permit.

10. Applicant will be solely responsible for all costs and expenses associated with complying with Applicant's obligations under this Permit.

11. Applicant will not transfer or assign this Permit, nor any of Applicant's rights or obligations under this Permit, without the express written consent of the District.

12. Upon Applicant's completion of installation of Applicant's Utilities, Applicant will notify the District and the District, in its discretion, may require an inspection of Applicant's Utilities to ensure compliance with this Permit. Applicant will be responsible for the District's costs associated with the inspection; following an inspection, the District will provide Applicant with notice of costs incurred and Applicant will reimburse the District within 60 days.

13. If Applicant fails to perform any of Applicant's obligations under this Permit within a reasonable time following request or demand from the District, the District may perform Applicant's obligations and may recover its costs incurred by assessing the costs against any property owned by Applicant in Cass County, North Dakota, including any attorneys' fees incurred in attempting to collect the amounts due, or by other legal means of collection.

14. The failure or delay of the District to insist on the timely performance of any of the terms of this Permit, or the waiver of any particular breach of any of the terms of this Permit, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred. Upon the occurrence of any default by Applicant, the District may, immediately and without the need for any prior notice, enforce the provisions of this Permit and may take any and all other actions necessary, in law or in equity, to collect all amounts due under this Permit or to enforce any of Applicant's other obligations under this Permit. The remedies provided for in this Permit are cumulative and not exclusive, and are in addition to any and all other remedies available to the District under North Dakota law. Applicant will be responsible for all of the District's costs and expenses, including reasonable attorneys' fees, incurred in enforcing, collecting, or attempting to collect under this Permit, or incurred in litigating the terms or validity of this Permit.

15. Special Conditions:

Applicant agrees to the above terms and conditions. This application will become effective as a Permit upon execution by both Applicant and the District.

APPLICANT:

CITY OF FARGO

By: _____
Timothy J. Mahoney
Its: Mayor

Date: _____

SOUTHEAST CASS WATER
RESOURCE DISTRICT

_____

Carol Harbeke Lewis
Secretary-Treasurer

Date Approved: _____

EXHIBIT A

Applicant's Plans

LAVERNE'S ADDITION

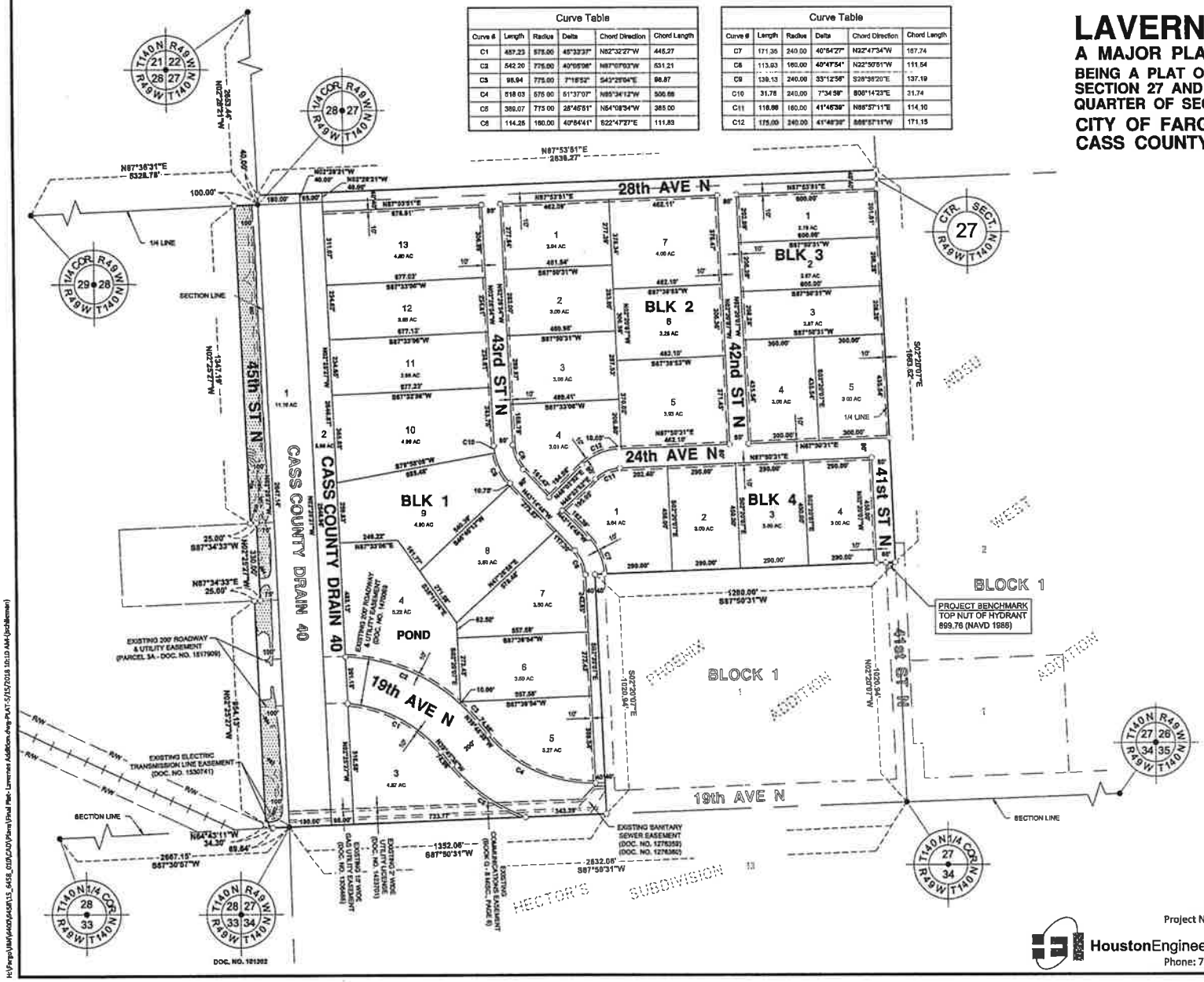
A MAJOR PLAT

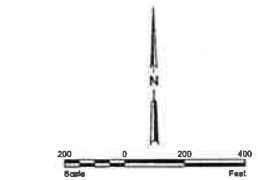
BEING A PLAT OF PART OF THE WEST HALF OF SECTION 27 AND PART OF THE SOUTHEAST QUARTER OF SECTION 28, T. 140 N., R. 49 W., 5th P.M.

CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	457.23	575.00	45°33'37"	N82°32'27"W	445.27
C2	542.20	775.00	40°05'06"	N87°07'03"W	531.21
C3	98.94	775.00	7°18'52"	S43°29'04"E	98.87
C4	518.03	575.00	51°37'07"	N85°34'12"W	500.68
C5	389.07	775.00	28°45'51"	N54°08'34"W	385.00
C6	114.25	160.00	40°54'41"	S22°47'27"E	111.83

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C7	171.35	240.00	40°54'27"	N22°47'34"W	167.74
C8	113.93	160.00	40°47'54"	N22°50'51"W	111.54
C9	139.13	240.00	33°12'56"	S28°38'20"E	137.19
C10	31.78	240.00	7°34'58"	S06°14'23"E	31.74
C11	116.86	160.00	41°45'39"	N88°57'11"E	114.10
C12	175.00	240.00	41°46'30"	S88°57'11"W	171.15

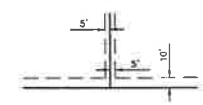




LEGEND

- IRON MONUMENT FOUND
- 1/2" I.D. PIPE SET
- PLAT BOUNDARY
- LOT LINE
- UTILITY EASEMENT
- EXISTING LOT LINE
- EXISTING UTILITY EASEMENT
- AREA WITHIN FEMA 100-YEAR FLOODPLAIN BFE = 890.0

BEARINGS SHOWN ARE BASED ON FARGO GIS HORIZONTAL DATUM.



BEING 6 FEET IN WIDTH AND ADJOINING LOT LINES, AND 10 FEET IN WIDTH AND ADJOINING RIGHT-OF-WAY LINES, UNLESS OTHERWISE INDICATED ON THE PLAT.

UTILITY EASEMENTS ARE SHOWN THUS

Sheet 1 of 2
Project No. 6458-010

HoustonEngineering Inc.
Phone: 701.237.5065

CITY OF Fargo

Metropolitan Area Transit
650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

26

August 13, 2018

Board of City Commissioners
City of Fargo
200 North Third Street
Fargo, ND 58102

Dear Commissioners:

The City of Fargo Transit Department (MATBUS) recently completed the Federal Transit Administration (FTA) Triennial Review. During the review, there were two suggestions made by the reviewers to update our current fare/route change policy to ensure compliance with FTA regulations. The changes to the policy clarify when a public hearing is required for fare or route changes.

The suggested changes are:

- Replace the word "significant" with "major"
- Add direction on how the public comments received prior to the public hearing are to be reviewed and provided to the City Commission for consideration.

Requested motion is to approve the attached Procedure for Fare/Route Changes which incorporates the suggested changes from the FTA reviewers.

Sincerely,

Matthew G. Peterson
Assistant Transit Director

/enc

Printed on Recycled paper.

Transit Public Comment Process on Fare/Service Changes

Procedure for fare/route changes

The City of Fargo must solicit and consider public comment before implementation of all changes in fares or major changes in service.

Public hearings will be held for all fare and major route changes. Public hearing dates are set and hearing notices appear in the Fargo newspaper approximately two weeks prior to the actual hearing. Hearings are held during the City Commission's regularly scheduled meetings in the Fargo City Hall. Hearings are open to the public; anyone wishing to speak at the hearing is afforded the opportunity. If someone is unable to attend the hearing, written comments are accepted prior to the hearing.

The Transit Director and/or Assistant Transit Director will summarize all comments received prior to the public hearing. The summary and an analysis will be provided to the City Commission during the scheduled public hearing for consideration.

Definition of Temporary Service Changes

Temporary service changes are those that are in effect for a limited time period due to road construction, special events, etc., and are not intended to be permanent.

The Transit Director or Assistant Transit Director shall make temporary service changes administratively. If a temporary service change is to become permanent, the Transit Director or Assistant Transit Director will evaluate the change to determine if it is minor or major based on the following.

Definition of Major Service Changes

Route or service changes are considered major if any of the following apply:

1. Elimination or addition of a route
2. Any change in routes in excess of 25% of the route's mileage and/or annual revenue hours.
3. Changes that would reduce or eliminate service to schools, elderly/public housing, hospitals or social service agencies.

All major route changes will be subject to the public hearing process and implemented after approval by the City Commission.

Definition of Minor Service Changes

Route or service changes are considered minor if they are less than 25% of the route's mileage and/or annual revenue hours.

APPROVED BY:

_____ _____

Dr. Timothy J. Mahoney, Mayor — Date

ATTEST:

_____ _____

Steve Sprague, City Auditor — Date

CITY OF Fargo

Metropolitan Area Transit
650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

(27)

August 13, 2018

Board of City Commissioners
City of Fargo
200 North Third Street
Fargo, ND 58102

Dear Commissioners:

The City of Fargo Transit Department (MATBUS) launched TapRide, a new on-demand service, on NDSU campus January 8, 2018. The service was introduced as a pilot program, which replaced the evening Route 35 to provide students on NDSU campus a safe ride.

City Commission approved to continue the service for the 2018 fall semester on March 26, 2018. We received an updated contract from TapRide which is for the full 2018-2019 academic year. Staff has negotiated with NDSU for the service for the 2018-2019 academic year and all charges for the service are paid for through the contract with NDSU.

Requested motion is to approve the TapRide service and the attached contract for the 2018-2019 academic year.

Exhibits (A)

Sincerely,

Matthew G. Peterson
Assistant Transit Director

/enc

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Service Agreement Addendum 1
DoubleMap, Inc and City of Fargo
Technology License and Services Agreement

Purpose of amendment: To amend contract terms in Section 2.1.2 and Section 2.1

WHEREAS, City of Fargo located in Fargo, ND and DoubleMap, Inc with offices at 429 N Pennsylvania Street, Ste 401, Indianapolis, IN 46204 previously entered into agreement on November 29, 2017 to support the above referenced activities;

WHEREAS, City of Fargo and DoubleMap, Inc. desire to amend the said agreement to be effective on November 29, 2018;

NOW, THEREFORE, the original agreement in modified as follows:

1. Replace Section 2.1.2. as follows:
   Recurring fees payable in annual recurring installments per the updated and attached Pricing Exhibit. All recurring fees are due within thirty (30) days of term renewal date.

2. Replace Section 2.1 as follows:
   Term: This agreement will expire thirty-six (36) months after the term renewal date. Thereafter, this Agreement will automatically renew for additional one-year terms unless either party notifies the other at least sixty (60) days prior to the end of the current annual term that such party does not intend to renew the Agreement. Should the Customer add to the number of their fleet or add additional products/services, a new pricing exhibit will be issued and added to the terms of this Agreement.

End of Amendment 1. All other terms and conditions remain unchanged.

Attachment: Pricing Exhibit

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly Executed.

DoubleMap, Inc.

Signature: _____

Title: _____

Date: _____

City of Fargo

Signature: _____

Title: _____

Date: _____

Signature: _____

Title: _____

Date: _____

Amendment to
Joint Powers Agreement for Transit Support
Between
The City of Fargo, North Dakota
and
North Dakota State University

This Amendment to Agreement (attachment A) is effective the 1st day of July, 2018, and is by and between the City of Fargo ("CITY") and the North Dakota State Board of Higher Education on behalf of North Dakota State University ("NDSU").

WHEREAS, CITY and NDSU entered into a Joint Powers Agreement for Transit Support dated July 1, 2018; and,

WHEREAS, Article 11 of said Joint Powers Agreement stated that the CITY and NDSU shall be authorized to adjust the financial terms of said agreement and the term of said agreement as they mutually agree in writing, from time to time; and,

WHEREAS, the CITY and NDSU wish to make such adjustments for the school year 2018-2019.

NOW, THEREFORE, it is mutually understood and agreed as follows:

A. Article 3, entitled "Payment" shall be amended to read as follows:

ARTICLE 3 – PAYMENT

3.1 NDSU will donate to the CITY $696,966.41over the term of this agreement. Payments of $69,696.64 will be made each month for 10 months, starting August, 2018. Said monthly payments shall be made, in arrears, by the end of each month.

B. Article 6, entitled "Term of Agreement" shall be amended to read as follows:

ARTICLE 7 – TERM OF AGREEMENT

This Agreement shall become effective July 1, 2018 and shall remain in full-force and effect for one year unless terminated earlier as provided in the joint powers agreement (attachment A).

C. Article 11, entitled "Notices" shall be amended to read as follows:

ARTICLE 11 – NOTICES

All notices herein required and any communications with respect to this Agreement shall be effected upon the mailing thereof, and addressed as follows:

NDSU

Mr. Mike Ellingson
Director of Facilities Management
North Dakota State University
Box 6050
Fargo, ND 58105

City of Fargo

Ms. Julie Bommelman
Transit Director
Metro Area Transit Garage
650 23rd St. N.
Fargo, ND 58102

D. In all other respects, the Joint Powers Agreement for Transit Support shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective July 1, 2018.

North Dakota State University

Mr. Bruce Bollinger
Vice President for Finance and Administration

Date: _____

City of Fargo

Dr. Timothy J. Mahoney, Mayor

Date: _____

Attest: City Auditor Date

Agreement for Transit Services
Between
The City of Fargo, North Dakota
and
North Dakota State University

This Agreement, dated July 1, 2018, is by and between the City of Fargo ("CITY") and North Dakota State University ("NDSU").

WHEREAS, NDSU wishes to provide transit services for the benefit of students using the regular fixed route system serving the Fargo-Moorhead metropolitan area, and six circulator shuttle routes serving the NDSU campus and vicinity, and;

WHEREAS, The CITY, through its Transit Division, in partnership with the City of Moorhead, Minnesota, provides bus service within the Fargo-Moorhead metropolitan area, and;

WHEREAS, The CITY has the infrastructure, vehicles, staffing, funding, and operational capacity to provide these services to NDSU in accordance with the articles in this agreement.

NOW, THEREFORE, it is mutually understood and agreed as follows:

ARTICLE 1 – GENERAL PURPOSE

The purpose of this agreement is to provide public transportation opportunities for NDSU students while reducing traffic congestion in the City of Fargo. This Agreement will allow NDSU students, faculty and staff to ride any bus route within the Fargo-Moorhead Metropolitan Area Transit system free of charge in accordance with Article 3.1 below. Students, faculty and staff must swipe a current NDSU ID card when boarding any non-circulator route. In addition to use of the regular fixed route system, six circulator shuttle routes will be maintained to increase student, faculty and staff mobility in and around the NDSU campus.

ARTICLE 2 – SERVICE

2.1 Route: The CITY will maintain service on Route 13 which connects the NDSU campus to the Ground Transportation Center where connections are made to routes serving the Fargo-Moorhead area. The CITY will also maintain six circulator routes in and around the NDSU campus, to be funded in accordance with Article 2.2 below.

2.2 Service: The CITY will operate Route 13 with a half hour frequency on weekdays and Saturdays during the day, and hourly at night, year round.

The following six circulator shuttle routes will utilize a total of eight (8) vehicles and operate in and around the NDSU main and downtown campus. Each will operate on routes/schedules determined by the CITY. Circulator shuttle routes will operate on days which NDSU classes are in session, the day prior to NDSU class starting each semester, and during NDSU finals week of each semester, except on State Holidays. Circulator shuttle routes are listed in article 3.2 below with the total operating hours assigned to each route per day. NDSU will have 64.93 operating hours each day NDSU classes are in session, the day prior to NDSU class starting each semester, and during NDSU finals week of each semester, except on State Holidays.

ARTICLE 3 – PAYMENT

3.1 Bison Roam Free U-Pass Program: All enrolled NDSU students regardless of full or part-time status, class standing, or location of residence shall be authorized to ride any fixed route within the Fargo-Moorhead Metropolitan Area Transit system free of charge This service is referred to as the "Bison Roam Free U-Pass Program", or simply as "U-Pass." To be eligible for participation, students must swipe a current NDSU ID at the time of boarding. In exchange, NDSU will pay the CITY an annual amount of $62,587.34. Payment is due by September 30, 2018.

The U-Pass cost is calculated by taking the total percent of NDSU student, faculty and staff ridership from all non-circulator routes at fifteen percent (15%) of the previous years operating costs. The formula below shows the calculation for the previous year.

2017 U-Pass Calculation: [2017 operating expense $5,541,154.67. NDSU 2017 ridership on all non-circulator routes was 7.53%. FTA expectation is 15% farebox recovery. 15% of $5,541,154.57 = $831,173.20 and 7.53% of 15% = $62,587.34.]

3.2 Circulator Costs:

Route	Daily Revenue Hours	Academic Operating Days	Annual Operating Hours	Rate	Cost
Route 31	10.50	162	1701		
Route 32E	10.67	162	1729		
Route 32W	3	162	486		
Route 33	28.35	162	4593		
Route 34	8.91	162	1443		
TapRide	3.5	162	567		
Totals			**10518.66**	**$66.26**	**$696,966.41**

Vehicle advertising is included in the hourly operating costs for NDSU routes. For every 1,000 annual operating hours, NDSU receives one (1) vehicle for advertising on both the interior and exterior of the vehicle. NDSU is allowed a maximum of 10 vehicles at the current rate. The City handle installation and removal of all wraps. The City will have sole discretion on which vehicles the wraps are placed.

3.3 Credits:
In the event any revenue hours are canceled by either NDSU or the City of Fargo, a credit of the total number of hours canceled will be credited in the formula to calculate the next years cost per hour.

ARTICLE 4 – ROUTE/SERVICE ADJUSTMENTS

The CITY will closely monitor NDSU student ridership statistics, patterns, and other information to create periodic reports for NDSU. NDSU will consult with students on the usefulness of the transit service, and provide this information to the CITY. Based on this information, the CITY may make adjustments to the routes and transit schedule. Both parties acknowledge that any such adjustments must comply with all applicable federal, state and local rules and regulations regarding transit operations, and with basic safety requirements pertaining to the operation of public transit vehicles.

ARTICLE 5 – INSURANCE

The CITY shall maintain and provide casualty, liability, body injury, collision and comprehensive insurance on the buses and equipment it deems necessary, and NDSU shall have no responsibility to provide such coverage. The CITY is authorized to self-insure for such risks, subject to the liability limits of the State of North Dakota.

ARTICLE 6 – FORCE MAJEURE

Neither Party shall be held responsible for delays or lack of performance caused by events or acts beyond their control. Such events and acts include, but are not limited to, acts of God, inclement weather, strikes and labor disputes, lack of fuel, road closures, changes in government regulation, war, insurrection or civil unrest.

ARTICLE 7 – TERM OF AGREEMENT

This Agreement shall become effective July 1, 2018 and shall remain in full-force and effect until June 30, 2019 unless terminated earlier as herein provided. The U-Pass portion of the agreement is in effect for the term of this agreement, and the shuttle service portions of the agreement that reference days that class is in session are in effect for the NDSU Fall 2018 and Spring 2019 semesters.

ARTICLE 8 – TERMINATION OF AGREEMENT

8.1 Changes in City Cost, Funding, or Service: The CITY may terminate or reduce the amount of service in this Agreement if there is, in the opinion of a majority of the City Commission, a significant increase in local costs; or insufficient local, state or federal funding available for the service. In such an event the CITY will provide NDSU a written notice ninety (90) days prior to any changes in the service.

8.2 NDSU Initiated Termination of U-Pass Program: NDSU may terminate the portion of this Agreement with the CITY that allows NDSU students to ride for no charge by providing written notice ninety (90) days prior to the termination of the Agreement. Any monies paid by NDSU to the CITY will be reimbursed on a prorated basis in which the numerator is the length of time from the beginning of the term to the termination date and the denominator is the length of time from the beginning of the term to May 10, 2019. NDSU understands that termination of the UPass program may result in the termination of the shuttle services due to required compliance with federal rules and regulations.

ARTICLE 9 – GENERAL PROVISIONS

9.1 Safety and Environmental Codes: All practices, materials, supplies, and equipment shall comply with the Federal Occupational Safety and Health Act as well as any pertinent federal, state and local safety or environmental codes.

9.2 Compliance with Applicable Rules and Regulations: This Agreement shall be subject to, governed by, and construed according to all applicable administrative codes and laws of the City of Fargo, State of North Dakota, and federal government.

9.3 Severability Clause: In the event that any provision of the Agreement is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect in any manner the legality or the remaining provisions of the Agreement, and each provision of the Agreement will be, and is deemed to be separate and severable from each other provision.

9.4 By the 30th day of each semester start, NDSU will provide the City a complete list of all active NDSU student, faculty and staff ID card numbers ensuring only active students are riding under the U-Pass program.

ARTICLE 10 – AUTHORITY TO AMEND FINANCIAL TERMS OF AGREEMENT

The City and NDSU shall be authorized to adjust the financial terms of this agreement and the term of agreement as they mutually agree, from time to time.

ARTICLE 11 – DISPUTES

In the event of a dispute regarding the performance of, or adherence to the provisions of this Agreement by either party to the Agreement, the CITY and NDSU shall select a representative(s) who will attempt to resolve the dispute. If the representatives are unable to resolve the dispute, the issue will be presented to the City's Administrator. If the City Administrator cannot resolve the dispute, then it will be referred to the Fargo City Commission. If the Fargo City Commission's decision does not resolve the dispute, the parties have such remedies as provided by law.

ARTICLE 12 – NOTICES

All notices herein required and any communications with respect to this Agreement shall be effected upon the mailing thereof, and addressed as follows:

NDSU

Mr. Mike Ellingson
Director, Facilities Management
North Dakota State University
Box 6050
Fargo, ND 58105

City of Fargo

Ms. Julie Bommelman
Transit Director
Metro Area Transit Garage
650 23rd St. N.
Fargo, ND 58102

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective July 1, 2018.

North Dakota State University

Mr. Bruce Bollinger
Vice President for Finance and Administration

Date:_____

City of Fargo

Dr. Timothy J. Mahoney, Mayor

Date:_____

Attest:

Steven Sprague, City Auditor

CITY OF Fargo

Metropolitan Area Transit
650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

August 13, 2018

28

Fargo City Commission
200 N 3rd Street
Fargo, ND 58102

Dear Commissioners:

Capital grant opportunities for Transit are often only made available through grants with the State of North Dakota (ND) and the Federal Transit Administration (FTA) at a ratio of 80% federal/state and 20% local share. The State of North Dakota has awarded the Transit Department three capital grants outlined below:

	Local	Federal	Total
ND Contract No. 38180982			
(5310 – CFDA 20.513)			
Mobility Manager Salary (Fargo Share)	$12,873	$51,492	$64,365
ND Contract No. 38180987			
(5310 – CFDA 20.513)			
Replace 5 Shelters	$10,000	$40,000	$50,000
ND Contract No. 38180972			
(5339 – CFDA 20.526)			
Replace 10 Shelters	$20,000	$80,000	$100,000
Wireless Lifts (Fargo Share)	$6,000	$24,000	$30,000
Forklift (Fargo Share)	$4,000	$16,000	$20,000

These grant awards resulted from the applications approved by the Commission last Spring and have been included in the Transit budget.

Requested motion: approve the grants awarded to the Transit Department by the State of North Dakota.

Thank you,

Julie Bommelman
Transit Director
City of Fargo

/enc

Printed on Recycled paper.

CONTRACT NO. 38180982

North Dakota Department of Transportation
SECTION 5310 TRANSIT GRANT AGREEMENT

Federal Award Information – To be provided by NDDOT

CFDA No.: 20.513 CFDA Title: Capital Assistance Program

Award Name: Elderly & Persons with Disabilities Program Awarding Fed. Agency: FTA

NDDOT Program Mgr.: Becky Hanson Telephone: 701-328-2542

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Government Entity hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.

WHEREAS, Section 5310 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005, provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and disabled persons for whom mass transportation services are unavailable, insufficient, or inappropriate; and

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds for the transportation needs of the elderly and disabled citizens of the state of North Dakota; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

Section 1. Purpose of Agreement. The purpose of this agreement is to provide grant funds to purchase vehicles and equipment for use in providing transportation services for the elderly and disabled citizens, hereinafter referred to as the project. The grant amount is $51,492.

Section 2. Project Obligation. The Contractor shall undertake and complete the project as described in the attached Project Description and Budget (Attachment A), and as described in the Contractor's approved grant application, on file with NDDOT.

Section 3. Period of Performance. The Contractor shall commence, carry on, and complete purchase of the project vehicles and equipment with all practicable dispatch, in a sound, economical, and efficient manner. This agreement shall begin upon execution of this agreement by both parties and terminate on June 30, 2019.

Section 4. Project Participation. Participation in the project costs shall be as indicated in the attached Project Description and Budget. The Contractor will provide sufficient non-federal funds which together

with the grant will pay the project costs. In the event that the actual project costs are less than what is shown in the project budget or if a rebate is given, this reduction in cost shall be applied to the Contractor and NDDOT in proportion to the participation rates of each.

Section 5. Purchase of Project Equipment. The purchase of all project equipment financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and 49 CFR 18 (Common Rule).

Section 6. Use of Project Equipment. The Contractor agrees that the project equipment shall be used for providing transportation service in accordance with the project description in the grant application. Such equipment shall be used for the duration of its useful life. If any project equipment is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition.

Section 7. Subcontracting. The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

Section 8. Assignments. Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or equipment and vehicles under this agreement; execute any contract, amendment, or change order thereto; or obligate in any manner with a third party with respect to rights and responsibilities under this agreement.

Section 9. Subcontract Provisions. The Contractor shall include in all subcontracts entered into, pursuant to this agreement, all of the above-required sections. In addition, the following statement of financial assistance shall be included in any advertisement or invitation to bid for any procurement under this agreement:

> "This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT."

Section 10. Records and Reports.

a. The Contractor shall submit project operational data and information as requested by NDDOT.

b. The Contractor shall also submit financial statements, data, records, contracts, and other documents related to the project as requested by NDDOT.

c. All charges to the project account shall be supported by executed invoices, contracts, or vouchers showing the nature of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified; readily accessible; and, to the extent feasible, kept separate and apart from all other such documents.

d. The Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

Section 11. Audit and Inspection. The Contractor shall permit NDDOT, the comptroller general of the United States, and the secretary of the US Department of Transportation or their authorized

representatives to inspect all vehicles, facilities, and equipment used by the Contractor as part of the project and all relevant project data and records. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than $750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

Section 12. Termination.

NDDOT reserves the right, with or without cause, to terminate this agreement by written notice. In the event of termination without cause, NDDOT will reimburse the Contractor for costs incurred prior to the termination date without further liability.

Section 13. Action Upon Termination. The Contractor agrees to dispose of the project equipment in accordance with 49 CFR 18.32 (Common Rule) and NDDOT's program policy, copies of which will be made available by NDDOT upon request.

Section 14. Contract Changes. All modifications of this agreement shall be made in writing and agreed upon by both parties.

Section 15. Prohibited Interest. No member, officer, or employee of the Contractor during his tenure or for one year thereafter shall have any personal interest, direct or indirect, in this contract or the proceeds thereof.

Section 16. Civil Rights. The following requirements apply to this contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to this contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection

for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Section 17. Disadvantaged Business Enterprise. The Contractor will comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Contractor of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et. seq.).

The Contractor will include the following paragraph verbatim in any subcontracts they sign relative to this project:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the NDDOT deems appropriate.

Section 18. Other Provisions. The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them:

Safety Jurisdiction. FTA's authority in the area of transit safety is set forth in section 22 of the Federal Transit Act Amendments of 1991. Under this section, FTA may withhold further financial assistance from any private nonprofit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

Section 19. Statement of Financial Assistance. This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

Section 20. Government-Wide Suspension and Debarment. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are not excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Section 21. Nondiscrimination – Compliance with Laws. The Contractor agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

Section 22. Applicable Law. Indemnity. Contractor shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement, and conduct its activities so as not to endanger any person or property.

Section 23. Charter Service Operations. The Contractor agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

Section 24. School Transportation Operations. The Contractor agrees that neither it nor any transit operator performing work in connection with the project will engage in school transportation operations exclusively for the transportation of students or school personnel in competition with private school transportation operators, except as qualified under specified exemptions permitted by 49 USC 5323(f) and FTA regulations, "School Bus Operations" 49 CFR Part 605 and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the grant agreement or cooperative agreement. When operating exclusive school bus service under an allowable exemption, federally funded equipment, vehicles, or facilities may not be used.

Section 25. Buy America. (Applies only if purchase is over $100,000.) The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15-passenger vans and 15-passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

Section 26. Energy Conservation. 42 USC 6321 and 49 CFR Part 18. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Section 27. Bus Testing. In the purchase of rolling stock the Contractor (manufacturer) agrees to comply with 49 USC 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the bus testing requirements set forth therein.

Section 28. Pre-Award and Post-Delivery Audit Requirements. The Contractor agrees to comply with requirements of 49 USC 5323(m) and FTA regulations "Pre-Award and Post-Delivery Audits" of rolling stock purchases 49 CFR Part 663 and any revision thereto.

Section 29. Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC §1601, et. seq.]. Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 40 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to NDDOT.

Section 30. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement (from FTA MA (2) dated October 1995) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Section 31. Clean Air. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§7401 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

Section 32. Clean Water. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

Section 33. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 et. seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

Section 34. Disputes. 49 CFR Part 18, FTA Cir. 4220.1E. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the

Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Section 35. Merger and Waiver. This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

Section 36. No Obligation by the Federal Government. The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Section 37. Drug and Alcohol Testing - The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of NDDOT or the NDDOT, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 before July 1 and to submit the Management Information System (MIS) reports before March 1 to the NDDOT Transit Office, 608 East Boulevard, Bismarck, ND 58505-0700. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Section 38. Insurance. The Contractor shall maintain insurance coverage on the project equipment in an amount adequate to protect the fair market value of the equipment throughout the duration of this agreement.

Section 39. Labor Protection. The Contractor stipulates it has read and agrees to abide by the provision of the labor protection warranty issued under Section 13C para. 1609 of the Transportation Act of 1964 and the National (Model) Agreement referenced therein.

Section 40. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC §552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the

Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

Section 41. Davis-Bacon And Copeland Anti-Kickback Acts. The Contractor agrees to comply with the requirements of 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5) for any construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

Section 42. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.

Section 43. Risk Management. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

DA Timothy J. Mahoney
NAME (TYPE OR PRINT)

SIGNATURE

Mayor, City of Fargo
TITLE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 17014 (Div. 38)
L.D. Approved 7-17-89; 8-15

Project

CERTIFICATION OF LOCAL MATCH

It is hereby certified that City of FARGO will provide non-federal funds, unless expressly allowed by federal regulation to use federal funds as match. The source of the non-federal funds is identified below, as match for the amount the Transit Provider is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided for Transit Provider. Please designate the source(s) of funds that will be used to match the federal funds obligated for this grant through the North Dakota Department of Transportation.

Source: GENERAL FUND, ADVERTISING REVENUE, VENDING REVENUE

Executed at FARGO, North Dakota, the last date below signed.

WITNESS:

SIGNATURE

DATE

APPROVED:

Timothy F. Mahoney
NAME (TYPE OR PRINT)

SIGNATURE

* Mayor, City of FARGO
TITLE

DATE

*Director or President of Transit Board

CLA 17014 (Div. 38)
L.D. Approved 7-17-89; 8-15

NDDOT North Dakota Department of Transportation

Risk Management Appendix

Routine* Transit Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:
Parties: State – State of North Dakota, its agencies, officers and employees
Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees
Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

1) **Commercial general liability** and **automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **$250,000 per person** and **$500,000 per occurrence**. The minimum limits of liability required of the State are **$250,000 per person** and **$1,000,000 per occurrence**.
2) **Workers compensation** insurance meeting all statutory limits.
3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, their agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against the Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are $250,000 per person and $1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual,* section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 5-09

NDDOT
North Dakota
Department of Transportation

Fly America Requirements

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Charter Bus Requirements

These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

School Bus Requirements

School Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000). Pursuant to 69 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third Party Participant that has operated school bus service in violation of FTA's School Bus laws and regulations, FTA may: (1) Require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third Party Participant from receiving Federal transit funds.

Energy Conservation

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

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

Access to Records and Reports

Applicability – As shown below. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC

5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $150,000.

3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

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

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

All Contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)
Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Recycled Products

All contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

No Government Obligation to Third Parties

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

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

Applicability – All contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)
(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.
(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.
(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination

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

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

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.
If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

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

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

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

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.
If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

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

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

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

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

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

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contact or otherwise and contractor shall be liable for any additional cost incurred by the recipient.
If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.
If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government Wide Debarment and Suspension (Non Procurement)

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations,

"Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," http://https.www.sam.gov,.proxy1.semalt.design if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at http://https.www.sam.gov,.proxy1.semalt.design if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements

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

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

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

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

Civil Rights Requirements

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

The following requirements apply to the underlying contract:

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

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI

Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and

2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination -- Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

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

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding $250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The

Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

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

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

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R.

part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Transit Employee Protective Provisions

Contracts for transit operations except micro-purchases ($3,500 or less, except for construction contracts over $2,000)

Public Transportation Employee Protective Arrangements. The Recipient agrees that 49 U.S.C. § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements:
(1) U.S. DOL Certification. When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project, (b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto, (c)
It will follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including: 1 Alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and
(e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project: 1 The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, 2 The

documents cited in that U.S. DOL certification for the Project, 3 Any alternative comparable arrangements that U.S. DOL has specified for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, (2) Special Warranty. When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. § 5311, as amended by Map-21, for former 49 U.S.C. § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must comply with Federal transit laws, specifically 49 U.S.C. § 5333(b),
(b) Follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (c) It will comply with the U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: 1 Any alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement: 1 The U.S. DOL Special Warranty for its Project, 2 Documents cited in that Special Warranty, 3 Alternative comparable arrangements U.S. DOL specifies for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, and (3) Special Arrangements for 49 U.S.C. § 5310 Projects. The Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not "necessary or appropriate" to apply the conditions of 49 U.S.C. § 5333(b) to Subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions: (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and (b) FTA reserves the right to make other exceptions as it deems appropriate.

Disadvantaged Business Enterprise

Contracts over $3,500 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

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

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

payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

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

Prompt payment

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

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

Incorporation of Federal Transit Administration (FTA) Terms

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

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

Drug and Alcohol Abuse and Testing

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

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants), " 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. §§ 8103 et seq., and 2 CFR part 182, b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

Other Federal Requirements

The following requirements are not federal clauses.

Full and Open Competition

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

Prohibition Against Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with

the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture

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

Access Requirements for Persons with Disabilities

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

Notification of Federal Participation

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

Interest of Members or Delegates to Congress

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

Ineligible Contractors and Subcontractors

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

Other Contract Requirements

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

Compliance with Federal Regulations

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

Real Property

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

Access to Services for Persons with Limited English Proficiency

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

Environmental Justice

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1)
Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Organizational Conflicts of Interest

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An

organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only

Non Federal entities that expend $750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200,"Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

Veterans Preference

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:
(1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
(2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

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

CFDA number for the Federal Transportation Administration

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

Federal Certifications

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

(1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

(1) Debarred,
(2) Suspended,
(3) Proposed for debarment,
(4) Declared ineligible,
(5) Voluntarily excluded, or
(6) Disqualified,

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
(2) Violation of any Federal or State antitrust statute, or
(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

(1) Equals or exceeds $25,000,
(2) Is for audit services, or
(3) Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:
(1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
(2) Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:

a. Debarred from participation in its federally funded Project,
b. Suspended from participation in its federally funded Project,
c. Proposed for debarment from participation in its federally funded Project,
d. Declared ineligible to participate in its federally funded Project,
e. Voluntarily excluded from participation in its federally funded Project, or
f. Disqualified from participation in its federally funded Project, and

3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor City of Fargo

Signature of Authorized Official _____ Date ___/___/___

Name and Title of Contractor's Authorized Official Timothy J Mahoney, Mayor

Attachment A

Project Name City of Fargo
SFY 2019 (July 1, 2018 - June 30, 2019)

	Local match percentage	Funding Source Section	TOTAL Federal Share Share	Local Share	Total
Funding Category					
Capital - Mobility Manager	20	5310	51,492	12,873	64,365
TOTALS			51,492	12,873	64,365

Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

CFDA Title	CFDA No.	Title 49 USC Chapter 53 Section	Award Name
Capital Assistance Program	CFDA No 20.513	**5310**	Elderly and Persons with Disabilities Program
Section 5310 provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and disabled persons for whom mass transportation services are unavailable, insufficient, or inappropriate			

CONTRACT NO. 38180987

North Dakota Department of Transportation
SECTION 5310 TRANSIT GRANT AGREEMENT

Federal Award Information – To be provided by NDDOT

CFDA No.: 20.513 CFDA Title: Capital Assistance Program

Award Name: Elderly & Persons with Disabilities Program Awarding Fed. Agency: FTA

NDDOT Program Mgr.: Becky Hanson Telephone: 701-328-2542

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Government Entity, hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.

WHEREAS, Section 5310 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005, provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and disabled persons for whom mass transportation services are unavailable, insufficient, or inappropriate; and

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds for the transportation needs of the elderly and disabled citizens of the state of North Dakota; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

Section 1. Purpose of Agreement. The purpose of this agreement is to provide grant funds to purchase vehicles and equipment for use in providing transportation services for the elderly and disabled citizens, hereinafter referred to as the project. The grant amount is $40,000.

Section 2. Project Obligation. The Contractor shall undertake and complete the project as described in the attached Project Description and Budget (Attachment A), and as described in the Contractor's approved grant application, on file with NDDOT.

Section 3. Period of Performance. The Contractor shall commence, carry on, and complete purchase of the project vehicles and equipment with all practicable dispatch, in a sound, economical, and efficient manner. This agreement shall begin upon execution of this agreement by both parties and terminate on June 30, 2020.

Section 4. Project Participation. Participation in the project costs shall be as indicated in the attached Project Description and Budget. The Contractor will provide sufficient non-federal funds which together

with the grant will pay the project costs. In the event that the actual project costs are less than what is shown in the project budget or if a rebate is given, this reduction in cost shall be applied to the Contractor and NDDOT in proportion to the participation rates of each.

Section 5. Purchase of Project Equipment. The purchase of all project equipment financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and 49 CFR 18 (Common Rule).

Section 6. Use of Project Equipment. The Contractor agrees that the project equipment shall be used for providing transportation service in accordance with the project description in the grant application. Such equipment shall be used for the duration of its useful life. If any project equipment is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition.

Section 7. Subcontracting. The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

Section 8. Assignments. Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or equipment and vehicles under this agreement; execute any contract, amendment, or change order thereto; or obligate in any manner with a third party with respect to rights and responsibilities under this agreement.

Section 9. Subcontract Provisions. The Contractor shall include in all subcontracts entered into, pursuant to this agreement, all of the above-required sections. In addition, the following statement of financial assistance shall be included in any advertisement or invitation to bid for any procurement under this agreement:

> "This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT."

Section 10. Records and Reports.

a. The Contractor shall submit project operational data and information as requested by NDDOT.

b. The Contractor shall also submit financial statements, data, records, contracts, and other documents related to the project as requested by NDDOT.

c. All charges to the project account shall be supported by executed invoices, contracts, or vouchers showing the nature of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified; readily accessible; and, to the extent feasible, kept separate and apart from all other such documents.

d. The Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

Section 11. Audit and Inspection. The Contractor shall permit NDDOT, the comptroller general of the United States, and the secretary of the US Department of Transportation or their authorized

representatives to inspect all vehicles, facilities, and equipment used by the Contractor as part of the project and all relevant project data and records. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than $750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

Section 12. Termination.

NDDOT reserves the right, with or without cause, to terminate this agreement by written notice. In the event of termination without cause, NDDOT will reimburse the Contractor for costs incurred prior to the termination date without further liability.

Section 13. Action Upon Termination. The Contractor agrees to dispose of the project equipment in accordance with 49 CFR 18.32 (Common Rule) and NDDOT's program policy, copies of which will be made available by NDDOT upon request.

Section 14. Contract Changes. All modifications of this agreement shall be made in writing and agreed upon by both parties.

Section 15. Prohibited Interest. No member, officer, or employee of the Contractor during his tenure or for one year thereafter shall have any personal interest, direct or indirect, in this contract or the proceeds thereof.

Section 16. Civil Rights. The following requirements apply to this contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to this contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection

for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Section 17. Disadvantaged Business Enterprise. The Contractor will comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Contractor of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et. seq.).

The Contractor will include the following paragraph verbatim in any subcontracts they sign relative to this project:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the NDDOT deems appropriate.

Section 18. Other Provisions. The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them:

Safety Jurisdiction. FTA's authority in the area of transit safety is set forth in section 22 of the Federal Transit Act Amendments of 1991. Under this section, FTA may withhold further financial assistance from any private nonprofit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

Section 19. Statement of Financial Assistance. This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

Section 20. Government-Wide Suspension and Debarment. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are not excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Section 21. Nondiscrimination – Compliance with Laws. The Contractor agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

Section 22. Applicable Law. Indemnity. Contractor shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement, and conduct its activities so as not to endanger any person or property.

Section 23. Charter Service Operations. The Contractor agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

Section 24. School Transportation Operations. The Contractor agrees that neither it nor any transit operator performing work in connection with the project will engage in school transportation operations exclusively for the transportation of students or school personnel in competition with private school transportation operators, except as qualified under specified exemptions permitted by 49 USC 5323(f) and FTA regulations, "School Bus Operations" 49 CFR Part 605 and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the grant agreement or cooperative agreement. When operating exclusive school bus service under an allowable exemption, federally funded equipment, vehicles, or facilities may not be used.

Section 25. Buy America. (Applies only if purchase is over $100,000.) The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15-passenger vans and 15-passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

Section 26. Energy Conservation. 42 USC 6321 and 49 CFR Part 18. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Section 27. Bus Testing. In the purchase of rolling stock the Contractor (manufacturer) agrees to comply with 49 USC 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the bus testing requirements set forth therein.

Section 28. Pre-Award and Post-Delivery Audit Requirements. The Contractor agrees to comply with requirements of 49 USC 5323(m) and FTA regulations "Pre-Award and Post-Delivery Audits" of rolling stock purchases 49 CFR Part 663 and any revision thereto.

Section 29. Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC §1601, et. seq.]. Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 40 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to NDDOT.

Section 30. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement (from FTA MA (2) dated October 1995) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Section 31. Clean Air. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§7401 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

Section 32. Clean Water. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

Section 33. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 et. seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

Section 34. Disputes. 49 CFR Part 18, FTA Cir. 4220.1E. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the

Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Section 35. Merger and Waiver. This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

Section 36. No Obligation by the Federal Government. The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Section 37. Drug and Alcohol Testing - The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of NDDOT or the NDDOT, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 before July 1 and to submit the Management Information System (MIS) reports before March 1 to the NDDOT Transit Office, 608 East Boulevard, Bismarck, ND 58505-0700. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Section 38. Insurance. The Contractor shall maintain insurance coverage on the project equipment in an amount adequate to protect the fair market value of the equipment throughout the duration of this agreement.

Section 39. Labor Protection. The Contractor stipulates it has read and agrees to abide by the provision of the labor protection warranty issued under Section 13C para. 1609 of the Transportation Act of 1964 and the National (Model) Agreement referenced therein.

Section 40. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC §552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the

Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

Section 41. Davis-Bacon And Copeland Anti-Kickback Acts. The Contractor agrees to comply with the requirements of 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5) for any construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

Section 42. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.

Section 43. Risk Management. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

DA Timothy J. Mahoney
NAME (TYPE OR PRINT)

SIGNATURE

Mayor, City of Fargo
TITLE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 17014 (Div. 38)
L.D. Approved 7-17-89; 8-15

NDDOT
North Dakota
Department of Transportation

Project

CERTIFICATION OF LOCAL MATCH

It is hereby certified that City of FARGO will provide non-federal funds, unless expressly allowed by federal regulation to use federal funds as match. The source of the non-federal funds is identified below, as match for the amount the Transit Provider is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided for Transit Provider. Please designate the source(s) of funds that will be used to match the federal funds obligated for this grant through the North Dakota Department of Transportation.

Source: GENERAL FUND, ADVERTISING REVENUE, VENDING REVENUE

Executed at FARGO, North Dakota, the last date below signed.

WITNESS:

SIGNATURE

DATE

APPROVED:

Timothy F. MAHONEY
NAME (TYPE OR PRINT)

SIGNATURE

* MAYOR, City of FARGO
TITLE

DATE

*Director or President of Transit Board

CLA 17014 (Div. 38)
L.D. Approved 7-17-89; 8-15

NDDOT

Risk Management Appendix

Routine* Transit Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:
Parties: State – State of North Dakota, its agencies, officers and employees
Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees
Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

1) **Commercial general liability** and **automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **$250,000 per person** and **$500,000 per occurrence**. The minimum limits of liability required of the State are **$250,000 per person** and **$1,000,000 per occurrence**.
2) **Workers compensation** insurance meeting all statutory limits.
3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, their agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against the Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are $250,000 per person and $1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual,* section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 5-09

NDDOT
North Dakota
Department of Transportation

Fly America Requirements

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Cargo Preference

Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000). Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

Energy Conservation

All Contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Bus Testing

Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665, to the extent they are consistent with 49 U.S.C. § 5318(e), as amended; and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not

identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

Pre-Award & Post Delivery Audit Requirements

Pre-Award & Post-Delivery Audit Requirements - Applicability – Rolling Stock/Turnkey
Contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:

A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

Access to Records and Reports

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

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $150,000.

3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books,

documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

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

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

All Contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)
Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

No Government Obligation to Third Parties

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

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

Applicability – All contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)
(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to

impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contact or otherwise and contractor shall be liable for any additional cost incurred by the recipient.
If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.
If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government Wide Debarment and Suspension (Non Procurement)

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," http://https.www.sam.gov,.proxy1.semalt.design if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at http://https.www.sam.gov,.proxy1.semalt.design if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements

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

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

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

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

Civil Rights Requirements

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

The following requirements apply to the underlying contract:

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

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and
2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit

, Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

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

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

C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the

Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

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

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

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention,

Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Disadvantaged Business Enterprise

Contracts over $3,500 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

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

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

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE

subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

Prompt payment

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

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

Incorporation of Federal Transit Administration (FTA) Terms

All contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)
The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Other Federal Requirements

The following requirements are not federal clauses.

Full and Open Competition

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

Prohibition Against Exclusionary or Discriminatory Specifications

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

Conformance with ITS National Architecture

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

Access Requirements for Persons with Disabilities

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

Notification of Federal Participation

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

Interest of Members or Delegates to Congress

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

Ineligible Contractors and Subcontractors

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

Other Contract Requirements

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

Compliance with Federal Regulations

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

Real Property

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

Access to Services for Persons with Limited English Proficiency

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

Environmental Justice

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

Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-

Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Organizational Conflicts of Interest

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only

Non Federal entities that expend $750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200,"Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of

audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

Veterans Preference

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:
(1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
(2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

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

CFDA number for the Federal Transportation Administration

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

Instructions for Certification: By signing and submitting this contract, the prospective lower tier participant is providing the signed certification set out below.

(1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

(1) Debarred,
(2) Suspended,
(3) Proposed for debarment,
(4) Declared ineligible,
(5) Voluntarily excluded, or
(6) Disqualified,

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
(2) Violation of any Federal or State antitrust statute, or
(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

(1) Equals or exceeds $25,000,
(2) Is for audit services, or
(3) Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:
(1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
(2) Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:

a. Debarred from participation in its federally funded Project,
b. Suspended from participation in its federally funded Project,
c. Proposed for debarment from participation in its federally funded Project,
d. Declared ineligible to participate in its federally funded Project,
e. Voluntarily excluded from participation in its federally funded Project, or
f. Disqualified from participation in its federally funded Project, and

3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor City of Fargo

Signature of Authorized Official _____ Date ___/___/___

Name and Title of Contractor's Authorized Official Timothy J Mahoney, Mayor

Attachment A

Project Name City of Fargo
SFY 2019 (July 1, 2018 - June 30, 2020)

	Local match percentage	Funding Source Section	TOTAL Federal Share Share	Local Share	Total
Funding Category					
Rehab/Renovate Bus Passenger Shelters	20	5310	40,000	10,000	50,000
TOTALS			40,000	10,000	50,000

Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

CFDA Title	CFDA No.	Title 49 USC Chapter 53 Section	Award Name
Capital Assistance Program	CFDA No 20.513	5310	Elderly and Persons with Disabilities Program
Section 5310 provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and disabled persons for whom mass transportation services are unavailable, insufficient, or inappropriate			

NDDOT Contract No. 38180972

North Dakota Department of Transportation
SECTION 5339 TRANSIT GRANT AGREEMENT

Federal Award Information – To be provided by NDDOT

CFDA No.: 20.526 CFDA Title: Federal Transit Capital Investment

Award Name: Federal Transit Capital Investment Grants Awarding Fed. Agency: FTA

NDDOT Program Mgr.: Becky Hanson Telephone: 701-328-2542

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Government Entity hereinafter referred to as the Contractor, whose address is 650 23nd Street North, Fargo, ND 58102.

WHEREAS, Section 5339 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005, provides for grants for the specific purpose of assisting in financing capital projects that will benefit the country's transit projects.

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds to finance capital projects such as rolling stock, equipment, and/or capital improvements that will benefit transit projects that serve the state of North Dakota; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

Section 1. Purpose of Agreement. The purpose of this agreement is to provide grant funds to finance rolling stock, equipment, and/or capital improvements, hereinafter referred to as the project. The grant amount is $120,000.

Section 2. Project Obligation. The Contractor shall undertake and complete the project as described in the attached Project Description and Budget (Attachment A), and as described in the Contractor's approved grant application, on file with NDDOT.

Section 3. Period of Performance. This agreement shall begin on July 1, 2018, and terminate on June 30, 2020.

Section 4. Project Participation. Participation in the project costs shall be as indicated in the attached Project Description and Budget. The Contractor will provide sufficient non-federal funds which together with the grant will pay the project costs. In the event that the actual project costs

are less than what is shown in the project budget or if a rebate is given, this reduction in cost shall be applied to the Contractor and NDDOT in proportion to the participation rates of each.

Section 5. Purchase of Project Equipment. The purchase of all project equipment financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and 49 CFR 18 (Common Rule).

Section 6. Use of Project Equipment. The Contractor agrees that the project equipment shall be used for providing transportation service in accordance with the project description in the grant application. Such equipment shall be used for the duration of its useful life. If any project equipment is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition.

Section 7. Subcontracting. The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

Section 8. Assignments. Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or equipment and vehicles under this agreement; execute any contract, amendment, or change order thereto; or obligate in any manner with a third party with respect to rights and responsibilities under this agreement.

Section 9. Subcontract Provisions. The Contractor shall include in all subcontracts entered into, pursuant to this agreement, all of the above-required sections. In addition, the following statement of financial assistance shall be included in any advertisement or invitation to bid for any procurement under this agreement:

> "This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT."

Section 10. Records and Reports.

a. The Contractor shall submit project operational data and information as requested by NDDOT.

b. The Contractor shall also submit financial statements, data, records, contracts, and other documents related to the project as requested by NDDOT.

c. All charges to the project account shall be supported by executed invoices, contracts, or vouchers showing the nature of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified; readily accessible; and, to the extent feasible, kept separate and apart from all other such documents.

d. The Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

Section 11. Audit and Inspection. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such

audit shall be submitted to NDDOT. Entities that spend less than $750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

Section 12. Termination. NDDOT reserves the right, with or without cause, to terminate this agreement by written notice. In the event of termination without cause, NDDOT will reimburse the Contractor for costs incurred prior to the termination date without further liability.

Section 13. Action Upon Termination. The Contractor agrees to dispose of the project equipment in accordance with 49 CFR 18.32 (Common Rule) and NDDOT's program policy, copies of which will be made available by NDDOT upon request.

Section 14. Contract Changes. All modifications of this agreement shall be made in writing and agreed upon by both parties.

Section 15. Prohibited Interest. No member, officer, or employee of the Contractor during his tenure or for one year thereafter shall have any personal interest, direct or indirect, in this contract or the proceeds thereof.

Section 16. Civil Rights. The following requirements apply to this contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to this contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees

to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Section 17. Disadvantaged Business Enterprise. The Contractor will comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Contractor of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et. seq.).

The Contractor will include the following paragraph verbatim in any subcontracts they sign relative to this project:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the NDDOT deems appropriate.

Section 18. Other Provisions. The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them:

Safety Jurisdiction. FTA's authority in the area of transit safety is set forth in section 22 of the Federal Transit Act Amendments of 1991. Under this section, FTA may withhold further financial assistance from any private nonprofit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

Section 19. Statement of Financial Assistance. This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

Section 20. Government-Wide Suspension and Debarment. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are not excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Section 21. Nondiscrimination – Compliance with Laws. The Contractor agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

Section 22. Applicable Law. Indemnity. Contractor shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement, and conduct its activities so as not to endanger any person or property.

Section 23. Charter Service Operations. The Contractor agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

Section 24. School Transportation Operations. The recipients agree that neither it nor any transit operator performing work in connection with the project will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as qualified under specified exemptions permitted by 49 USC 5323(f) and FTA regulations, "School Bus Operations" 49 CFR Part 605 and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the grant agreement or cooperative agreement. When operating exclusive school bus service under an allowable exemption, federally funded equipment, vehicles, or facilities may not be used.

Section 25. Buy America. (Applies only if purchase is over $100,000.) The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15-passenger vans and 15-passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

Section 26. Energy Conservation. 42 USC 6321 and 49 CFR Part 18. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Section 27. Bus Testing. In the purchase of rolling stock the Contractor (manufacturer) agrees to comply with 49 USC 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the bus testing requirements set forth therein.

Section 28. Pre-Award and Post-Delivery Audit Requirements. The recipient agrees to comply with requirements of 49 USC 5323(m) and FTA regulations "Pre-Award and Post-Delivery Audits" of rolling stock purchases 49 CFR Part 663 and any revision thereto.

Section 29. Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC §1601, et. seq.]. Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 40 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Section 30. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement (from FTA MA (2) dated October 1995) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Section 31. Clean Air. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§7401 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

Section 32. Clean Water. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

Section 33. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 et. seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

Section 34. Disputes. 49 CFR Part 18, FTA Cir. 4220.1E. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision

of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Section 35. Merger and Waiver. This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

Section 36. No Obligation by the Federal Government. The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Section 37. Insurance. The Contractor shall maintain insurance coverage on the project equipment in an amount adequate to protect the fair market value of the equipment throughout the duration of this agreement.

Section 38. Labor Protection. The Contractor stipulates it has read and agrees to abide by the provision of the labor protection warranty issued under Section 13C para. 1609 of the Transportation Act of 1964 and the National (Model) Agreement referenced therein.

Section 39. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC §552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

Section 40. Davis-Bacon And Copeland Anti-Kickback Acts. The Contractor agrees to comply with the requirements of 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5) for any construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for

purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

Section 41. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

(1) Equals or exceeds $25,000,
(2) Is for audit services, or
(3) Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:
(1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
(2) Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:

a. Debarred from participation in its federally funded Project,
b. Suspended from participation in its federally funded Project,
c. Proposed for debarment from participation in its federally funded Project,
d. Declared ineligible to participate in its federally funded Project,
e. Voluntarily excluded from participation in its federally funded Project, or
f. Disqualified from participation in its federally funded Project, and

3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor City of Fargo

Signature of Authorized Official _____ Date ___/___/___

Name and Title of Contractor's Authorized Official Timothy J Mahoney, Mayor

Project

CERTIFICATION OF LOCAL MATCH

It is hereby certified that City of FARGO will provide non-federal funds, unless expressly allowed by federal regulation to use federal funds as match. The source of the non-federal funds is identified below, as match for the amount the Transit Provider is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided for Transit Provider. Please designate the source(s) of funds that will be used to match the federal funds obligated for this grant through the North Dakota Department of Transportation.

Source: GENERAL FUND, ADVERTISING REVENUE, VENDING REVENUE

Executed at FARGO, North Dakota, the last date below signed.

WITNESS:

SIGNATURE

DATE

APPROVED:

Timothy J. MAHONEY
NAME (TYPE OR PRINT)

SIGNATURE

* MAYOR, City of FARGO
TITLE

DATE

*Director or President of Transit Board

CLA 17014 (Div. 38)
L.D. Approved 7-17-89; 8-15

NDDOT

Risk Management Appendix

Routine* Transit Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:
Parties: State – State of North Dakota, its agencies, officers and employees
Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees
Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

1) **Commercial general liability** and **automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **$250,000 per person** and **$500,000 per occurrence**. The minimum limits of liability required of the State are **$250,000 per person** and **$1,000,000 per occurrence**.
2) **Workers compensation** insurance meeting all statutory limits.
3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, their agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against the Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are $250,000 per person and $1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual,* section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 5-09

NDDOT
North Dakota
Department of Transportation

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding $100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to

a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Federal Clauses – Rolling Stock, Materials & Supplies up to $150,000

Fly America Requirements

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Cargo Preference

Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases ($3,500 or less, except for construction contracts over $2,000). Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

Energy Conservation

All Contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Bus Testing

Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665, to the extent they are consistent with 49 U.S.C. § 5318(e), as amended; and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not

identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

Pre-Award & Post Delivery Audit Requirements

Pre-Award & Post-Delivery Audit Requirements - Applicability – Rolling Stock/Turnkey
Contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:

A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

Access to Records and Reports

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

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $150,000.

3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books,

documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

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

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

All Contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)
Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Recycled Products

All contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

No Government Obligation to Third Parties

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

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

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

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination

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

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

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

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

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

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any

breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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

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

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

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

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

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

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

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

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of

delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contact or otherwise and contractor shall be liable for any additional cost incurred by the recipient.
If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.
If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government Wide Debarment and Suspension (Non Procurement)

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," http://https.www.sam.gov,.proxy1.semalt.design if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at http://https.www.sam.gov,.proxy1.semalt.design if necessary to comply with

U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements

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

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

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

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

Civil Rights Requirements

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

The following requirements apply to the underlying contract:

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

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and
2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party

Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

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

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

administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49
C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

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

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

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility

Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Disadvantaged Business Enterprise

Contracts over $3,500 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

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

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

incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

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

Prompt payment

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

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

Incorporation of Federal Transit Administration (FTA) Terms

All contracts except micro-purchases ($3,500 or less, except for construction contracts over $2,000)
The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Other Federal Requirements

The following requirements are not federal clauses.

Full and Open Competition

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

Prohibition Against Exclusionary or Discriminatory Specifications

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

Conformance with ITS National Architecture

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

Access Requirements for Persons with Disabilities

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts

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

Notification of Federal Participation

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

Interest of Members or Delegates to Congress

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

Ineligible Contractors and Subcontractors

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

Other Contract Requirements

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

Compliance with Federal Regulations

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

Real Property

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

Access to Services for Persons with Limited English Proficiency

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

December 14, 2005.

Environmental Justice

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1)
Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Organizational Conflicts of Interest

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only

Non Federal entities that expend $750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200,"Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single

source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

Veterans Preference

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

(1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and

(2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

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

CFDA number for the Federal Transportation Administration

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

Instructions for Certification: By signing and submitting this contract, the prospective lower tier participant is providing the signed certification set out below.

(1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

(1) Debarred,
(2) Suspended,
(3) Proposed for debarment,
(4) Declared ineligible,
(5) Voluntarily excluded, or
(6) Disqualified,

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
(2) Violation of any Federal or State antitrust statute, or
(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,

Section 43. Risk Management. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

DA Timothy J. Mahoney
NAME (TYPE OR PRINT)

SIGNATURE

Mayor, City of Fargo
TITLE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 17014 (Div. 38)
L.D. Approved 7-17-89; 8-15

NDDOT
North Dakota
Department of Transportation

Attachment A

Project Name **MatBus**
SFY 2019 (July 1, 2018 - June 30, 2020)

Funding Category	Local match percentage	Funding Source Section	TOTAL Federal Share Share	Local Share	Total
Miscellaneous Equipment (Wireless Mobile Lift - Vehicle Maint)	20	5339	24,000	6,000	30,000
Miscellaneout Equipment (Forklift)	20	5339	16,000	4,000	20,000
Rehab/Renovate Bus Passenger Shelters	20	5339	80,000	20,000	100,000
TOTALS			120,000	30,000	150,000

Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

CFDA Title	CFDA No.	Title 49 USC Chapter 53 Section	Award Name
Capital Assistance Program	CFDA No 20.526	**5339**	Bus and Bus Facilities Formula
Section 5339 provides for capital grants to private nonprofit corporations and associations for the specific purpose of providing mass transportation services			

THE CITY OF Fargo FAR MORE

Water Treatment Plant
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

29

August 9, 2017

Honorable Board of City Commissioners
City of Fargo
200 3rd Street North
Fargo, ND 58102

Subject: Advertisement for Bid – Filter-to-Waste Installation at Water Treatment Plant

Dear Commissioners:

Water Utility staff is seeking approval to advertise bidding for filter-to-waste installation at the existing Lime Softening Water Treatment Plant (LSWTP) – Project WA1753. Please see the attached Advertisement for Bid. Filter-to-Waste installation is in the Water Utility Capital Improvement Plan (CIP) and will be funding through a federal State Revolving Fund (SRF) loan. The North Dakota Department of Health has strongly encouraged the City of Fargo Water Utility to install filter-to-waste in the Lime Softening Water Treatment Plant. Installation of filter-to-waste will help comply with EPA drinking water standards.

With the intention of completing filter-to-waste installation, a task order for the design and bidding of this project was approved by the City of Fargo (COF) Utility Committee on June 22, 2017. Water Utility staff is now in position to bid the project.

Your consideration is greatly appreciated in this matter.

Sincerely,

Troy B. Hall
Water Utility Director

C: Bruce Grubb, City Administrator

SUGGESTED MOTION:

Approve the Advertisement for Bid for Filter-to-Waste installation in the Lime Softening Water Treatment Plant.

SECTION 00 11 13 – ADVERTISEMENT FOR CONSTRUCTION BIDS

Fargo WTP Filter-to-Waste Improvements
CITY OF FARGO PROJECT #WA1753

NOTICE IS HEREBY GIVEN, that the City of Fargo, North Dakota, will receive sealed Bids at the Auditor's Office until September 19, 2018 at the hour of 11:30 a.m. local time, for the purpose of furnishing all materials, labor, equipment, and skill required for the construction of the Fargo WTP Filter-to-Waste Improvements, and incidental items, for said City, as is more fully described and set forth in the Plans and Specifications which are now on file in the office of the City Engineering Department. Bids will be opened in the Lobby of Centennial Hall, located at 207 4th Street North, shortly after the bid deadline and read aloud.

Bids shall be mailed or delivered to the City Auditor, City of Fargo, 200 3rd Street North, Fargo, ND 58102.

The Work is comprised of three (3) Contracts: Contract No. 1 – General Construction; Contract No.2 – Electrical Construction and Contract No. 3 – Combined General and Electrical Construction. Individual Bids will be received for each Contract as well as Contract No.3 – Combined General and Electrical Construction. The Owner will not accept a combined Bid unless that Bid is lower than the combined total of the lowest and best Bids for the Separate Contracts. The Work for each Contract is generally described as follows:

Contract No. 1: General Construction:

Work generally consists of general construction associated with the furnishing and installation of new process piping, valves, pipe supports, and associated appurtenances, and modifications to existing filter gallery piping and equipment at the Fargo Water Treatment Plant (WTP) to provide a filter-to-waste system on six existing gravity filters.

Contract No. 2: Electrical Construction:

Work generally consists of electrical construction associated with a new filter-to-waste system to be provided at the Fargo WTP including electrically actuated valves, control panel modifications, power and conduit.

Contract No. 3: Combined General and Electrical Construction:

Work includes construction consisting of the Work described under both Contract No. 1 – General Construction and Contract No. 2 – Electrical Construction.

All bids shall be contained in a sealed envelope plainly marked showing that such envelope contains a Bid for the Project. Also refer to Section 00 21 13 for preparation of bid information.

All Bids shall be prepared according to the Instructions to Bidders contained within the Project Manual. Each Bid shall be accompanied **by a separate envelope** containing a Bid Security in the form of a Bidder's Bond executed by the Bidder as principal and by a surety company authorized to do business in the State of North Dakota, payable to the City of Fargo, in a sum equal to five percent (5%) of the full amount of the Bid. A certified check in lieu of a surety company in the amount of 5% of the total project cost **will not** be accepted. This is to serve as a guarantee that the successful Bidder will enter into a Contract within fifteen (15) days of Notice of

Award, in accordance with the terms of the principal's Bid and Contractor's Bond as required by law and regulations and determinations of City of Fargo for the performances of such Work. Only Bids that are accompanied by such a Bond will be considered.

Contracts shall be awarded on the basis of the low Bid submitted by a qualified, responsible, and responsive Bidder deemed most favorable to the City's interest.

The City of Fargo reserves the right to reject any and all Bids, to waive any informality in any Bid, to hold all Bids for a period not to exceed forty-five (45) days from the date of opening Bids.

All Work shall be performed in accordance with the Bidding Documents on file in the Office of City of Fargo, ND where they may be seen and examined. Bidders must be licensed for the full amount of the Bid as required by North Dakota Century Code 43-07-05. Each Bid shall contain a copy of the Contractor's license or certificate of renewal thereof issued by the Secretary of State. All Bids must be submitted on the Bid Form furnished by the Engineer. No Bid will be read or considered that does not fully comply with the above provisions and other provisions contained within the Bidding Documents, and any deficient Bid submitted will be returned to the Bidder unopened.

Bidders on this Work will be required to comply with the Presidential Executive Order No. 11246, as amended. The requirements for Bidders and Contractors under this order include **EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS, DAVIS-BACON WAGE RATE REQUIREMENTS, and AMERICAN IRON AND STEEL REQUIREMENTS** as explained in the Specifications.

Bidders on this work will be required to comply with Title 40 CFR Part 33 – Participate by Disadvantaged Business Enterprises in the United States Environmental Protection Agency Programs. The requirements for bidders and contractors under this regulation concern utilization of Minority Business Enterprises (MBE), Women's Business Enterprises (WBE), and Small Business Enterprises (SBE) and are explained in the specifications. The goal for MBE is 2% of the total dollar value of the project. The goal for WBE is 3% of the total dollar value of the project.

MBE/WBE Subcontractor Solicitation Information shall be enclosed in the required Bid Bond envelope. Failure to include the form in the Bid Bond Envelope will result in the Bid not being opened.

Contracts shall be awarded on the basis of the low Bid submitted by a responsible and responsive Bidder deemed most favorable to the Owner's interest.

All Bids shall be contained in a sealed envelope plainly marked showing that such envelope contains a Bid for the Project. In addition, the Bidder shall place upon the exterior of such envelope the following information:

1. Project Name and Work covered by the Bidder (General).
2. The name of the Bidder.
3. Acknowledgement of all Addenda.
4. Separate envelope containing Bid Bond, a copy of Contractor's License or Renewal Certificate, and a copy of the signed MBE/WBE subcontractor solicitation.

Complete digital project Bidding Documents are available at www.questcdn.com. You may download the digital plan documents for Thirty Dollars ($30.00) by inputting Quest project #5903507 on the website's Project Search page. Please contact QuestCDN.com at 952-233-1632 or info@questcdn.com for assistance in free membership registration, downloading, and working with this digital project information.

Copies of the Bidding Documents may also be seen and examined at the office of the Engineer, **Advanced Engineering and Environmental Services, Inc.**, 4170 28th Avenue South, Fargo, ND 58104. The Bidding Documents are available in the form of printed plans and specifications and/or PDF compact discs (CDs) from Advanced Engineering and Environmental Services, Inc. The costs are $40.00 for CDs and $200.00 for printed documents, for each set of Documents obtained. Payment for Bidding Documents is **NON-REFUNDABLE**. All Work shall be done according to the Bidding Documents. Bidding Documents may also be examined at the offices of AE2S in Bismarck, Grand Forks, and Williston, ND; Moorhead and Maple Grove, MN, and Builders' exchanges in Grand Forks, Bismarck, Minot, Grand Forks, and Fargo, ND, and in Minneapolis, MN.

The work for each contract must be completed no later than the following:

Substantial Completion: February 1, 2019

Final Completion: March 1, 2019

All Bids will be made on the basis of cash payment for such work. After Bid opening, the Owner will return Bid security of all except the three lowest responsible Bidders. When the Contract is awarded, the remaining unsuccessful Bidder's Bonds will be returned. The Owner reserves the right to reject any or all Bids, and further reserves the right to award the Contract in the best interests of the Owner. The Owner reserves the right to hold the three (3) low Bids for a period of forty-five (45) days after the date of the Bid opening to complete financial arrangements.

Dated this 27th day of August 2018.

By: /s/ Steve Sprague, City Auditor
Fargo, North Dakota

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

32

Improvement District No. AN-17-G1

Type: Change Order #1 & Time Extension

Location: Roberts Alley, 2nd – 4th Ave N

Date of Hearing: 8/6/2018

Routing	Date
City Commission	8/13/2018
PWPEC File	X
Project File	Kristy Schmidt

The Committee reviewed the accompanying correspondence from Project Manager, Kristy Schmidt, regarding Change Order #1, in the amount of $102,651, bringing the total contract amount to $498,307.

Key Contracting has also requested a 63-day time extension due to delays outside of the Contractor's control and additional work being added to the project.

Staff is recommending approval of Change Order #1, in the amount of $102,651, and 63-day time extension as shown below:

Original Completion Dates	Revised Previously	Revised This Memo
Substantial – June 30, 2018 **Final – July 30th, 2018**	- -	**Substantial – September 1, 2018** **Final – October 1, 2018**

On a motion by Steve Sprague, seconded by Nicole Crutchfield, the Committee voted to recommend approval of Change Order #1 & time extension as shown above.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #1 in the amount of $102,651, bringing the total contract amount to $498,307 and the time extension to the substantial and final completion dates.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Utility Funds & Special Assessments

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

COMMITTEE

	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

Item A4

CITY OF Fargo

Memorandum

To: Members of PWPEC

From: Kristy Schmidt, Project Engineer

Date: August 1, 2018

Re: Improvement District #AN-17-G1 (PC Alley Paving & Inc) – Change Order #1 and Time Extension

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Background:

Improvement District #AN-17-G1 is for the reconstruction and incidentals in the Roberts Alley between 2nd and 4th Avenue North.

I concur with Moore Engineering's recommendation for the change order items associated with additional conduit and the time extension associated with these items.

The attached Change Order in the amount of $102,651.00, which increases the total contract amount to $498,307.00, is for additional work as shown on Change Order #1. A full description of the additional work can be seen on the attached change order.

Key Contracting is also requesting a time extension of the substantial completion to September 1, 2018.

This Improvement District is funded by sales tax and special assessment.

Recommended Motion:

Approve Change Order # 1 in the amount of $102,651.00 with a 63-day time extension for this work.

Original Completion Dates	Revised Previously	Revised This Memo
Substantial – June 30, 2018 **Final – July 30th, 2018**	- -	**Substantial – September 1, 2018** **Final – October 1, 2018**

KLS/klo
Attachment

C: Brenda Derrig

925 10th Avenue East
West Fargo, ND 58078

P: 701.282.4692
F: 701.282.4530

moore engineering, inc.

August 2, 2018

Kristy Schmidt
City of Fargo
200 3rd St N
Fargo, ND 58102

RE: Roberts Alley Change Order No. 1
Fargo, North Dakota
Moore Project No. 19869

Dear Kristy,

Pursuant to your request, I have reviewed Change Order Requests No. 4, 5, 6, 7, 8, and 9 received from Key Contracting. A summary of each item is listed below:

- Change Order Request No. 4: Adding 5' ADA accessible sidewalk.
  - Kilbourne requested this revision to match the work that was done adjacent to the Roberts Commons building.
    - Recommend Approval of CO # 1 Item 29 in the amount of $2,860.00
- Change Order Request No. 5: Increase in unit costs to Clean Site, Temp Fence – Safety, and Traffic Control – Type 1. Added pay item for extended garbage pickup.
  - The increase in unit prices for the 3 pay items listed above is due to additional work (more signage, recyclables, grease) and duration of project (additional 2 months).
    - Recommend Approval of CO # 1 Item 8 in the amount of $1,500.00
    - Recommend Approval of CO # 1 Item 9 in the amount of $1,500.00
    - Recommend Approval of CO # 1 Item 19 in the amount of $3,500.00
  - The original contract was to end on June 30. The garbage costs if for collections after that date. Cost reflects labor and equipment at a daily rate.
    - Recommend Approval of CO # 1 Item 28 in the amount of $26,660.00
- Change Order Request No. 6: Temporary gravel surfacing
  - Temporary gravel surfacing was installed to provide temporary access for previously scheduled special events impacted by a local business.
    - Recommend Approval of CO # 1 Item 30 in the amount of $5,700
- Change Order Request No. 7: Filling cavity, rerouting roof drains, and restocking fee
  - During excavation a cavity was located under the stairs to the Command Center located along the alley. The cavity was filled with CDF. Rerouting of the Command Center roof drains was performed to protect the Command Center foundation. Restocking Charge for manhole that was eliminated from the project per Kilbourne.
    - Recommend Approval of CO # 1 Item 31 in the amount of $3,860.00
- Change Order Request No. 8: Manhole Removal
  - An existing, deteriorated storm sewer manhole was removed.
    - Recommend Approval of CO # 1 Item 32 in the amount of $1,050.00
- Change Order Request No. 9 ($1,485.00): Additional Signs
  - Additional signs were required for the three loading zones that were established for both construction season.

925 10th Avenue East
West Fargo, ND 58078

P: 701.282.4692
F: 701.282.4530

moore engineering, inc.

- Recommend Approval of CO # 1 Item 33 in the amount of $1,485.00

The contractor has requested a time extension moving Substantial Completion from June 30th to September 1st. The basis of the extension is summarized below:

- Contractor start was pushed into mid May to allow for better planning of future electrical project.
- Excel Energy took 2 weeks to replace gas lines. Bidding documents indicated 1 week.
- Special events delayed starting of conduit installation 1 week in June.
- Approximately 2,800 feet of conduit was added to the project to facilitate future expansion.

The items listed above were outside of the contractor's control. Recommend Approval.

Please review the information above and contact me if you have any questions or concerns.

Sincerely,

Erik Gilbertson, PE

Enclosure(s)

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	AN-17-G1	**Change Order No**	1
Project Name	P.C. Concrete Alley Paving & Incidentals		
Date Entered	7/16/2018	**For**	Key Contracting Inc

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

EXPLANATION OF CHANGE: Additional conduit/Innerduct including time extension

This is for the future burying of the power and telecommunications.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price ($)	C/O Ext Price ($)
Paving	8	Clean Site	LS	1.00	0.00	1.00	0.43	1.43	3,500.00	1,505.00
	9	Temp Fence - Safety	LS	1.00	0.00	1.00	0.43	1.43	3,500.00	1,505.00
	19	Traffic Control - Type 1	LS	1.00	0.00	1.00	1.00	2.00	3,500.00	3,500.00
	28	Extra - SolidWaste	LS	0.00	0.00	0.00	62.00	62.00	430.00	26,660.00
	29	F&I Sidewalk 6" Thick Reinf Conc	SY	0.00	0.00	0.00	80.00	80.00	33.50	2,680.00
	30	Temp Construction Entrance	EA	0.00	0.00	0.00	1.00	1.00	5,700.00	5,700.00
	31	F&I Controlled Density Fill	CY	0.00	0.00	0.00	5.00	5.00	772.00	3,860.00
	33	Construction Signing	SF	0.00	0.00	0.00	18.00	18.00	82.50	1,485.00
									Paving Sub Total ($)	46,895.00
Utility Conduit system	20	F&I Conduit 2" Dia	LF	4,355.00	0.00	4,355.00	650.00	5,005.00	13.00	8,450.00
	22	F&I Conduit 2.5" Dia	LF	1,560.00	0.00	1,560.00	400.00	1,960.00	14.00	5,600.00
	23	F&I Conduit 6" Dia	LF	2,250.00	0.00	2,250.00	400.00	2,650.00	13.50	5,400.00
	24	F&I MicroDuct	LF	1,362.00	0.00	1,362.00	1,360.00	2,722.00	13.50	18,360.00
	34	F&I Pull Box Polymer Conc	EA	0.00	0.00	0.00	8.00	8.00	1,672.00	13,376.00
	35	Install Electrical Service	LS	0.00	0.00	0.00	1.00	1.00	3,520.00	3,520.00
									Utility Conduit system Sub Total ($)	54,706.00
Storm Sewer	32	Remove Manhole	EA	0.00	0.00	0.00	1.00	1.00	1,050.00	1,050.00
									Storm Sewer Sub Total ($)	1,050.00

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Summary

Source Of Funding	Special Assessments, Utility Funds - Wastewater - 521
Net Amount Change Order # 1 ($)	102,651.00
Previous Change Orders ($)	0.00
Original Contract Amount ($)	395,656.00
Total Contract Amount ($)	498,307.00

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
06/30/2018		63.00	0.00	09/01/2018	

Description

APPROVED Steve Cave

For Contractor Key Contracting

Title VP

APPROVED DATE

Department Head 8/7/18

Mayor

Attest

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

33

Improvement District No. NR-17-A1

Type: Change Order #2 & #3

Location: LS #9, 14, 16, 69

Date of Hearing: 8/6/2018

Routing	Date
City Commission	8/13/2018
PWPEC File	X
Project File	Rob Hasey

The Committee reviewed the accompanying correspondence from Project Manager, Rob Hasey, for Change Orders #2 & #3, for the combined amount of $36,656.00 (CO #2 - $54,136.00, CO #3 - $-17,480.00), bringing the total contract amount to $549,328.00.

Staff is recommending approval of Change Orders #2 & #3.

On a motion by Steve Sprague, seconded by Nicole Crutchfield, the Committee voted to recommend approval of Change Orders #2 & #3 to Key Contracting.

RECOMMENDED MOTION
Approve Change Order #2, in the amount of $54,136.00 and Change Order #3, in the amount of $-17,480.00 to Key Contracting.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Utility Funds & Special Assessments

	Yes	No
Developer meets City policy for payment of delinquent specials		N/A
Agreement for payment of specials required of developer		N/A
50% escrow deposit required		N/A

COMMITTEE	Present	Yes	No	Unanimous ☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

Item A2

Memorandum

To: PWPEC

From: Rob Hasey, Civil Engineer I, Storm Sewer Utility

Cc: Jody Bertrand, Division Engineer

Date: 8/6/2018

Re: Improvement District NR-17-A1 – Change Orders #2 & #3

Background:

The Street Department identified a void under a section of pavement located on 34th Avenue South near 38th Street. The Street Department televised the pipe and found a joint separation in the 36" RCP storm sewer. One option for pipe repair would be to excavate around the pipe and install an external joint repair band. The pipe is located approximately 14' deep. Excavating down to this depth would require a large excavation, large removal and replacement of concrete pavement and large amount of gravel backfill to fill the excavation. An underground electric cable paralleling the storm sewer line would also complicate excavation and concrete collar around the separation.

Key Contracting is under contract to repair four storm sewer lift stations on Improvement District NR-17-A1. Key Contracting submitted a quote to repair the pipe that minimized the excavation in the street and minimized the amount of pavement that would need to be removed and replaced. Key Contracting's quote included an interior repair band to the inside the 36" RCP, soil stabilization around the exterior of the pipe and the necessary pavement repairs were to be paid under Change Order #1 which was approved by PWPEC on May 30, 2018.

Upon waiting for the repair to take place, the pavement condition deteriorated through the undermining of the street due to the large storm pipe separation. The pipe was cleaned of additional gravel material and re-televised for evaluation. It was determined that the original repair plan would not prove effective due to the size of the separation. SubSurface, Inc., a subcontractor for Key Contracting submitted a quote for three separate repair alternatives and the one selected was for a Cured In-place 30 foot long pipe sleeve to seal the original large pipe separation and two of the other adjoining joints, which also had separation movement identified but still had pipe joint overlap.

Attached to this memorandum is Change Order #2 totaling $54,136 for the interior liner repair of the storm sewer pipe. Recommended source of funding is Storm Utility Fund 524. Change Order #1 totaling $17,480 will not be used due to the new repair type selected and is removed from the contract via Change Order #3.

Recommended Motion:

Approve change orders #2 & #3 as shown:

Original Contract Amount	Change Order #2 & #3 combined	New Contract Amount
$512,672.00	$36,656 ($54,136 - $17,480)	$549,328

Attached:

Proposal from Key Contracting

Signed Change Orders #2 & #3

200 North 3rd Street
Fargo, ND 58102

Phone: (701) 241-1545
FAX: (701) 241-8101

Key Contracting, Inc.
245 7th Avenue NE
West Fargo, North Dakota 58078
Phone: (701) 238-8192
Fax: (701) 356-0166
Internet: keycontracting.com

PROPOSAL AND ACCEPTANCE

Second Revision

Submitted To: City of Fargo
Date: 7/24/2018
Project: Pipe separation & sinkhole repair
Project Location: 38th St & 34th Ave So

Key Contracting, Inc., hereby submits an estimate for all labor and materials for:

Item	Item Description	Price
1	Remove and replace mainline pavement	$230/sy
2	Class 5 base compacted in place (up to 2' thick)	$36/sy
3	Class 3 backfill compacted in place	$20/tn
4	Excavation, protect power lines	$5,500.00
5	Traffic Control	$1,500.00
6	Repair Pipe Selected Option - 30' UV CIPP Spot Repair Plus Up To 60 gal Void Grout	$27,500.00

Notes:

1. Key is a North Dakota licensed contractor.
2. This proposal may not be severed.
3. All materials are guaranteed as specified.
4. All work shall be completed in a workman like manner and according to standard practice.
5. Any alteration or deviation from the specifications shall be upon written change orders only.
6. This proposal is withdrawn unless accepted in writing within 15 days.

Dated as noted above.

Accepted on: _____

Randy Berggren II

By: _____

Key Contracting, Inc.
Contact: Randy Berggren
Cell: 701-238-4825

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	NR-17-A1	**Change Order No**	2
Project Name	Storm Sewer Lift Station Modifications & Incidentals		
Date Entered	7/25/2018	**For**	Key Contracting Inc

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

EXPLANATION OF CHANGE: 38th Street and 34th Ave S - Emergency Street Repair and Pipe Lining

$230/SY	Remove and Replace Pavement
$20/ton	Class 3 backfill compacted in place
$5,500.00	Excavation and power line protection
$1,500.00	Traffic control
$27,500.00	30' UV CIPP Storm Sewer Pipe Repair

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price ($)	C/O Ext Price ($)
Miscellaneous	37	Remove Pavement All Thicknesses All Types	SY	0.00	0.00	0.00	82.00	82.00	30.00	2,460.00
	38	F&I Pavement 9" Thick Reinf Conc	SY	0.00	0.00	0.00	82.00	82.00	200.00	16,400.00
	40	F&I Aggregate for Asph Pavement Class 31	TON	0.00	0.00	0.00	38.80	38.80	20.00	776.00
	41	Extra - TrafficControl/Signals	LS	0.00	0.00	0.00	1.00	1.00	1,500.00	1,500.00
	42	Extra - Paving	LS	0.00	0.00	0.00	1.00	1.00	5,500.00	5,500.00
	43	Extra - StormSewers	LS	0.00	0.00	0.00	1.00	1.00	27,500.00	27,500.00
								Miscellaneous Sub Total ($)		54,136.00

Summary

Source Of Funding	Utility Funds - Stormwater - 524
Net Amount Change Order # 2 ($)	54,136.00
Previous Change Orders ($)	17,480.00
Original Contract Amount ($)	495,192.00
Total Contract Amount ($)	566,808.00

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

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
08/15/2018		0.00	0.00	08/15/2018	Unchanged

Description

APPROVED

Thomas P. Martin

For Contractor

President

Title

APPROVED DATE

Department Head 8/7/18

Mayor

Attest

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	NR-17-A1	**Change Order No**	3
Project Name	Storm Sewer Lift Station Modifications & Incidentals		
Date Entered	8/1/2018	**For**	Key Contracting Inc

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

EXPLANATION OF CHANGE: Remove previous change order #1 items - repair plan modified on change order #2

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price ($)	C/O Ext Price ($)
Miscellaneous	34	Repair pipe separation on 36" RCP at 34th Avenue South & 38th Street. Remove and replace sunken pavement at pipe separation location.	LS	0.00	1.00	1.00	-1.00	0.00	17,480.00	-17,480.00
									Miscellaneous Sub Total ($)	-17,480.00

Summary

Source Of Funding	Utility Funds - Stormwater - 524
Net Amount Change Order # 3 ($)	-17,480.00
Previous Change Orders ($)	71,616.00
Original Contract Amount ($)	495,192.00
Total Contract Amount ($)	549,328.00

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
08/15/2018		0.00	0.00	08/15/2018	

Description

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

APPROVED Thomas P. Martin	**APPROVED DATE**
For Contractor	Department Head 8/7/18
President	
Title	Mayor
	Attest

REPORT OF ACTION

UTILITY COMMITTEE

34

Improvement District NR-17-B Type: Change Order #1

Location: Sanitary Lift Station #2 (Bdwy SSO Reduction Project)

Date of Hearing: 8-8-18

Routing	Date
City Commission	8-13-18
Project File	

Jim Hausauer, Wastewater Utility Director, presented attached Change Order #1 from ICS, Inc. for Improvement District (ID) NR-17-B. The City of Fargo was approved for FEMA Hazard Mitigation Grant Program (HMGP) funding, with a formula of 75% Federal, 10% State, and 15% Local. The Broadway SSO Reduction Project will reduce hazards associated with sanitary sewer overflows backups within the Broadway Interceptor Service Area caused by wet weather conditions and river flooding. Historically, sanitary Lift Station (LS) 1 & 2 service areas (SA) have experienced issues with wet weather flows during extreme rain events, which exceeded the capacity of the existing lift stations and the Broadway Interceptor. The NR-17-B improvements include the construction of new wet weather lift stations that are attached to the existing sanitary lift station 1 and 2. Along with the new construction, improvements of various components within the existing lift stations are to be included with this improvement district.

Change Order #1 consists of the installation of a bypass connection to be used while Lift Station #2 is under construction. Specifically, the contractor needs to bypass the wet well so it can be dried, cleaned and apply a protective coating to the concrete. Subsequently this bypass connection needs to be included for the short term construction of the lift station, but will also benefit Wastewater Utility Staff as it can be used for repairs and bypassing in the future. The HMGP funding formula is as follows:

Change Order #1	Federal (75%)	State (10%)	City (15%)	Special Assessment
$41,200	$30,900	$4,120	$6,180	$0

MOTION:

On a motion by Bruce Grubb, seconded by Troy Hall, the Utility Committee voted to approve Improvement District NR-17-B Change Order #1 from ICS, Inc. in the amount of $41,200.00. (Note: City share of $6,180.00)

COMMITTEE:	Present	Yes	No	Unanimous	X
					X Proxy
Anthony Gehrig, City Commissioner		X			
Kent Costin, Director of Finance		X			
Brian Ward, Water Plant Supt.		X			
Mark Miller, Wastewater Plant Supt.		X			
Bruce Grubb, City Administrator		X			
Scott Liudahl, City Forester		X			
Terry Ludlum, Solid Waste Utility Director		X			
Jim Hausauer, Wastewater Utility Director		X			
Troy Hall, Water Utility Director		X			
Ben Dow, Public Works Operations Director		X			
Brenda Derrig, City Engineer		X			

ATTEST:

Jim Hausauer
Wastewater Utility Director

C: Mayor Mahoney
Commissioner Strand
Commissioner Piepkorn
Commissioner Grindberg

CITY OF FARGO PUBLIC WORKS
Wastewater Treatment Facility
3400 North Broadway
Fargo, ND 58102
Phone: 701-241-1454
Fax: 701-241-8159

MEMORANDUM

August 8, 2018

To: Utility Committee
From: Jim Hausauer, Wastewater Utility Director
Re: Improvement District (ID) NR-17-B – Change Order #1
Broadway Interceptor SSO Reduction Project

Background

If you recall, the City of Fargo was approved for FEMA Hazard Mitigation Grant Program (HMGP) funding for project DR-1981-ND-9R (Broadway Interceptor SSO Reduction Project). The HMGP funding that was available consisted of 85% project grant funds for the City, with a funding formula of 75% Federal, 10% State, and 15% Local.

The Broadway SSO Reduction Project will reduce hazards associated with sanitary sewer overflows and sanitary sewer backups within the Broadway Interceptor Service Area caused by wet weather conditions and river flooding. To accomplish this reduction in hazards, the project will include three main components:

1. **Structure Improvements:** This will include modifications to sanitary Lift Station (LS) #1, LS #2, and the West Side Interceptor Overflow Improvements.
2. **Broadway Relief Force Main**: This will include the construction of 22,000' of relief force main from LS #1 & LS #2 and will convey wet weather flows to the WWTP or wastewater stabilization ponds (WWSP).
3. **WWTP Effluent Force Main Rehabilitation**: This will include the rehab of 2,000 ft of the existing 30" ductile iron Effluent Force Main from the WWTP to the stabilization ponds.

ID NR-17- B

Historically, sanitary Lift Station (LS) 1 & 2 service areas (SA) have experienced issues with wet weather flows during extreme rain events, which exceeded the capacity of the existing lift stations and the Broadway Interceptor. The NR-17-B improvements include the construction of new wet weather lift stations that are attached to the existing sanitary lift station 1 and 2. Along with the new construction, improvements/replacement of various components within the existing lift stations are to be included with this improvement district.

Change Order #1

Change Order #1 consists of the installation of a bypass connection to be used while Lift Station #2 is under construction. Specifically, the contractor needs to bypass the wet well so it can be dried, cleaned and apply a protective coating. The original plan by the contractor was to bypass the station in the manner that Wastewater Staff would bypass during extreme weather events to protect basements and property (divert to the storm sewer). Diverting to the storm sewer would not be acceptable during non-emergency events for the Utility and its regulators. Subsequently this bypass connection needs to be included for the short term construction of the lift station, but will also benefit Wastewater Utility Staff as it can be used for repairs and bypassing in the future.

The HMGP funding formula is as follows:

Amount	Federal (75%)	State (10%)	City (15%)	Special Assessment
$41,200	$30,900	$4,120	$6,180	$0

Note: As per the HMGP Funding formula, the City of Fargo will be responsible for $6,180 and is funded with Wastewater Infrastructure Sales Tax Fund 455.

Your consideration in this matter is greatly appreciated.

Recommended Motion

Approve attached Change Order #1 for Improvement District NR-17-B from ICS, Inc. for an increase of $41,200 for the installation of a connection to allow the lift station to be bypassed during construction and for use by Wastewater Staff for future maintenance.

www.ae2s.com

August 8, 2018

Jim Hausauer, REHS
Wastewater Utility Director
City of Fargo
Wastewater Treatment Plant
3400 Broadway North
Fargo, ND 58102

Re: Change Order No. 1
Contract #1 Broadway Interceptor Wet Weather Lift Stations
City Project NR-17-B

Dear Jim:

Enclosed please find three (3) copies of Change Order No. 1 for the above-referenced project for your review and approval. This Change Order pertains to the addition of a bypass connection at existing sanitary Lift Station No. 2 (LS2) to allow the lift station to be bypassed with sanitary flows while construction activity is completed in the existing wet well. The bypass connection will remain in place after the project is complete and can be used in the future to bypass the lift station for any maintenance activities performed by the Owner.

The cost impact to Change Order No. 1 is a contract increase of $41,200.00.

The funding summary for this change includes the following:

- FEMA: $30,900.00
- State HMGP: $4,120.00
- City Sales Tax: $6,180.00
- Special Assessment: $0.00

Upon the City of Fargo's acceptance of Change Order No. 1, please sign and date the three (3) original copies. Retain one copy for your records and return the remaining two (2) copies to AE2S. AE2S will forward one (1) copy to ICS, Inc. and will retain the remaining copy for our records. Please contact me if you have any questions or need additional information.

In Service,

AE2S

Ben Julson, PE
Project Engineer

Advanced Engineering and Environmental Services, Inc.
3101 Frontage Road South • Moorhead, MN 56560 • (t) 218-299-5610 • (f) 218-299-5611

Change Order

No. 1

Date of Issuance: August 13, 2018 **Effective Date:** August 13, 2018

Project: Broadway Interceptor Wet Weather Improvements – Phase III	**Owner:** City of Fargo	**Owner's Contract No.:** NR-17-B
Contract: Contract No. 1 – General Contractor		**Date of Contract:** July 3, 2017
Contractor: ICS, Inc.		**Engineer's Project No.:** P00803-2014-000

The Contract Documents are modified as follows upon execution of this Change Order:

Description: A bypass connection will be installed at existing sanitary lift station No. 2 (LS2) to allow the existing lift station to be bypassed with sanitary flows while construction activity is completed in the existing wet well. The bypass connection will remain in place after the project is complete and can be used in the future to bypass the lift station for any maintenance activities performed by the Owner.

Attachments: 1) Quote from ICS, Inc., dated 7/12/2018
2) Detail of bypass connection

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price:	~~Original Contract Times: Working days Calendar days~~
	~~Substantial completion (days or date):~~
$ 4,970,950.00	~~Ready for final payment (days or date):~~
[Increase] [Decrease] from previously approved Change Orders No. 0 to No. 1:	~~[Increase] [Decrease] from previously approved Change Orders No. 0 to No. 0:~~
	~~Substantial completion (days):~~
$ 0.00	~~Ready for final payment (days):~~
Contract Price prior to this Change Order:	~~Contract Times prior to this Change Order:~~
	~~Substantial completion (days or date):~~
$ 4,723,550.00	~~Ready for final payment (days or date):~~
[Increase] [Decrease] of this Change Order:	~~[Increase] [Decrease] of this Change Order:~~
	~~Substantial completion (days or date):~~
$ 41,200.00	~~Ready for final payment (days or date):~~
Contract Price incorporating this Change Order:	~~Contract Times with all approved Change Orders:~~
	~~Substantial completion (days or date):~~
$ 5,012,150.00	~~Ready for final payment (days or date):~~

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: Ben Jakson	By:	By:
Engineer (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Date: 8-8-2018	Date:	Date: 8/8/18

Approved by Funding Agency (if applicable): Date:

Change Order
Instructions

A. GENERAL INFORMATION

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

B. COMPLETING THE CHANGE ORDER FORM

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.

Industrial Contract Services, Inc.

P. O. Box - Highway 81 North
Grand Forks, North Dakota 58208-3158
Phone: (701) 775-8480 FAX: (701) 775-8479

Proposal

PROPOSAL SUBMITTED TO Ben Julson		PHONE (218) 299-5610 FAX (218) 299-5611	DATE 7/12/2018
STREET 3101 Frontage Rd S.		JOB NAME Broadway Interceptor WWI-Phase III	
CITY, STATE AND ZIP CODE Moorhead, MN 56560		JOB LOCATION 285 1st Ave N, Fargo, ND	
ARCHITECT AE2S, Inc.	DATE OF PLANS	ATTN: Ben Julson	JOB PHONE (701) 318-7899

Proposal to provide all labor & equipment necessary to perform the following work:

1. Install new bypass and plug valve at WS2 = $41,200.

Exclusions: Temporary bypass pumping

We Propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of: *Forty-one thousand and two hundred dollars.* ($ 41,200.00)

Payment to be made as follows:
Per monthly pay request

All material is guaranteed to be as specified. All work to be comp
manner according to standard practices. Any alteration or deviati
tions involving extra costs will be executed only upon written ord
extra charge over and above the estimate. All agreements contir
or delays beyond our control. Owner to carry fire, tornado and ot
Our workers are fully covered by Workmen's Compensation Insu

Authorized
Signature

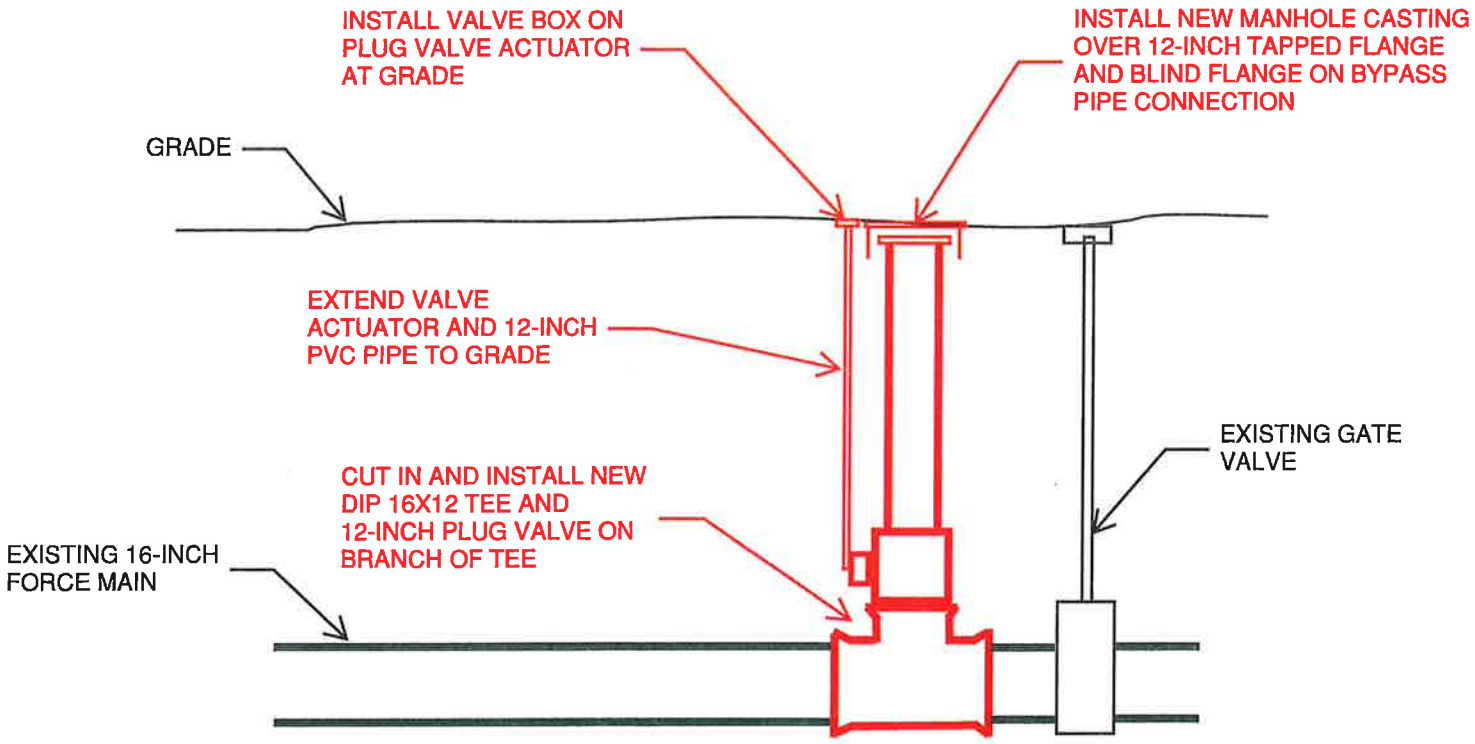
Note: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Proposal The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work specified. Payment will be made as outlined above.

Date of Acceptance: _____

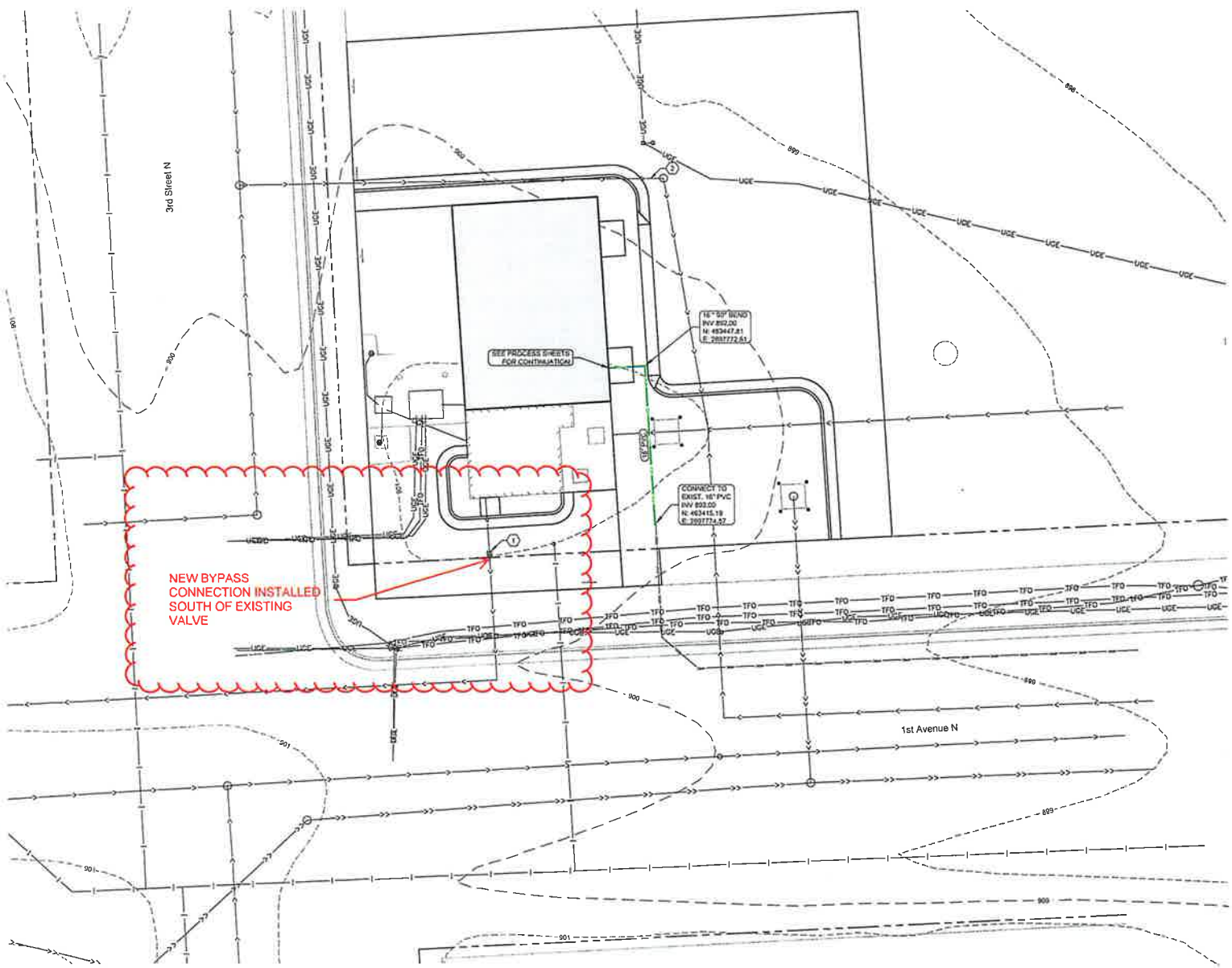
Signature _____

Signature _____



NOTES:
1. BYPASS CONNECTION SHALL BE INSTALLED SOUTH OF EXISTING VALVE.
2. DIP FITTING SHALL BE PROTECTO 401 LINED.
3. CONTRACTOR SHALL BE RESPONSIBLE FOR ALL NECESSARY EXCAVATION, BACKFILL, PIPE BEDDING, ETC. THAT IS NECESSARY FOR THE ISNTALLATION.
4. CONTRACTOR SHALL BE REPSONSIBLE FOR REMOVAL OF FLUID FROM CUTTING INTO THE EXISTING FORCE MAIN.

LS2 BYPASS CONNECTION DETAIL



This document was originally issued and sealed by Ben Julson, PE, Registration Number PE-7782 on April 19, 2017 and the original documents are stored at the office of Advanced Engineering & Environmental Services, Inc.

NORTH

0 10
Scale In Feet

GENERAL NOTES

1. ITEMS ON THIS DRAWING SHALL BE INCLUDED ON THE WS2 LINE ITEM ON THE BID FORM.
2. ALL PVC PIPING SHALL BE INSTALLED AS FORCEMAIN PIPING.

CONSTRUCTION NOTES

1. RAISE VALVE COVER TO MATCH CONCRETE ELEVATION.
2. CONTRACTOR SHALL PROTECT EXISTING UTILITIES FROM DAMAGE.

THE CITY OF Fargo FAR MORE

AE2S

BROADWAY INTERCEPTOR WET WEATHER IMPROVEMENTS
PHASE III
FARGO, NORTH DAKOTA
SITE PIPING PLAN

DRAWING TYPE: CONST.
PREPARED BY: KWF
CHECKED / APPROVED: BJJ / BJJ
DATE: APRIL 2017
PROJECT NUMBER: P00603-2014-000
FACILITY: WS2
DRAWING: C3

ADDENDUM 4

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

35

Improvement District No. SL-16-A1

Type: Final Balancing Change Order #1

Location: Roosevelt Neighborhood

Date of Hearing: 8/6/2018

Routing	Date
City Commission	8/13/2018
PWPEC File	X
Project File	Dave Helland

The Committee reviewed the accompanying correspondence from Project Manager, Dave Helland, for Final Balancing Change Order #1 in the amount of $17,837.04, bringing the total contract amount to $944,962.66.

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

On a motion by Steve Sprague, seconded by Nicole Crutchfield, the Committee voted to recommend approval of Final Balancing Change Order #1.

RECOMMENDED MOTION
Approve Final Balancing Change Order #1 in the amount of $17,837.04 to Moorhead Electric.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Special Assessments

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo SAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	SL-16-A1	**Change Order No**	1
Project Name	Street Lighting & Incidentals		
Date Entered	7/25/2018	**For**	Moorhead Electric

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

EXPLANATION OF CHANGE: Final Balancing

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price ($)	C/O Ext Price ($)
Street Lighting	2	F&I Base 5' Deep Reinf Conc	EA	185.00	0.00	185.00	-4.00	181.00	325.00	-1,300.00
	3	F&I Base 6' Deep Reinf Conc	EA	35.00	0.00	35.00	6.00	41.00	365.00	2,190.00
	4	F&I Conductor #6 USE Cu	LF	84,531.00	0.00	84,531.00	-933.00	83,598.00	1.12	-1,044.96
	5	F&I Innerduct 1.5" Dia	LF	28,301.00	0.00	28,301.00	-320.00	27,981.00	5.90	-1,888.00
	6	F&I Luminaire Type A	EA	162.00	0.00	162.00	5.00	167.00	1,190.00	5,950.00
	7	F&I Luminaire Type B	EA	23.00	0.00	23.00	1.00	24.00	960.00	960.00
	8	F&I Luminaire Type C	EA	35.00	0.00	35.00	3.00	38.00	1,975.00	5,925.00
	9	F&I Pull Box	EA	7.00	0.00	7.00	-1.00	6.00	650.00	-650.00
	10	F&I Light Standard Type A	EA	162.00	0.00	162.00	1.00	163.00	1,225.00	1,225.00
	11	F&I Light Standard Type B	EA	23.00	0.00	23.00	1.00	24.00	1,730.00	1,730.00
	12	F&I Light Standard Type C	EA	35.00	0.00	35.00	3.00	38.00	1,580.00	4,740.00
								Street Lighting Sub Total ($)		17,837.04

Summary

Source Of Funding	
Net Amount Change Order # 1 ($)	17,837.04
Previous Change Orders ($)	0.00
Original Contract Amount ($)	927,125.62

THE CITY OF Fargo

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Total Contract Amount ($)	944,962.66

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
08/18/2017		0.00	0.00	08/18/2017	

Description

APPROVED

For Contractor

Title

Project Manager
07/25/2018

APPROVED DATE

Department ~~Head~~

Mayor 8/7/18

Attest

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(36)

Improvement District No. SL-16-B1

Type: Final Balancing Change Order #1

Location: Oak Grove Area

Date of Hearing: 8/6/2018

Routing	Date
City Commission	8/13/2018
PWPEC File	X
Project File	Dave Helland

The Committee reviewed the accompanying correspondence from Project Manager, Dave Helland, for Final Balancing Change Order #1 in the amount of $8,684.90, bringing the total contract amount to $625,775.30.

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

On a motion by Steve Sprague, seconded by Nicole Crutchfield, the Committee voted to recommend approval of Final Balancing Change Order #1.

RECOMMENDED MOTION
Approve Final Balancing Change Order #1 in the amount of $8,684.90 to Strata Corporation.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Special Assessments

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	SL-16-B1	**Change Order No**	1
Project Name	Street Lighting & Incidentals		
Date Entered	7/25/2018	**For**	Strata Corporation

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

EXPLANATION OF CHANGE: Final Balancing

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price ($)	C/O Ext Price ($)
Street Lighting	2	F&I Base 5' Deep Reinf Conc	EA	119.00	0.00	119.00	6.00	125.00	325.00	1,950.00
	3	F&I Base 6' Deep Reinf Conc	EA	18.00	0.00	18.00	1.00	19.00	350.00	350.00
	4	F&I Conductor #6 USE Cu	LF	55,854.00	0.00	55,854.00	-981.00	54,873.00	1.10	-1,079.10
	5	F&I Innerduct 1.5" Dia	LF	18,246.00	0.00	18,246.00	-296.00	17,950.00	6.00	-1,776.00
	6	F&I Luminaire Type A	EA	125.00	0.00	125.00	1.00	126.00	1,100.00	1,100.00
	10	F&I Light Standard Type A	EA	125.00	0.00	125.00	1.00	126.00	1,190.00	1,190.00
	13	Remove Base	EA	3.00	0.00	3.00	6.00	9.00	1,000.00	6,000.00
	14	Remove Street Light	EA	9.00	0.00	9.00	4.00	13.00	250.00	1,000.00
	15	Remove Feed Point	EA	4.00	0.00	4.00	-1.00	3.00	50.00	-50.00
								Street Lighting Sub Total ($)		8,684.90

Summary

Source Of Funding	
Net Amount Change Order # 1 ($)	8,684.90
Previous Change Orders ($)	0.00
Original Contract Amount ($)	617,090.40
Total Contract Amount ($)	625,775.30

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

THE CITY OF Fargo FOR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
09/15/2017		0.00	0.00	09/15/2017	

Description

APPROVED

Kurt Walter

For Contractor

Strata Corporation

Title

Electrical Manager

APPROVED DATE

Department Head

Mayor

Attest

6/7/18

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

37

Improvement District No. SL-17-F1

Type: Final Balancing Change Order #1

Location: Woodhaven 3rd Addition

Date of Hearing: 8/6/2018

Routing	Date
City Commission	8/13/2018
PWPEC File	X
Project File	Dave Helland

The Committee reviewed the accompanying correspondence from Project Manager, Dave Helland, for Final Balancing Change Order #1 in the amount of $43.12, bringing the total contract amount to $34,967.36.

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

On a motion by Steve Sprague, seconded by Nicole Crutchfield, the Committee voted to recommend approval of Final Balancing Change Order #1.

RECOMMENDED MOTION
Approve Final Balancing Change Order #1 in the amount of $43.12 to Fargo Electric.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Special Assessments

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	SL-17-F1	**Change Order No**	1
Project Name	Street Lighting & Incidentals		
Date Entered	7/24/2018	**For**	Fargo Electric Const Inc

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

EXPLANATION OF CHANGE: Final Balancing

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price ($)	C/O Ext Price ($)
Street Lighting	1	F&I Innerduct 1.5" Dia	LF	858.00	0.00	858.00	4.00	862.00	7.18	28.72
	5	F&I Conductor #6 USE Cu	LF	2,574.00	0.00	2,574.00	12.00	2,586.00	1.20	14.40
								Street Lighting Sub Total ($)		43.12

Summary

Source Of Funding	
Net Amount Change Order # 1 ($)	43.12
Previous Change Orders ($)	0.00
Original Contract Amount ($)	34,924.24
Total Contract Amount ($)	34,967.36

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
11/01/2017		0.00	0.00	11/01/2017	

Description

APPROVED **APPROVED DATE**

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

For Contractor _____ Department Head _____ 8/7/18

Title Project Manager Mayor _____

Attest _____

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

38

Improvement District No. BR-16-C1

Type: Final Balancing Change Order #3

Location: 2nd St N btwn 6th Ave N & 10th Ave N

Date of Hearing: 8/6/2018

Routing	Date
City Commission	8/13/2018
PWPEC File	X
Project File	Rick Larson

The Committee reviewed the accompanying correspondence from Project Manager, Rick Larson, for Final Balancing Change Order #3 in the amount of $34,316.88, bringing the total contract amount to $2,559,278.76.

Staff is recommending approval of Final Balancing Change Order #3.

On a motion by Steve Sprague, seconded by Nicole Crutchfield, the Committee voted to recommend approval of Final Balancing Change Order #3.

RECOMMENDED MOTION
Approve Final Balancing Change Order #3 in the amount of $34,316.88 to Dakota Underground Co.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Sales Tax, Utility, State, Federal & Special Assessments

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

Item A1

CITY OF Fargo

Memorandum

To: Members of PWPEC

From: Rick Larson, Project Manager

Date: July 31, 2018

Re: Final Balancing Change Order #3 – Improvement District #BR-16-C1
Water Main Replacement, Force Main Construction, Street Reconstruction & Incidentals

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Attached is a final balancing change order in the amount of $34,316.88 for Improvement District No. BR-16-C1. Please refer to the attached Final Balancing Change Order (FBCO) which reconciles the measured quantities with those estimated for the contract.

Original Contract:	$ 2,515,766.99
CO #1	$ 6,000.00 (0.24% increase)
CO #2	$ 3,194.90 (0.13% increase)
FBCO Amount:	$ 34,316.88 (1.36% increase)
Total Contract:	$ 2,559,278.76

Recommended Motion:
Approve the Final Balancing Change Order #3 in the amount of $34,316.88 to Dakota Underground Company.

RJL/klo
Attachment
C: Tom Knakmuhs

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	BR-16-C1	**Change Order No**	3
Project Name	Water Main Replacement, Force Main Construction, Street Reconstruction & Incidentals		
Date Entered	7/30/2018	**For**	Dakota Underground Co Inc

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

EXPLANATION OF CHANGE: Final Balancing

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price ($)	C/O Ext Price ($)
HMGP Eligible	1	Remove Pavement All Thicknesses All Types	SY	4,005.00	0.00	4,005.00	19.10	4,024.10	8.00	152.80
	2	Remove Curb & Gutter	LF	1,666.00	0.00	1,666.00	88.30	1,754.30	3.50	309.05
	3	Subgrade Preparation	SY	4,507.00	0.00	4,507.00	-1,376.50	3,130.50	3.00	-4,129.50
	4	F&I Woven Geotextile	SY	4,507.00	0.00	4,507.00	-1,376.50	3,130.50	1.90	-2,615.35
	5	F&I Edge Drain 4" Dia PVC	LF	1,684.00	0.00	1,684.00	-372.25	1,311.75	7.00	-2,605.75
	6	F&I Class 5 Agg - 8" Thick	SY	1,495.00	0.00	1,495.00	47.70	1,542.70	9.00	429.30
	7	F&I Class 5 Agg - 12" Thick	SY	3,011.50	0.00	3,011.50	42.20	3,053.70	12.90	544.38
	8	F&I Curb & Gutter Standard (Type II)	LF	1,684.00	0.00	1,684.00	113.50	1,797.50	19.00	2,156.50
	9	F&I Pavement 9" Thick Doweled Conc	SY	2,506.00	0.00	2,506.00	32.70	2,538.70	69.00	2,256.30
	10	F&I Aggregate for Asph Pavement FAA 43	TON	519.50	0.00	519.50	86.16	605.66	47.50	4,092.60
	11	F&I Asphalt Cement PG 58-34	GAL	7,229.50	0.00	7,229.50	236.30	7,465.80	2.00	472.60
	15	F&I Pipe w/GB DR 25 - 30" Dia PVC	LF	2,077.00	0.00	2,077.00	21.70	2,098.70	180.00	3,906.00
	16	F&I Insulation 4" Thick	SY	540.00	0.00	540.00	-60.00	480.00	35.00	-2,100.00
	17	F&I Pipe SDR 26 - 4" Dia PVC	LF	250.00	0.00	250.00	-58.40	191.60	45.00	-2,628.00
	18	F&I Pipe w/GB 1" Dia Copper	LF	40.00	0.00	40.00	-28.40	11.60	60.00	-1,704.00
	19	Remove Inlet	EA	1.00	0.00	1.00	1.00	2.00	400.00	400.00
	20	Remove Pipe All Sizes All Types	LF	88.00	0.00	88.00	-0.06	87.94	10.00	-0.60

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

HMGP Eligible	21	F&I Pipe w/GB 12" Dia Reinf Conc	LF	88.00	0.00	88.00	-29.06	58.94	70.00	-2,034.20
	23	Connect Pipe to Exist Structure	EA	4.00	0.00	4.00	-1.00	3.00	600.00	-600.00
	25	Casting to Grade - w/Conc	EA	1.00	0.00	1.00	-1.00	0.00	700.00	-700.00
	28	F&I 1-1/4" Trench Found Rock 27" thru 36" Dia	LF	100.00	0.00	100.00	-100.00	0.00	0.01	-1.00
								HMGP Eligible Sub Total ($)		-4,398.87
Sanitary Sewer	29	Remove Pipe All Sizes All Types	LF	25.00	0.00	25.00	-2.50	22.50	20.00	-50.00
	32	Repair Pipe w/GB 10" Dia	EA	2.00	0.00	2.00	-1.00	1.00	2,500.00	-2,500.00
	35	F&I Pipe w/GB Sch 40 - 4" Dia PVC	LF	25.00	0.00	25.00	13.70	38.70	70.00	959.00
	36	F&I Pipe w/GB SDR 26 - 6" Dia PVC	LF	270.00	0.00	270.00	-67.50	202.50	70.00	-4,725.00
	38	F&I Pipe w/GB SDR 35 - 12" Dia PVC	LF	25.00	0.00	25.00	-11.50	13.50	107.00	-1,230.50
	42	Clean Pipe 12" Dia All Types	LF	370.00	0.00	370.00	-370.00	0.00	3.00	-1,110.00
	157	* Extra-Repair 14" CIP FM	LS	0.00	0.00	0.00	1.00	1.00	4,196.81	4,196.81
								Sanitary Sewer Sub Total ($)		-4,459.69
Water Main Replacement	44	Remove Pipe All Sizes All Types	LF	1,715.00	0.00	1,715.00	-419.00	1,296.00	3.00	-1,257.00
	45	F&I Fittings Ductile Iron	LB	1,630.00	0.00	1,630.00	490.00	2,120.00	2.50	1,225.00
	47	F&I Pipe w/GB C900 DR 18 - 6" Dia PVC	LF	30.00	0.00	30.00	1.10	31.10	69.00	75.90
	48	F&I Pipe w/GB C900 DR 18 - 8" Dia PVC	LF	1,610.00	0.00	1,610.00	1.20	1,611.20	70.00	84.00
	49	F&I Pipe w/GB C900 DR 18 - 10" Dia PVC	LF	75.00	0.00	75.00	-3.20	71.80	76.00	-243.20
	50	F&I Gate Valve 6" Dia	EA	2.00	0.00	2.00	1.00	3.00	1,600.00	1,600.00
	51	F&I Gate Valve 8" Dia	EA	4.00	0.00	4.00	1.00	5.00	2,100.00	2,100.00
	53	F&I Tapping Sleeve & Valve 8"x6"	EA	1.00	0.00	1.00	-1.00	0.00	4,600.00	-4,600.00
	54	F&I Pipe w/GB 1" Dia Copper	LF	1,590.00	0.00	1,590.00	153.70	1,743.70	55.00	8,453.50
	55	F&I Pipe w/GB 1.25" Dia Copper	LF	155.00	0.00	155.00	-52.80	102.20	70.00	-3,696.00
	56	Rem & Repl CS & Box 1" Dia	EA	49.00	0.00	49.00	3.00	52.00	400.00	1,200.00
	57	Rem & Repl CS & Box 1.25" Dia	EA	4.00	0.00	4.00	-1.00	3.00	600.00	-600.00
	58	Transfer Water Svc	EA	53.00	0.00	53.00	2.00	55.00	400.00	800.00

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Water Main Replacement	60	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	100.00	0.00	100.00	-100.00	0.00	0.01	-1.00
								Water Main Replacement Sub Total ($)		5,141.20
Storm Sewer	61	Remove Pipe All Sizes All Types	LF	335.00	0.00	335.00	-43.74	291.26	15.00	-656.10
	63	Remove Inlet	EA	10.00	0.00	10.00	4.00	14.00	400.00	1,600.00
	64	F&I Inlet - Single Box (SBI) Reinf Conc	EA	10.00	0.00	10.00	-2.00	8.00	1,900.00	-3,800.00
	66	F&I Pipe w/GB 12" Dia Reinf Conc	LF	320.00	0.00	320.00	37.60	357.60	63.00	2,368.80
								Storm Sewer Sub Total ($)		-487.30
Paving	69	Remove Pavement All Thicknesses All Types	SY	6,552.00	0.00	6,552.00	-46.20	6,505.80	8.00	-369.60
	70	Remove Curb & Gutter	LF	3,590.00	0.00	3,590.00	55.70	3,645.70	3.50	194.95
	71	Remove Sidewalk All Thicknesses All Types	SY	1,450.00	0.00	1,450.00	404.67	1,854.67	7.50	3,035.03
	72	Remove Driveway All Thicknesses All Types	SY	950.00	0.00	950.00	78.06	1,028.06	7.50	585.45
	73	Subgrade Preparation	SY	7,784.00	0.00	7,784.00	-36.35	7,747.65	3.00	-109.05
	74	F&I Woven Geotextile	SY	7,784.00	0.00	7,784.00	-36.35	7,747.65	1.90	-69.07
	75	F&I Class 5 Agg - 8" Thick	SY	2,990.00	0.00	2,990.00	-50.60	2,939.40	9.00	-455.40
	76	F&I Class 5 Agg - 12" Thick	SY	4,794.00	0.00	4,794.00	14.25	4,808.25	12.90	183.83
	77	F&I Edge Drain 4" Dia PVC	LF	3,611.00	0.00	3,611.00	-56.43	3,554.57	7.00	-395.01
	78	F&I Curb & Gutter Standard (Type II)	LF	3,611.00	0.00	3,611.00	23.25	3,634.25	19.00	441.75
	79	F&I Pavement 9" Thick Doweled Conc	SY	3,849.00	0.00	3,849.00	144.60	3,993.60	69.00	9,977.40
	80	F&I Aggregate for Asph Pavement FAA 43	TON	973.00	0.00	973.00	105.70	1,078.70	47.50	5,020.75
	81	F&I Asphalt Cement PG 58-34	GAL	13,545.00	0.00	13,545.00	351.54	13,896.54	2.00	703.08
	82	F&I Flat MH Cover 8" Thick Reinf Conc	EA	4.00	0.00	4.00	-2.00	2.00	1,000.00	-2,000.00
	83	Rem & Repl Casting - Floating Manhole	EA	4.00	0.00	4.00	2.00	6.00	1,500.00	3,000.00
	84	Rem & Repl Casting - Std Manhole	EA	2.00	0.00	2.00	-1.00	1.00	450.00	-450.00
	85	Rem & Repl Casting - Inlet	EA	4.00	0.00	4.00	-1.00	3.00	500.00	-500.00
	87	Casting to Grade - no Conc	EA	23.00	0.00	23.00	2.00	25.00	400.00	800.00

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Paving	89	GV Box to Grade - no Conc	EA	6.00	0.00	6.00	2.00	8.00	350.00	700.00
	90	F&I Sidewalk 4" Thick Reinf Conc	SY	1,400.00	0.00	1,400.00	305.53	1,705.53	44.00	13,443.32
	91	F&I Sidewalk 6" Thick Reinf Conc	SY	115.00	0.00	115.00	5.24	120.24	50.00	262.00
	92	F&I Det Warn Panels Cast Iron	SF	248.00	0.00	248.00	24.00	272.00	43.00	1,032.00
	93	F&I Driveway 6" Thick Reinf Conc	SY	950.00	0.00	950.00	150.19	1,100.19	50.00	7,509.50
	96	Inlet Protection - Existing Inlet	EA	38.00	0.00	38.00	-2.00	36.00	210.00	-420.00
	97	Inlet Protection - New Inlet	EA	11.00	0.00	11.00	2.00	13.00	160.00	320.00
	98	Seeding Type B	SY	7,400.00	0.00	7,400.00	850.00	8,250.00	0.60	510.00
	99	Mulching Type 1 - Hydro	SY	7,400.00	0.00	7,400.00	850.00	8,250.00	0.60	510.00
	100	Weed Control Type B	SY	7,400.00	0.00	7,400.00	-7,400.00	0.00	0.09	-666.00
	101	Temp Construction Entrance	EA	2.00	0.00	2.00	-2.00	0.00	1,000.00	-2,000.00
	158	* Extra-Traffic Control	LS	0.00	0.00	0.00	1.00	1.00	841.50	841.50
	160	* Extra-Replace SS MH Lid	LS	0.00	0.00	0.00	1.00	1.00	228.92	228.92
								Paving Sub Total ($)		41,865.35
Street Lighting	103	Install Street Light	EA	2.00	0.00	2.00	-1.00	1.00	1,575.00	-1,575.00
	104	Remove Street Light	EA	2.00	0.00	2.00	-1.00	1.00	840.00	-840.00
	107	F&I Conductor #6 USE Cu	LF	9,159.00	0.00	9,159.00	96.00	9,255.00	1.58	151.68
	108	F&I Innerduct 1.5" Dia	LF	3,434.00	0.00	3,434.00	4.00	3,438.00	5.25	21.00
								Street Lighting Sub Total ($)		-2,242.32
Traffic Signals	130	F&I Signal Cable AWG 14/2	LF	1,090.00	0.00	1,090.00	-29.00	1,061.00	1.05	-30.45
	131	F&I Signal Cable AWG 14/20	LF	560.00	0.00	560.00	-60.00	500.00	4.20	-252.00
	133	F&I Signal Cable Loop Lead-in	LF	1,891.00	0.00	1,891.00	-133.00	1,758.00	1.84	-244.72
								Traffic Signals Sub Total ($)		-527.17
Signing	146	F&I Sign Assembly	EA	10.00	0.00	10.00	3.00	13.00	58.30	174.90
	147	F&I Sign Assembly & Anchor	EA	23.00	0.00	23.00	-3.00	20.00	78.75	-236.25
	148	F&I Diamond Grade Cubed	SF	33.00	0.00	33.00	4.90	37.90	31.50	154.35
	149	F&I Engineering Grade	SF	70.00	0.00	70.00	-6.70	63.30	12.60	-84.42
								Signing Sub Total ($)		8.58
Pavement Marking	151	F&I Grooved Plastic Film 4" Wide	LF	2,310.00	0.00	2,310.00	23.00	2,333.00	4.65	106.95

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Pavement Marking	152	F&I Grooved Plastic Film 6" Wide	LF	352.00	0.00	352.00	-43.00	309.00	7.20	-309.60
	153	F&I Grooved Plastic Film 8" Wide	LF	325.00	0.00	325.00	-18.00	307.00	8.25	-148.50
	154	F&I Grooved Plastic Film 16" Wide	LF	107.00	0.00	107.00	-15.00	92.00	15.45	-231.75
									Pavement Marking Sub Total ($)	-582.90
	* NC Items								**Grand Total ($)**	34,316.88

Summary

Source Of Funding	
Net Amount Change Order # 3 ($)	34,316.88
Previous Change Orders ($)	9,194.90
Original Contract Amount ($)	2,515,766.99
Total Contract Amount ($)	2,559,278.76

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
09/30/2016		0.00	0.00	09/30/2016	

Description

APPROVED Bob Nelson
For Contractor Dakota Underground Co.
Title Project Manager

APPROVED DATE
Department Head 8/7/18
Mayor
Attest

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(39)

Improvement District No. SL-17-E1 Type: Negative Final Balancing Change Order #1

Location: 7th St – 14th St, 2nd Ave N – 4th Ave N Date of Hearing: 8/6/2018

Routing	Date
City Commission	8/13/2018
PWPEC File	X
Project File	Dave Helland

The Committee reviewed the accompanying correspondence from Project Manager, Dave Helland, for Negative Final Balancing Change Order #1 in the amount of $-1,682.76, bringing the total contract amount to $667,130.20.

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

On a motion by Steve Sprague, seconded by Nicole Crutchfield, the Committee voted to recommend approval of Negative Final Balancing Change Order #1.

RECOMMENDED MOTION
Approve Negative Final Balancing Change Order #1 in the amount of $-1,682.76 to Moorhead Electric.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Special Assessments

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	SL-17-E1	**Change Order No**	1
Project Name	Street Lighting & Incidentals		
Date Entered	7/25/2018	**For**	Moorhead Electric

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

EXPLANATION OF CHANGE: Final Balancing

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price ($)	C/O Ext Price ($)
Street Lighting	2	Remove Base	EA	10.00	0.00	10.00	1.00	11.00	500.00	500.00
	4	F&I Innerduct 1.5" Dia	LF	14,834.00	0.00	14,834.00	-44.00	14,790.00	6.20	-272.80
	11	F&I Conductor #6 USE Cu	LF	45,368.00	0.00	45,368.00	-758.00	44,610.00	1.12	-848.96
	13	Remove Feed Point	EA	4.00	0.00	4.00	-1.00	3.00	600.00	-600.00
	15	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	100.00	0.00	100.00	-73.00	27.00	87.00	-6,351.00
	16	Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	50.00	0.00	50.00	62.00	112.00	95.00	5,890.00
								Street Lighting Sub Total ($)		-1,682.76

Summary

Source Of Funding	
Net Amount Change Order # 1 ($)	-1,682.76
Previous Change Orders ($)	0.00
Original Contract Amount ($)	668,812.96
Total Contract Amount ($)	667,130.20

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

CONTRACT TIME

THE CITY OF Fargo

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
06/01/2018		0.00	0.00	06/01/2018	

Description

APPROVED

For Contractor

Title

Project Manager
07/25/2018

APPROVED DATE

Department Head

Mayor 8/7/18

Attest

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

40

Improvement District No. SL-17-G1 Type: Negative Final Balancing Change Order #1

Location: 27th Circle S Date of Hearing: 8/6/2018

Routing	Date
City Commission	8/13/2018
PWPEC File	X
Project File	Dave Helland

The Committee reviewed the accompanying correspondence from Project Manager, Dave Helland, for Negative Final Balancing Change Order #1 in the amount of $-53.90, bringing the total contract amount to $21,965.92.

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

On a motion by Steve Sprague, seconded by Nicole Crutchfield, the Committee voted to recommend approval of Negative Final Balancing Change Order #1.

RECOMMENDED MOTION
Approve Negative Final Balancing Change Order #1 in the amount of $-53.90 to Fargo Electric.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Special Assessments

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☐	☐	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	SL-17-G1	**Change Order No**	1
Project Name	.Street Lighting & Incidentals		
Date Entered	7/24/2018	**For**	Fargo Electric Const Inc

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

EXPLANATION OF CHANGE: Final Balancing

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price ($)	C/O Ext Price ($)
Street Lighting	2	F&I Innerduct 1.5" Dia	LF	769.00	0.00	769.00	-5.00	764.00	7.18	-35.90
	5	F&I Conductor #6 USE Cu	LF	2,307.00	0.00	2,307.00	-15.00	2,292.00	1.20	-18.00
									Street Lighting Sub Total ($)	-53.90

Summary

Source Of Funding	
Net Amount Change Order # 1 ($)	-53.90
Previous Change Orders ($)	0.00
Original Contract Amount ($)	22,019.82
Total Contract Amount ($)	21,965.92

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
10/31/2017		0.00	0.00	10/31/2017	

Description

APPROVED **APPROVED DATE**

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

For Contractor _____ Department Head _____ 8/7/18

Title Project Manager Mayor _____

Attest _____

CITY OF Fargo

41

August 8, 2018

ENGINEERING DEPARTMENT
200 3rd Street North
Fargo, North Dakota 58102
Phone: (701) 241-1545
Fax: (701) 241-8101
E-Mail: feng@cityoffargo.com

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. SN-18-C2

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, August 8, 2018, for New Sidewalk Construction & Incidentals, Improvement District No. SN-18-C2, located at 2nd Street North between the new City Hall building and the City Centre Loft property.

The bids were as follows:

Key Contracting, Inc.	$394,750.00
Dakota Underground Company	$399,540.00

Engineer's Estimate $308,460.00

The special assessment escrow is not required.

This office recommends award of the contract to Key Contracting, Inc. in the amount of $394,750.00 as the lowest and best bid. No protests have been received.

Sincerely,

Thomas Knakmuhs
Division Engineer

TAK/klb

ENGINEER'S STATEMENT OF ESTIMATED COST

PROJECT # SN-18-C2

New Sidewalk Construction & Incidentals

Construct a new sidewalk along 2nd Street North between the new City Hall building and the City Centre Loft property.

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

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

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

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

New Sidewalk Construction & Incidentals Project # SN-18-C2 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price ($)	Amount ($)
Sanitary Sewer					
1	Modify Manhole	EA	1.00	3,500.00	3,500.00
				Sanitary Sewer Total	3,500.00
Storm Sewer					
2	Connect Pipe to Exist Structure	EA	1.00	1,600.00	1,600.00
3	Modify Manhole	EA	1.00	3,500.00	3,500.00
				Storm Sewer Total	5,100.00
Paving					
4	F&I Sidewalk 4" Thick Reinf Conc	SY	435.00	72.00	31,320.00
5	F&I Sidewalk 6" Thick Reinf Conc	SY	387.00	90.00	34,830.00
6	F&I Impressioned 4" Thick Reinf Conc	SY	67.00	175.00	11,725.00
7	Temp Construction Entrance	EA	1.00	3,500.00	3,500.00
8	Traffic Control - Type 1	LS	1.00	4,500.00	4,500.00
9	Mobilization	LS	1.00	24,000.00	24,000.00
10	F&I Retaining Wall	SF	620.00	140.00	86,800.00
11	F&I Outlet Structure	EA	1.00	105,000.00	105,000.00
12	Fill - Import Special	CY	45.00	55.00	2,475.00
13	F&I Rip Rap Rock	CY	12.00	350.00	4,200.00
14	F&I Fence Ornamental	LF	96.00	550.00	52,800.00
15	Sediment Control Log 6" to 8" Dia	LF	500.00	3.00	1,500.00
16	Inlet Protection - Existing Inlet	EA	6.00	150.00	900.00
17	Site Grading	LS	1.00	8,500.00	8,500.00
18	Mulching Type 1 - Hydro	SY	2,000.00	1.50	3,000.00
19	Seeding Type B	SY	2,000.00	1.50	3,000.00
20	Overseeding	SY	2,000.00	1.50	3,000.00
21	Weed Control Type B	SY	2,000.00	1.50	3,000.00
22	GV Box to Grade - Blvd	EA	6.00	350.00	2,100.00
				Paving Total	386,150.00
				Total Construction in $	**394,750.00**
			Engineering	7.00 %	27,632.50
			Legal & Misc	3.00 %	11,842.50
			Contingencies	10.00 %	39,475.00
			Interest	4.00 %	15,790.00
			Outside Engineering	8.00 %	31,580.00
				Total Estimated Costs	**521,070.00**
				Sales Tax Funds - Infrastructure - 420	521,070.00
				Unfunded Costs	**0.00**

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

Date: 08/08/2018

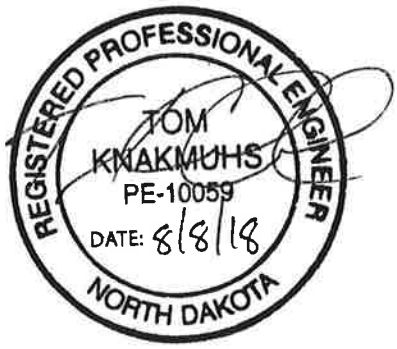
ENGINEER'S STATEMENT OF ESTIMATED COST

PROJECT # SN-18-C2

New Sidewalk Construction & Incidentals

Tom Knakmuhs

Division Engineer



COVER SHEET
CITY OF FARGO PROJECTS

42-1

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of Improvement District as it will appear in the Contract:

Flood Mitigation, Street Reconstruction & Incidentals

Improvement District No. FM-14-8

Call For Bids	August 13	, 2018
Advertise Dates	August 27 & September 3	, 2018
Bid Opening Date	(Diversion Authority) September 20	, 2018
Substantial Completion Date	June 31	, 2020
Final Completion Date	July 31	, 2020

X PWPEC Report (Attach Copy)

X Engineer's Report (Attach Copy)

N/A Direct City Auditor to Advertise for Bids **(to be bid by Diversion Authority)**

N/A Bid Quantities – Diversion Authority Led

X Notice to Property Owners (Dan Eberhardt)

Project Engineer Nathan Boerboom

Phone No. 476-6743

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

X Create District (Attach Copy of Legal Description)

N/A Order Plans & Specifications – Diversion Authority Led

N/A Approve Plans & Specifications – Diversion Authority Led

X Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

X Assessment Map (Attach Copy for Auditor's Office Only)

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. FM-14-83 Type: Project Creation & CIP Revision

Location: 2nd Street South Date of Hearing: 2/20/2018

Routing	Date
City Commission	2/26/2018
PWPEC File	X
Project File	Nathan Boerboom

The Committee reviewed a communication from Division Engineer, Nathan Boerboom, regarding a recommendation to create and add a project to the 2018 CIP.

This is the last phase of the 2nd Street South Flood Mitigation Project. This phase is located directly south of the Main Avenue intersection and includes the reconstruction of storm sewer lift station #1, construction of a removable floodwall across 2nd Street South and reconstruction of the floodwall east of 2nd Street South to U.S. Army Corps of Engineers specifications. Due to the condition and age of the pavement on 2nd Street South, staff is recommended it be added to the Diversion Authority's project. The additional pavement will be the City's responsibility and will be funded according to the City's Infrastructure Funding Policy. Preliminary estimates have determined that $212,887.58 will be special assessed with the remaining $227,663.37 being funded by City Infrastructure Sales Tax.

Staff is recommending creation of Improvement District #FM-14-83 and its addition to the 2018 CIP.

On a motion by Bruce Grubb, seconded by Ben Dow, the Committee voted to create and add Improvement District #FM-14-83 to the 2018 CIP.

RECOMMENDED MOTION
Concur with Committee recommendation to create and add Improvement District #FM-14-83 to the 2018 CIP.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Sales Tax & Special Assessments

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

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	Mark Williams
Steve Dirksen, Fire Chief	☑	☑	☐	
Mark Bittner, Director of Engineering	☐	☐	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
City Engineer	☑	☑	☐	Brenda Derrig
Kent Costin, Finance Director	☑	☑	☐	

ATTEST:

Brenda E. Derrig, P.E.
Division Engineer

ENGINEER'S REPORT

FLOOD MITIGATION, STREET RECONSTRUCTION & INCIDENTALS

IMPROVEMENT DISTRICT NO. FM-14-8

Nature and Scope

The FM Diversion Authority (DA) has created a flood mitigation project on 2nd Street South that is scheduled to be constructed in 2018 and 2019. The work associated with this project includes the reconstruction of Fargo's storm sewer lift station #1, construction of a removable floodwall across 2nd Street South (near Main Avenue), and reconstruction of the floodwall east of 2nd Street South to U.S. Army Corps of Engineers specifications. Also included in the DA project is reconstruction of 2nd Street South where the flood mitigation project will be impacting the roadway.

The City will be taking this opportunity to have the DA include the reconstruction of the remaining portions of 2nd Street South, where previous years construction has not replaced the pavement. The City is responsible for paying for this additional pavement reconstruction.

Purpose

2nd Street South is an arterial street that services the downtown area. The existing street section is deteriorated and in need of replacement. The new roadway will be reduced in width to match the current traffic needs.

Bids were received previously for this project in May of 2018 but were rejected due to the bid prices received.

Feasibility

The DA will be paying for all costs related to replacement, reconstruction, or relocation of City infrastructure that is necessary due to the proposed flood mitigation project that is part of the overall FM Metro Diversion Project. The costs included within this Engineer's Report are only for items that are the City's responsibility and are not authorized within the DA project WP42E.

The estimated construction cost for the City's responsibility is approximately $481,000. Funding for the project will be in accordance to the infrastructure funding policy utilizing Infrastructure Sales Tax Funds and Special Assessments.

The cost breakdown is as follows:

Street Reconstruction Cost

Assessed Construction Cost:	$	79,862
Engineering Fees (4%):	$	3,194
Administration Fees (6%):	$	4,792
Interest Fees (4%):	$	3,194
Legal Fees (3%):	$	2,396
Total Estimated Assessed Cost:	**$**	**93,438**
City Funded Construction Cost:	$	401,138
Engineering Fees (4%):	$	16,046
Interest Fees (4%):	$	16,046
Legal Fees (3%):	$	12,034
Total Estimated City Funded Cost (Infrastructure Sales Tax:	**$**	**445,264**
Total Estimated Street Reconstruction Cost:	**$**	**538,702**

Project Funding Summary:

Special Assessments – Street Reconstruction	$	93,438
Infrastructure Sales Tax	$	445,264
Total Fargo Estimated Project Cost	**$**	**538,702**

Costs will be special assessed according to City policy.

We believe this project to be cost effective.



Nathan Boerboom, PE, CFM
Division Engineer

CITY OF FARGO
ENGINEERING DEPARTMENT

LOCATION & COMPRISING

IMPROVEMENT DISTRICT FM-14-8

LOCATION:

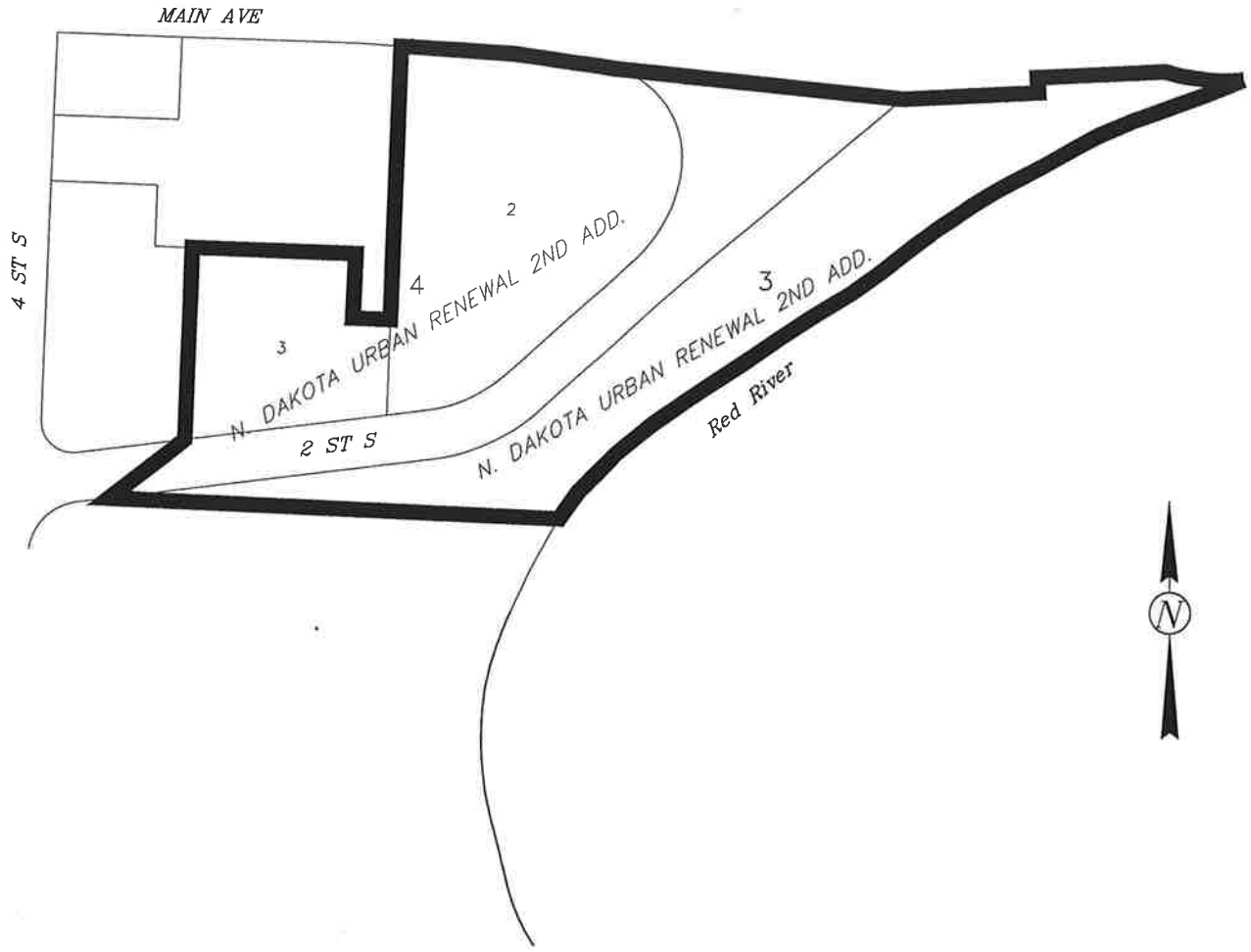
On 2nd Street South from Main Avenue to 4th Street South.

COMPRISING:

Lots 2 and 3, Block 4.
Block 3, less ded r/w desc as foll: beg at a pt on n ln of sd blk, sd pt bg 565 ft more or less w of w bank of red river of the n, then s 84 deg 53 min 55 sec w & alg nly ln of sd blk 3114.09 ft, then alg a curve to left, sd curve bg nwly ln of sd blk & having a radius of 140 ft a dist of 110.45 ft, then s 39 deg 41 min 45 sec w & alg nwly ln of sd blk a dist of 356.48 ft, then n 52 deg 32 min 45 sec e 549.98 ft, more or less to pt of beg

All in North Dakota Urban Renewal 2nd Addition.

All of the foregoing located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO
ENGINEERING DEPARTMENT

LOCATION & ASSESSMENT AREA

IMPROVEMENT DISTRICT NO. FM-14-8

COVER SHEET
CITY OF FARGO PROJECTS

42-2

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of the Project as it will appear in the Contract:

Storm Sewer Lift Station, Storm Sewer & Incidentals

Improvement District No. NN-18-A

Call for Bids August 13, 2018

Advertise Dates August 20 & 27, 2018

Bid Opening Date September 19, 2018

Substantial Completion Date July 15, 2019

Final Completion Date September 1, 2019

N/A PWPEC Report **(Water Project No. WA1852)**

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

X Notice to Property Owners (Dan Eberhardt)

Project Engineer Roger E. Kluck, P.E. C.F.M.
Phone No. 241-1537

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

X Create District (Attach Copy of Legal Description)

X Order Plans & Specifications

X Approve Plans & Specifications

X Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

X Assessment Map (Attach Copy for Auditor's Office Only)

ENGINEER'S REPORT

STORM SEWER LIFT STATION, STORM SEWER & INCIDENTALS

IMPROVEMENT DISTRICT NO. NN-18-A

Nature & Scope

This project is phase II of improving the drain from Drain 27 and west to near the Sheyenne River. The project installs a lift station, control works, and outfall to Drain 27. This project is also part of a larger water supply project that will pump water from the Sheyenne River into the detention pond and improved ditch for conveyance towards a pump station near Drain 27. River water will then be pumped into Drain 27 to be carried to the Red River in times of low flow for use in providing potable water for the City of Fargo, West Fargo, Horace, and the Rural Water Systems.

Purpose

To convey storm water from adjoining developments and to provide conveyance of Sheyenne River water for potable water use for Fargo and the region when needed.

Feasibility

The estimated construction cost is approximately $1,773,168.50. Funding for this project will consist of Special Assessment Funds and the Water Utility. The project's cost breakout is as follows:

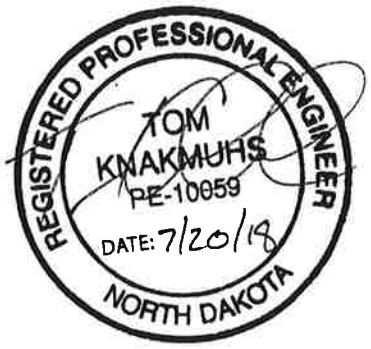
Total Estimated Costs to be paid by Water Utility:	$ 699,868.26
Outside Engineering Fees (15%):	$ 104,980.24
Legal & Misc. Fees (3%):	$ 20,996.05
Interest Fees (4%):	$ 27,994.73
Estimated Water Utility Cost:	**$ 853,839.28**
Special Assessment:	$ 1,073,300.24
Outside Engineering Fees (15%):	$ 160,995.04
Administration Fees (6%):	$ 64,398.01
Legal & Misc. Fees (3%):	$ 32,199.01
Interest Fees (4%):	$ 42,932.01
Estimated Water Utility Cost:	**$ 1,373,824.31**
Total Estimated Construction Cost with Fees:	**$ 2,227,663.58**

Project Funding Summary:

Water Utility (38.33%)	$ 853,839.28
Special Assessment (61.67%)	$ 1,373,824.31
Total Estimated Project Cost:	**$ 2,227,663.58**

The project costs will be assessed as shown and as per City policy.

We believe this project to be cost effective.



Thomas A. Knakmuhs, PE
Division Engineer

CITY OF FARGO
ENGINEERING DEPARTMENT

LOCATION & COMPRISING

DRAIN IMPROVEMENTS & INCIDENTALS

IMPROVEMENT DISTRICT NO. NN-18-A

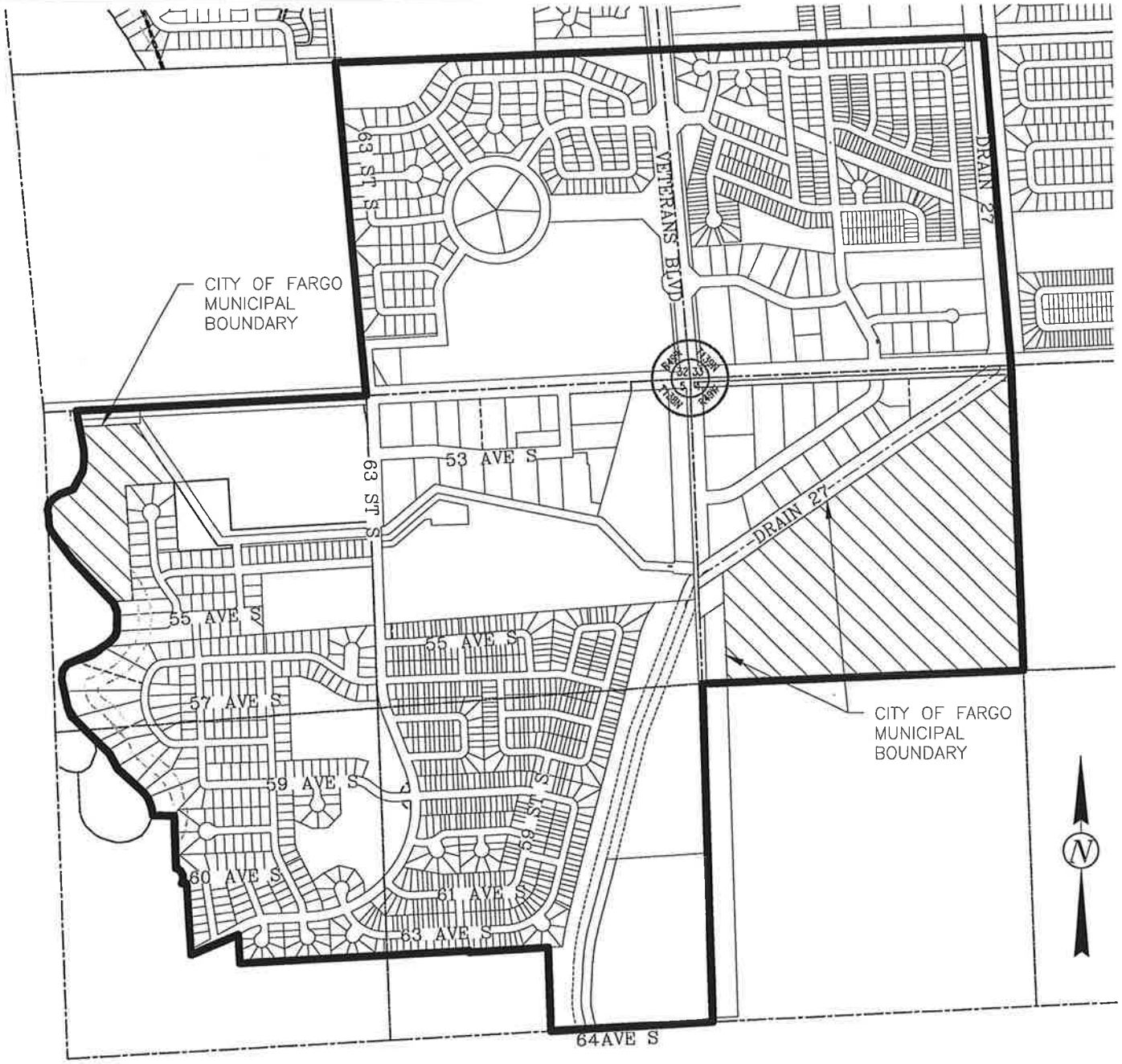
LOCATION:

At the intersection of Veteran's Boulevard and Drain 27 approximately 1,660 feet south of 52nd Avenue South.

COMPRISING:

All platted and unplatted land in the SE ¼ of Section 32, SW ¼ of Section 33, NW ¼ of Section 4, and Section 5 of T139N, R49W that lie within the City of Fargo, Cass County, North Dakota and portions of Section 4 and 5 that lie outside the City of Fargo Limits within City of Fargo Extra Territorial Limits, Cass County, North Dakota as described below.

Beginning at the Southwest corner of the SE ¼ of said Section32; thence northerly along the west line to the Northwest corner of the SE ¼ of said Section 32; thence easterly along the north line of said quarter section to the Northwest corner of the SW ¼ of said Section 33; thence easterly along the north line of said quarter section to the Northeast corner of the SW ¼ of said Section 33; thence southerly along the east line of said quarter section to the Northeast corner of the NW ¼ of said Section 4; thence southerly along the east line to the Southeast corner of said NW ¼ of Section 4; thence westerly along the south line to the Southwest corner of said NW ¼ of Section 4; thence southerly along the west section line of said Section 4 to the southwest corner of said Section 4; thence westerly and northerly within Section 5 along the Fargo Municipal Boundary established by Document 1250821 and the Fargo Municipal Boundary established by Document 1402964 including the land east of the Sheyenne River and west of the Fargo Municipal Boundary to a point on the north Section line of said Section 5, point being 218.2' east of the northwest section corner of said Section 5; thence easterly along said section line to the point of beginning.



CITY OF FARGO
ENGINEERING DEPARTMENT

LOCATION ASSESSMENT AREA & FUTURE
BENEFITING AREA OUTSIDE CITY OF FARGO CITY LIMITS

STORM SEWER LIFT STATION,
STORM SEWER & INCIDENTALS

IMPROVEMENT DISTRICT NO. NN-18-A

FUTURE BENEFITING AREA OUTSIDE CITY LIMITS