

FARGO CITY COMMISSION AGENDA  
Monday, September 18, 2023 - 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, September 5, 2023).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. 1st reading of an Ordinance Amending Section 8-1321 of Article 8-13 of Chapter 8 of the Fargo Municipal Code Relating to Use of Safety Belts Required in Certain Motor Vehicles.
- 2. 1st reading of an Ordinance Enacting Article 3-24 of Chapter 3 of the Fargo Municipal Code Relating to a Lodging Tax for Fargodome Including Conference Center.
- 3. 1st reading of an Ordinance Enacting Article 3-25 of Chapter 3 of the Fargo Municipal Code Relating to a Sales Tax for Fargodome Including Conference Center.
- 4. Findings of Fact, Conclusions and Order, and Notice of Entry Order for 1449 4th Avenue South.
- 5. City of Fargo Resolution Authorizing Officers to Make Deposits and Withdrawals.
- 6. Resolution (Special Election Matters – Establishing Precinct-Setting Compensation of Election Officials).
- 7. Applications for Games of Chance:
  - a. FM Derby Girls for a raffle on 9/23/23.
  - b. FirstChoice Clinic d/b/a Women's Care Center for bingo on 10/9/23.
- 8. Negative Final Balancing Change Order No. 5 in the amount of -\$62,377.95 for Project No. UR-22-B1.
- 9. ND Department of Transportation Participation, Construction and Maintenance Agreement for LPA Federal Aid Project (Project No. SL-23-B1).
- 10. Declaration of Easement (Utility) at 6375 31st Street South.
- 11. Emergency Water Main Replacement on Mills Avenue North (EM23170).
- 12. Developer Agreements with North Fargo Land, LLC and ARD Properties, LLC for the Interstate Business District Addition.

13. Bid award to Master Construction Company, Inc. in the amount of \$305,425.00 for Project No. BP-23-02.
14. Bid advertisement for Project No. SN-23-A.
15. Change Order No. 2 in the amount of \$7,046.15 and 2-day time extension to the Phase 2 Interim Date, Substantial Completion Date and Milestone Date for Improvement District No. BR-23-F1.
16. Easement (Temporary Access Easement) with Sanford Research North (Improvement District No. BR-23-J1).
17. Change Order No. 1 in the amount of \$83,176.80 for Improvement District No. UR-23-C1 (EM23135).
18. Minimum Payment Policy Waiver and Election Form, Permanent Easement (Bike Trail) and Easement (Temporary Construction Easement) with EA Children Properties, LLC (Improvement District No. SN-23-A1).
19. Create Improvement District No. BR-24-C.
20. Create Improvement District No. BR-24-E.
21. Lease extension with Fargo Baseball, LLC through 10/1/28.
22. Change Orders in the amount of \$3,804.00 for the Fargo Public Library Sunshades Replacement Project (RFP23090).
23. Amendment No. 4 with KLG for the GTC Underground Parking Facility (RFQ18325).
24. Receive and file General Fund – Budget to Actual unaudited monthly financial statements through 8/31/23.
25. Change Orders for Fire Station No. 8 Construction:
  - a. No. 1 in the amount of \$9,881.00.
  - b. No. 2 in the amount of \$38,336.34.
  - c. No. 3 in the amount of -\$12,511.00.
26. Change Orders for Fire Station No. 2 Addition:
  - a. No. 1 in the amount of -\$821.00
  - b. No. 2 in the amount of \$7,871.36.
  - c. No. 3 in the amount of \$3,392.55.
  - d. No. 4 in the amount of \$1,209.44.
  - e. No. 5 in the amount of \$1,948.80.
  - f. No. 6 in the amount of \$1,017.35.
  - g. No. 7 in the amount of -\$203.00.
27. NDDES Mitigation Grant Application as a sub-applicant and subsequently acting as a pass through entity to receive and pass reimbursement to the resident for a storm shelter.
28. Agreement for Services with Folkways.
29. Grant Agreement with the ND Department of Health and Human Services, Office of Refugee Support Services.

Page 3 Agreement of Affiliation with North Dakota State University, Department of Public Health.

31. Purchase of Service Agreement with Megan Nies.
32. Resolution Approving Plat of Timber Parkway Tenth Addition.
33. Resolution Approving Plat of Village West Fourth Addition.
34. Set October 2, 2023 at 5:15 p.m. as the date and time for a Public Hearing on a dangerous building at 1809 14th Avenue South.
35. UKG Dimensions Agreement for the upgrade of the time and attendance software (RFP23030).
36. Acceptance of the ND Department of Transportation Grant Funding for Occupant Protection, Impaired Driving, Distracted Driving Enforcement, Speed Enforcement and Underage Drinking Enforcement and Education Activities (CFDA #s 20.616 and 20.600).
37. Purchase of Lexipol/PoliceOne Academy Training software using seized asset forfeiture funds in the amount of \$10,757.70.
38. Extension of the 2022/2023 Services Agreements – Snow Hauling Trucking Services with Master Construction; Lenzmeier Trucking Inc.; J D Kraemer Enterprises, LLC; and Diesel Dogs Trucking, LLC for the 2023/2024 snow season (RFP22137).
39. Street Snow Plowing Services Agreement with Master Construction Co., Inc. (RFP23138).
40. ND Department of Transportation State Aid for Public Transit Agreement for FY 2024.
41. ND Department of Transportation Section 5339 Transit Grant Agreement (CFDA #20.526).
42. Bills.

#### REGULAR AGENDA:

43. **RESIDENT COMMENTS (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at [FargoND.gov/VirtualCommission](https://FargoND.gov/VirtualCommission)).**

#### \*Public Input Opportunity\* - PUBLIC HEARINGS - 5:15 pm:

44. **PUBLIC HEARING** – Interstate Business District Addition (4753 45th Street North and 4269 40th Avenue North); approval recommended by the Planning Commission on 8/1/23:
  - a. Growth Plan Amendment from Residential Area, Lower to Medium Density, Commercial and Proposed Park to Industrial and Commercial.
  - b. Zoning Change from AG, Agricultural and LI, Limited Industrial with a C-O, Conditional Overlay to LI, Limited Industrial with a C-O, Conditional Overlay; GC, General Commercial with a C-O, Conditional Overlay; and P/I, Public and Institutional.
  - c. 1st reading of rezoning Ordinance.
  - d. Plat of Interstate Business District Addition.

**PUBLIC HEARING** - Public comment on the 2024 preliminary budget and recommended tax levies.

46. Application for Abatement or Refund of Taxes #4545 and #4544 at 1201 Elm Street North requesting a reduction in value for 2021 from \$257,200.00 to \$97,000.00 and for 2022 from \$282,900.00 to \$125,900.00.
47. Recommendation for appointments to the Civil Service Commission.
48. Liaison Commissioner Assignment Updates.

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

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA



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

1 AN ORDINANCE AMENDING SECTION 8-1321 OF ARTICLE 8-13 OF  
2 CHAPTER 8 OF THE FARGO MUNICIPAL CODE RELATING TO  
3 USE OF SAFETY BELTS REQUIRED IN CERTAIN MOTOR VEHICLES

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

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

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

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

13 NOW, THEREFORE,

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

15 Section 1. Amendment.

16 Section 8-1321 of Article 8-13 of Chapter 8 of the Fargo Municipal Code is hereby  
17 amended as follows:

18 8-1321. - Use of safety belts required in certain motor vehicles.

19 A driver may not operate on any street or highway in the City of Fargo, a motor vehicle  
20 designed for carrying fewer than 11 passengers, which was originally manufactured with  
21 safety belts, unless each front-seat occupant is wearing a properly adjusted and fastened  
22 safety belt.  
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OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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A. This section shall not apply to the following:

1. A child in a child restraint device or seat belt as defined in § 39-21-41.2, N.D.C.C.
2. Drivers of implements of husbandry.
3. To operators of farm vehicles as defined in subsection 5 of § 39-04-19, N.D.C.C.
4. To rural mail carriers while on duty delivering mail.
5. When all front seat safety belts are in use by other occupants.
6. To an occupant with a medical or physically disabling condition that prevents appropriate restraint in a safety belt, if a qualified physician, physician assistant, or advanced practice registered nurse states in a signed writing the nature of the condition and the reason restraint is inappropriate.
7. To an occupant who is an emergency medical services personnel, during the provision of direct patient care.

~~B. A peace officer may not issue a citation for a violation of this section unless the officer lawfully stopped or detained the driver of the motor vehicle for another violation.~~

Section 2. Penalty.

A person who violates Fargo Municipal Code section 8-1321 shall be deemed to have committed a non-criminal offense and shall pay a fee of \$40 as provided in Section 1-0305 of the Fargo Municipal Code, as may be amended from time to time.

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Section 3. Effective Date.

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

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

Attest:

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

First Reading:  
Second Reading and Final Passage:  
Publication:

Erik R. Johnson  
Assistant City Attorney - Fargo

September 12, 2023

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

RE: Ordinances enacting Articles 3-24 (Lodging Tax) and 3-25 (Sales and Use Tax) to finance the Fargodome Project – Waiver of First Reading


Dear Commissioners:

At your September 5<sup>th</sup> regular meeting, you received and filed the enclosed two ordinances pertaining to the enactment of an additional 3% lodging tax and a ¼% sales and use tax to be imposed and collected for the purpose of financing the remodeling of and the addition of the conference center to the Fargodome. As I explained previously, in order to deliver the enacted sales tax ordinance to the North Dakota Tax Commissioner in a timely manner, we are requesting that the City Commission undertake the customary preliminary steps taken with ordinances, prior to actual final passage and enactment, before the December 5th election, with “final passage” and enactment of the ordinances to occur only after the canvassing of the election votes and the certification of the result and only if the home rule charter amendment has been approved by the required 60% vote. There is a regular City Commission meeting scheduled for Tuesday, December 26th, 2023. By that time, the December 18th canvassing results will be known and the results certified and, therefore, if the city voters have approved the Home Rule Charter amendment, the two ordinances will be presented to the City Commission at the December 26th regular meeting for “final passage.” The two ordinances are drafted to “take effect” on Friday, December 29, 2023. Thus, the ordinances will take effect after the home rule charter amendment takes effect, with collection of both taxes to commence on April 1, 2024.

Therefore, enclosed are the two ordinances that will be used to implement the home rule charter amendment if the amendment is approved by the voters at the special election, submitted herewith for waiver of first reading.

**SUGGESTED MOTION:** I move to waive first reading of the following two ordinances, as presented: An Ordinance Enacting Article 3-24 of Chapter 3 of the Fargo Municipal Code Relating to a Lodging Tax for Fargodome Including Conference Center; and, An Ordinance Enacting Article 3-25 of Chapter 3 of the Fargo Municipal Code Relating to a Sales Tax for Fargodome Including Conference Center; and to place both ordinances on the agenda for the next regular meeting of the City Commission for second reading, but not for final passage.

Sincerely,



Erik R. Johnson

Enclosures

Email: [ejohnson@lawfargo.com](mailto:ejohnson@lawfargo.com)

Phone: 701.371.6850



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

AN ORDINANCE ENACTING ARTICLE 3-24  
OF CHAPTER 3 OF THE FARGO MUNICIPAL CODE  
RELATING TO A LODGING TAX  
FOR FARGODOME  
INCLUDING CONFERENCE CENTER

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

5  
6 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

7  
8 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 purpose; and

9  
10 WHEREAS, by a vote of the electorate of the city of Fargo, the City's home rule charter having  
been amended to authorize a three percent (3%) lodging tax to be imposed and collected in addition  
11 to an existing three percent (3%) city of Fargo lodging tax set forth in Article 3-13 of the Fargo  
Municipal Code, said existing tax having been (a) initially imposed by city ordinance as a two  
12 percent lodging tax (City of Fargo Ord. No. 2014 (June 1981)) under city home rule authority at a  
time when North Dakota non-home-rule cities were empowered by state statute to enact lodging  
13 taxes using state statutory authority (N.D.S.L. Ch. 429 (1981), Sec. 1 – 4) and, therefore by  
exclusion, the city of Fargo and other home rule charter cities could utilize home rule city powers to  
14 enact lodging taxes, and (b) subsequently expanded to the existing three percent lodging tax (City of  
Fargo Ord No. 2595 (1991)) also by said home rule authority; and,

15  
16 WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement  
such authority by the adoption of this ordinance;

17  
18 NOW, THEREFORE, Be it Ordained by the Board of City Commissioners of the City of Fargo:

19 Section 1. Enactment. Article 3-24 of Chapter 3 of the Fargo Municipal Code, consisting of  
Sections 3-2401 through 3-2407, is hereby enacted as follows:

20  
21 3-2401. Definitions.—

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1           1.       Gross receipts - shall mean receipts of retailers for the leasing or renting of a hotel or  
2           motel room or other accommodations occupied by the same natural person or persons for residential  
3           housing, for periods of fewer than thirty consecutive calendar days within the corporate limits of the  
4           city of Fargo.

5           2.       Retailer - shall mean any person, firm or corporation in the business of leasing or  
6           renting hotel, motel or other accommodations for periods of fewer than thirty consecutive calendar  
7           days or one month.

8           3.       Ordinance - All references to "this ordinance" shall mean the ordinance enacted by the  
9           board of city commissioners of the city of Fargo and codified as Article 3-24 of the Fargo Municipal  
10          Code containing enumerated sections commencing with this section 3-2401.

11          3-2402. Tax on gross receipts. -- In addition to the tax imposed pursuant to Fargo Municipal  
12          Code Article 3-13, a three percent (3%) tax is hereby imposed upon gross receipts as defined herein,  
13          which tax shall be computed on a monthly basis by each and every hotel, motel or other  
14          accommodations located within the corporate limits of the city of Fargo. Said tax must be in addition  
15          to the state sales tax on rental accommodations provided in chapter 57-39.2, N.D.C.C. Said tax shall  
16          be placed in a Fargodome improvement capital construction fund of the City of Fargo which, together  
17          with interest and other authorized investment earnings, shall be utilized by the city of Fargo for costs  
18          associated with the remodeling of the Fargodome and with the addition to the Fargodome of a  
19          conference center and with ongoing capital projects, maintenance, and operations of the  
20          Fargodome and functionally-related facilities, including the conference center.

21          3-2403. Collection of tax. -- The tax hereby imposed shall be computed by every retailer and  
22          paid to the city of Fargo. Such computation shall be on a monthly basis and payment for each month  
23          shall be made to the city on or before the 10th day of the following month. The payment shall be  
24          accompanied by a report indicating the amount of gross receipts for the reporting period and shall be  
25          certified by a certified public accountant or by the retailer, or managing officer thereof. The city may  
26          retain up to 3% of the total amount collected for administrative costs.

27          3-2404. Dedication of tax proceeds. -- All fees, taxes, penalties and other charges imposed  
28          and collected under this ordinance, less administrative costs, shall be dedicated and utilized for costs  
29          associated with the remodeling of the Fargodome, with the addition of a conference center to the  
30          Fargodome, and with ongoing capital projects, maintenance, and operations of the Fargodome and  
31          functionally-related facilities including the conference center (the "Projects"), said proceeds to be  
32          placed initially in a Fargodome improvement capital construction fund of the city of Fargo which,  
33          together with interest and other authorized investment earnings, shall be utilized by the city of  
34          Fargo for such purposes. Proceeds from such tax may be used to make direct payment of the costs

OFFICE OF THE CITY ATTORNEY  
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1 for such construction, maintenance, and operation or may be pledged, applied or directed to amortize  
2 bonds or other obligations which may be sold to finance such costs. Interest earnings, earnings from  
3 authorized investments, or both such interest and investment earnings, on such proceeds may also be  
4 utilized for such purposes. Any funds remaining after completion of the Projects and payment of  
5 related obligations will be placed in a special escrow fund which, together with interest earnings and  
6 investment earnings, shall be utilized by the Fargodome Authority, with the concurrence of the  
7 governing body of the city, to provide for future capital improvements, maintenance, and operation  
8 of the Fargodome and functionally-related facilities including the conference center. Proceeds from  
9 such tax may be combined with proceeds from the sales, gross receipts and use tax being implemented  
10 for the same purpose. All such proceeds of a lodging tax which is imposed pursuant to the authority  
11 granted herein shall be utilized for the purposes authorized herein as the governing body of the city  
12 may select. The Fargodome Authority is hereby authorized and encouraged to provide  
13 recommendations to the governing body of the city.

14 3-2405. Failure to comply--Penalty. -- If any retailer shall fail to make payment as required  
15 by this article or to file the necessary report within the time provided, or, if upon audit, is found to  
16 owe additional tax, such retailer shall be subject to a penalty of 5% of the amount of tax due, plus  
17 interest of 1% of such tax for each month of delay or a fraction thereof. The board of city  
18 commissioners, if satisfied that the delay was excusable, may waive all or any part of such penalty  
19 and interest. Any penalty and interest paid shall be utilized in the same manner as other receipts under  
20 this article.

21 3-2406. Saving clause. -- Should any section, paragraph, sentence, clause or phrase of this  
22 ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall  
23 not be affected thereby.

3-2407. Term. -- A tax imposed by this ordinance shall extend for a period of twenty (20)  
years from and after April 1, 2024, and ending on March 31, 2044.

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

Section 2. Effective Date.

This ordinance shall be in full force and effect from and after December 29, 2023.

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Timothy J. Mahoney, M.D., 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 ENACTING ARTICLE 3-25  
OF CHAPTER 3 OF THE FARGO MUNICIPAL CODE  
RELATING TO A SALES TAX FOR FARGODOME  
INCLUDING CONFERENCE CENTER

1  
2  
3 WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in accordance with  
Chapter 40-05.1 of the North Dakota Century Code; and

4  
5 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

6  
7 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 purpose; and

8  
9 WHEREAS, an amendment to the City’s Home Rule Charter has been authorized by a vote of at  
least 60% of the qualified electors voting on the question, as provided by initiated amendment  
Number Two to the Fargo Home Rule Charter; and

10  
11 WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement  
such authority by the adoption of this ordinance;

12  
13 NOW, THEREFORE, Be it Ordained by the Board of City Commissioners of the City of Fargo:

14 Section 1. Enactment. Article 3-25 of Chapter 3 of the Fargo Municipal Code, consisting of  
Sections 3-2501 through 3-2512, is hereby enacted as follows:

15 3-2501. Definitions. -- All terms defined in chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-  
16 39.6, and 57-40.2 of the North Dakota Century Code (N.D.C.C.), including any future amendments,  
are adopted by reference. All references to the N.D.C.C. include amendments adopted by the North  
17 Dakota Legislative Assembly. All references to “this ordinance” shall mean the ordinance enacted  
by the board of city commissioners of the city of Fargo and codified as Article 3-25 of the Fargo  
18 Municipal Code containing enumerated sections commencing with this section 3-2501.

19 3-2502. Collection and administration. -- Where not in conflict with the provisions of this  
20 ordinance, the provisions of N.D.C.C. chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-  
40.2, and all administrative rules adopted by the Tax Commissioner, pertaining to the collection and  
21 administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund,  
22

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penalty, interest or credit, govern the administration by the North Dakota Office of State Tax Commissioner (hereinafter "Tax Commissioner") of the taxes imposed by this ordinance.

1       3-2503. Sales tax imposed. -- Subject to the provisions of N.D.C.C. § 40-05.1-06, and except  
2 as otherwise provided by this ordinance, or the sales and use tax laws of the State of North Dakota, a  
3 tax of one-quarter of one percent (0.25%) is imposed upon the gross receipts of retailers from all sales  
at retail, including the leasing or renting of tangible personal property, within the corporate limits of  
the of the city of Fargo, North Dakota.

4       3-2504. Use tax imposed. -- Subject to the provisions of N.D.C.C. § 40-05.1-06, and except  
5 as otherwise provided in this ordinance, or the sales and use tax laws of the State of North Dakota, an  
6 excise tax is imposed upon the storage, use, or consumption within the corporate limits of the city of  
7 Fargo, North Dakota of tangible personal property purchased at retail for storage, use, or consumption  
8 in this city, at the rate of one-quarter of one percent (0.25%) of the purchase price of the property. An  
9 excise tax is imposed on the storage, use, or consumption within the corporate limits of the city of  
Fargo, North Dakota of tangible personal property not originally purchased for storage, use, or  
consumption in this city at the rate of one-quarter of one percent (0.25%) percent of the fair market  
value of the property at the time it was brought into this city.

10       With respect to the purchase price of tangible personal property used by a contractor or subcontractor  
11 to fulfill a contract as defined in N.D.C.C. § 57-40.2-03.3, the tax imposed by this section applies only  
to bids submitted on or after the effective date of this ordinance.

12       3-2505. Gross receipts of alcoholic beverages. -- Subject to the provisions of N.D.C.C. § 40-  
13 05.1-06, and except as otherwise provided in this ordinance, a gross receipts tax of one-quarter of one  
14 percent (0.25%) is imposed upon all gross receipts from the sale of alcoholic beverages within the  
15 city. A person who receives alcoholic beverages for storage, use, or consumption in this state is  
subject to tax on storage, use, or consumption of those alcoholic beverages at the rate of one-quarter  
of one percent (0.25%).

16       3-2506. Gross receipts of new farm machinery and new farm irrigation equipment. -- Subject  
17 to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this ordinance, a  
18 gross receipts tax of one-quarter of one percent (0.25%) is imposed upon all gross receipts from the  
19 sale of new farm machinery and new farm irrigation equipment within the city. A person who  
20 receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in  
this state is subject to tax on storage, use, or consumption of that machinery and/or equipment at the  
rate of one-quarter of one percent (0.25%).

21       3-2507. Maximum tax imposed. -- Any patron or user paying a tax imposed by this ordinance  
22 in excess of six and 25/100ths dollars (\$6.25) upon any single transaction of one or more items may  
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obtain a credit or refund of the excess tax at the time of purchase from the vendor or request a refund of the excess tax payment by filing a request for refund upon the forms provided by the Tax Commissioner.

1           3-2508. Exemptions. -- All sales, storage, use, or consumption of tangible personal property  
2 which are exempt from imposition and computation of the sales or use tax of the state of North Dakota  
3 are specifically exempt from the provisions of this ordinance.

4           3-2509. Dedication of tax proceeds. -- All fees, taxes, penalties and other charges imposed  
5 and collected under this ordinance, less administrative costs, are hereby dedicated and shall be utilized  
6 for costs associated with the remodeling of the Fargodome, with the addition of a conference center  
7 to the Fargodome, and with ongoing capital projects, maintenance, and operations of the  
8 Fargodome and functionally-related facilities, including the conference center (the "Projects");  
9 said proceeds to be placed initially in a Fargodome improvement capital construction fund of the city  
10 of Fargo which, together with interest and other authorized investment earnings, shall be utilized by  
11 the city of Fargo for such purposes. Proceeds from such tax may be used to make direct payment of  
12 the costs for such construction, maintenance, and operations or may be pledged, applied or directed  
13 to amortize bonds or other obligations which may be sold to finance such costs. Interest earnings,  
14 earnings from authorized investments, or both such interest and investment earnings, on such  
15 proceeds may also be utilized for such purposes. Any funds remaining after completion of the  
16 Projects and payment of related obligations will be placed in a special escrow fund which, together  
17 with interest earnings and investment earnings, shall be utilized by the Fargodome Authority, with  
18 the concurrence of the governing body of the city, to provide for future capital improvements,  
19 maintenance, and operation of the Fargodome and functionally-related facilities including the  
20 conference center. Proceeds from such tax may be combined with proceeds from the lodging tax  
21 being imposed for the same purpose. All such proceeds of a sales, gross receipts and use tax which  
22 is imposed pursuant to the authority granted herein shall be utilized for the purposes authorized herein  
23 as the governing body of the city may select. The Fargodome Authority is hereby authorized and  
encouraged to provide recommendations to the governing body of the city.

16           3-2510. Contract with state tax commissioner. -- The city auditor of the city of Fargo is  
17 hereby authorized to contract with the Tax Commissioner for administration and collection of taxes  
18 imposed by this ordinance. The City Auditor has all powers granted to the Tax Commissioner and in  
19 the absence of a valid contract with the Tax Commissioner or failure of the Tax Commissioner to  
20 perform the delegated duties, shall perform these duties in place of the Tax Commissioner.

19           3-2511. Saving clause. -- Should any section, paragraph, sentence, clause or phrase of this  
20 ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall  
21 not be affected thereby.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

3-2512. Term. – A tax imposed by this ordinance shall extend for a period of twenty (20) years from and after April 1, 2024, and ending on March 31, 2044.

1 Section 2. Effective Date.

2 This ordinance shall be in full force and effect from and after December 29, 2023.

3  
4  
5 \_\_\_\_\_  
6 Timothy J. Mahoney, M.D., Mayor

6 (SEAL)

7 Attest:

8  
9 \_\_\_\_\_  
10 Steven Sprague, City Auditor

11 First Reading:  
12 Second Reading:  
13 Final Passage:  
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**CITY ATTORNEY**

Nancy J. Morris

**ASSISTANT CITY ATTORNEYS**

Ian R. McLean ▪ Alissa R. Farol ▪ William B. Wischer

④

September 14, 2023

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

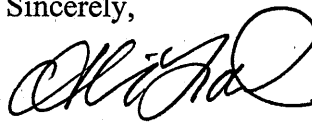
**RE: Dangerous Building located at 1449 4<sup>th</sup> Avenue South, Fargo, North Dakota**

Dear Commissioners,

Enclosed for your review and approval are proposed Findings of Fact, Conclusions and Order regarding the dangerous building proceeding for the property at 1449 4<sup>th</sup> Avenue South. At its September 5<sup>th</sup>, 2023 meeting, the report presented by Shawn Ouradnik, city of Fargo Building Inspections Director, was approved by the Board. As such, the City Attorney's Office was directed to prepare the appropriate Findings of Fact, Conclusions and Order, and Notice.

**Suggested Motion:** I move to approve the Findings of Fact, Conclusions and Order, as presented.

Sincerely,



Alissa R. Farol  
Assistant City Attorney

Enclosure

cc: Shawn Ouradnik, Inspections Department

**FINDINGS OF FACT, CONCLUSIONS AND ORDER**  
**of the**  
**BOARD OF CITY COMMISSIONERS**  
**OF THE CITY OF FARGO**

Property Address: 1449 4<sup>th</sup> Avenue South, Fargo, North Dakota, 58103

Property Owner: Lori Jill Eveland

A hearing was held before the Board of City Commissioners of the City of Fargo on the 5<sup>th</sup> day of September, 2023 regarding the property located at 1449 4<sup>th</sup> Avenue South, Fargo, North Dakota. Shawn Ouradnik, city of Fargo Building Inspections Director, appeared on behalf of the city of Fargo Inspections Department and provided testimony as to the condition of the property. In addition, Kathy Polansky and Todd Kensinger, neighbors, additionally appeared and provided testimony. The Property Owner did not appear.

The Board heard the testimony offered by the Inspections Director and neighbors, considered the reports, evidence and other information presented, and hereby makes the following Findings of Fact:

**FINDINGS OF FACT**

1. That Lori Jill Eveland is the owner of the following described real property located in the City of Fargo, County of Cass and State of North Dakota:

West 36.6 Feet of South 110 Feet of Lot Two (2), Block One (1) of Case, Peake, and Hall Addition to the city of Fargo

Street address: 1449 4<sup>th</sup> Avenue South, Fargo, North Dakota, 58103

[hereinafter “Subject Property”].

2. That on June 22, 2023, Dillon Riemann, Building Inspector to the City of Fargo, inspected the Subject Property and found the building, consisting of a single-story, single-stall wood-framed detached garage to be dangerous buildings within the standards set forth in Article 21-04 of the Fargo Municipal Code and Section 111.1.5 of the International Property Maintenance Code concerning dangerous structures.

3. That the building is unsafe and dangerous in the following respects: (a) extensive fire damage to structure; (b) missing and broken windows; (c) compromised weather proofed surfaces; and (d) damaged and inoperable overhead door.

4. That the following conditions exist with respect to the Subject Property:

- a. The building is unsafe, fails to provide the amenities essential to decent living, and is unfit for human habitation; and
- b. The building is unsafe or dangerous to the health, moral safety or general welfare of the people of the City of Fargo.

5. That the information in the files of the Inspections Department stemming from various inspections of the property on or before June 22, 2023, in respect to the Subject Property is hereby accepted as true and correct.

6. That Notice of Dangerous Building was posted on the property on or about June 22, 2023, in accordance with Municipal Code § 21-0404. The Notice of Dangerous Building informed the owner and all occupants, if any, that the “dangerous buildings” must be vacated and secured, and the buildings must be demolished or any necessary and valid permits be obtained within thirty (30) days from the date of the notice.

**CONCLUSIONS AND ORDER**

Based on the foregoing Findings of Fact, the Board of City Commissioners hereby makes the following Conclusions:

1. That the garage located at 1449 4<sup>th</sup> Avenue South, Fargo, North Dakota 58103, is hereby found to be a “dangerous building.”
2. That the owner or anyone claiming to have an ownership interest in said building has not sufficiently presented cause why the “dangerous building” should not be demolished.
3. That despite being ordered that the building on the Subject Property should be demolished or necessary and valid permits be obtained within thirty (30) days of the notice, the owner or anyone else claiming to have an ownership interest in said building has failed to do so.

**IT IS HEREBY ORDERED** that Lori Jill Eveland or anyone else claiming an ownership interest, shall demolish the “dangerous building” and remove all building debris and construction materials located at 1449 4<sup>th</sup> Avenue South, Fargo, North Dakota by November 4, 2023.

It is further ordered that if the owner fails to demolish said “dangerous building,” the City Auditor, Building Inspector and City Attorney are directed to act on behalf of the City of Fargo to cause the “dangerous building” to be demolished, and the cost of said demolition to be assessed against the Subject Property as provided in Section 21-0405 of the Fargo Municipal Code.

DATED this \_\_\_\_ day of September, 2023.

BOARD of CITY COMMISSIONERS of the CITY  
OF FARGO,  
a North Dakota Municipal Corporation

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

ATTEST:

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

**NOTICE OF ENTRY OF ORDER**

TO: LORI JILL EVELAND AND ALL OTHER PERSONS HAVING INTEREST IN THIS PROPERTY

RE: PROPERTY AT 1449 4<sup>TH</sup> AVENUE SOUTH, FARGO, NORTH DAKOTA 58103

YOU ARE HEREBY GIVEN NOTICE that you shall have thirty (30) days from the date of service of Findings of Fact and Conclusions and Order of the Board of City Commissioners of the City of Fargo (“Order”) upon you in which to appeal the Order to the District Court of Cass County, North Dakota, or to take such other legal action to enjoin the enforcement of this Order as you deem proper, all-in accordance with the appeal procedure set forth in Fargo Municipal Code § 21-0412. You are further given notice that the “dangerous building” on the Subject Property may be demolished by the city of Fargo at any time on or after November 4, 2023.

DATED this \_\_\_\_\_ day of September, 2023.

BOARD OF CITY COMMISSIONERS  
CITY OF FARGO, a North Dakota Municipal Corporation

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

ATTEST:

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

5

## MEMORANDUM

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**TO: Board of City Commissioners**

**FROM: Steven Sprague, City Auditor**

**SUBJECT: Designated Depositories**

**DATE: September 18, 2023**

At the September 5<sup>th</sup> City Commission meeting Susan Thompson was appointed Finance Director, it is time to update our authorized signors.

I would like to designate all financial institutions and brokerage firms located in the City of Fargo as designated depositories of the City of Fargo in addition please designate PFM Financial Advisors Group as asset managers. Also, it is time to update the authorized signors of public funds.

Copies of the updated resolution will be forwarded to financial institutions located in the City.

If you have any questions, please call me at 241-1301

**Recommended Motion:**

**Approve the Resolution Authorizing Officers to make Deposits and Withdrawals and approve the Designated Depositories.**

**CITY OF FARGO RESOLUTION AUTHORIZING OFFICERS TO MAKE DEPOSITS AND WITHDRAWALS**

**WHEREAS**, The City of Fargo, a municipal corporation existing under the laws of the State of North Dakota, must designate depositories of the funds of the City of Fargo,

**NOW THEREFORE BE IT RESOLVED**, That the Board of City Commissioners of the City of Fargo, North Dakota hereby designates any City of Fargo Financial Institution or Brokerage Firm and PFM Financial Advisors to be a depository of the funds of the City of Fargo, and that the said funds be subject to withdrawal upon checks, notes, drafts, bills of exchange, acceptances, undertakings or other orders for the payment of money when signed by two signatures of the following: Timothy J. Mahoney, Mayor; Susan Thompson, Director of Finance, Angie Bear, Deputy City Auditor and Steven Sprague, City Auditor with one of the signatures being either Steven Sprague or Susan Thompson.

**BE IT FURTHER RESOLVED**, That the depository institution is authorized to pay any such checks, notes, drafts, bills of exchange, acceptances, undertakings or other orders and also to receive the same for the credit of or in payment from the payee or any other holder without inquiry as to the circumstance of issue or the disposition of the proceeds thereof, even if drawn to the individual order of any signing officer or payable to said firm or others for his account, or tendered in payment of his individual obligation.

**BE IT FURTHER RESOLVED**, That any and all endorsements for or on behalf of the City of Fargo upon checks, drafts, notes or instruments for deposit or collection made with the said Firm may be written or stamped endorsements of the City of Fargo without any designation of the person making such endorsements.

**BE IT FURTHER RESOLVED**, That said Firm be promptly notified in writing by the City Auditor or any other officer of the City of Fargo of any change in these resolutions and that until it has actually received such notice in writing said Firm is authorized to act in pursuance of these resolutions.

**WE FURTHER CERTIFY**, That these resolutions are within the power of the Board of City Commissioners to pass as provided in the Home Rule Charter to the City of Fargo.

Adopted at the meeting of the Board of City Commissioners this 18<sup>th</sup> day of September 2023.

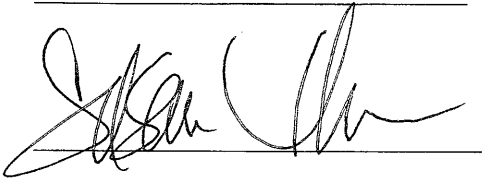
SEAL

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

IN WITNESS WHEREOF, I have hereunto set my hand as City Auditor of the City of Fargo and affixed the corporate seal this 18<sup>th</sup> day of September, 2023.

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

The following are the Signatures of the authorized officers of the City of Fargo to sign for the deposited funds as adopted on September 18, 2023.

A handwritten signature in cursive script, appearing to read "Timothy J. Mahoney", written over a horizontal line.

Timothy J. Mahoney, Mayor

A handwritten signature in cursive script, appearing to read "Susan Thompson", written over a horizontal line.

Susan Thompson, Director of Finance

A handwritten signature in cursive script, appearing to read "Steven Sprague", written over a horizontal line.

Steven Sprague, City Auditor

A handwritten signature in cursive script, appearing to read "Angie Bear", written over a horizontal line.

Angie Bear, Deputy City Auditor



(6)

**AUDITOR'S OFFICE**

Fargo City Hall  
225 4th Street North  
PO Box 2471  
Fargo, ND 58108  
Phone: 701.241.8108 | Fax: 701.241.8184  
www.FargoND.gov

**MEMORANDUM**

---

TO: Board of City Commissioners  
FROM: Steven Sprague, City Auditor  
SUBJECT: Special Election matters--Fargodome Project  
DATE: September 13, 2023

A proposed resolution is submitted for your approval. At the City Commission's September 5, 2023, regular meeting a Resolution was adopted proposing a sales and use tax and a lodging tax to be presented for city-wide vote and a second resolution was adopted setting the date for the special election as December 5, 2023, and establishing three polling locations.

The North Dakota Century Code requires the city commission to establish the precincts for this special election. We are proposing establishing the entire city as a single precinct so that voters can vote at any one of the three polling locations (Fargodome, Fargo Civic Memorial Auditorium or Ramada Inn). Further, state law sets election official compensation at the Federal minimum wage unless a higher sum is established by resolution of the city commission and, therefore, the enclosed resolution proposes that compensation for election workers be established as follows: \$20/hour for Poll Clerks and Judges and \$25/ hour for Inspectors.

We continue to contact election workers and will bring the list to you for approval at a future date for your appointment along with the appointment of the members of the canvassing board for the special election. The enclosed resolution has been drafted by the City Attorney's Office and is remitted for your consideration and approval.

**Recommended Motion:**

**I move to adopt the Resolution establishing the city as a single precinct for the special election and establishing election officials' compensation as presented.**

Enclosure

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

**RESOLUTION**  
**[Special Election Matters – Establishing Precinct-Setting Compensation of Election Officials]**

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

WHEREAS, the Board of City Commissioners has, on September 5, 2023, adopted a resolution establishing December 5, 2023, as the date of a special election for city-wide vote on a proposal for a sales, gross receipts and use tax for a period of twenty (20) years and for a lodging tax on hotel and motel room rentals for a period of twenty (20) years, with the proceeds of such taxes to be utilized to pay or finance costs associated with the remodeling of the Fargodome, with the addition of a conference center to the Fargodome, and with ongoing capital projects, maintenance, and operation of the Fargodome and functionally-related facilities including the conference center (the “Projects”); and,

WHEREAS, the Board of City Commissioners wishes to establish a single precinct for the said special election and to establish the rate of compensation for election officials for said special election;

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of City Commissioners of the City of Fargo, North Dakota, as follows:

That with respect to the special election to be held on December 5, 2023, as provided by the Resolution of September 5, 2023, it is hereby declared that the city of Fargo be comprised of a single election precinct, the borders of which are to be the corporate limits of the city of Fargo; and,

That the rate of compensation for the election officials serving said special election shall be: (a) election polling clerks and election judges shall be compensated at a rate of \$20.00 per hour and election inspectors shall be compensated at a rate of \$25.00 per hour, it being understood and declared that such compensation shall be applicable to services provided by said election officials for the election itself as well as for training in preparation for said election.

[Remainder of page blank—execution page to follow]

\_\_\_\_\_  
Mayor

Attest:

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

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

The following were absent and not voting: \_\_\_\_\_,  
and the following voted against the same: \_\_\_\_\_,  
whereupon the resolution was declared duly passed and adopted.



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 GAMING DIVISION  
 SFN 9338 (4-2023)

7a

Applying for (check one)

Local Permit       Restricted Event Permit\*

Games to be conducted

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

\*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.  
**LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS**

**ORGANIZATION INFO**

Name of Organization or Group <b>Fm Derby Girls</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>9/23/23</b>	
Organization or Group Contact Person <b>Katie Kalabza</b>	E-mail <b>FMDGOoperations@gmail</b>	Telephone Number <b>701-730-1477</b>	
Business Address <b>PO Box 10644</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58106</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>John E. Carlson Arena</b>	County <b>Cass</b>
Site Physical Address <b>807 17<sup>th</sup> Ave N</b>	City <b>Fargo</b>
	State <b>ND</b>
	ZIP Code <b>5802</b>

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)

**PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)**

Game Type	Description of Prize	Exact Retail Value of Prize
<b>raffle tickets 50/50</b>	<b>Cash</b>	<b>Approx. \$ 120</b>
<b>Total</b> (limit \$40,000 per year)		<b>\$ 120</b>

Intended Uses of Gaming Proceeds  
**Donate to Charity**

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)

Yes     No

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1 - June 30 (If yes, the organization or group does not qualify for a local permit or restricted event permit)

Yes     No

Has the organization or group received a local permit from an city or county for the fiscal year July 1 - June 30 (If yes, indicate the total retail value of all prizes previously awarded)

No     Yes - Total Retail Value: **\$300** (This amount is part of the total prize limit for \$40,000 per fiscal year)

Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be for political purposes.)

Yes     No

Name <b>Katie Kalabza</b>	Title <b>Treasurer</b>	Telephone Number <b>701-730-1477</b>	E-mail Address <b>FMDGOoperations@gmail.com</b>
Signature of Organization or Group's Top Official <b>Katie Kalabza</b>		Title <b>Treasurer</b>	Date <b>8/31/23</b>

76



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 GAMING DIVISION  
 SFN 9338 (4-2023)

Applying for (check one)

Local Permit       Restricted Event Permit\*

Games to be conducted       Raffle by a Political or Legislative District Party

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

\*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.  
**LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS**

**ORGANIZATION INFO**

Name of Organization or Group <b>FirstChoice Clinic dba Women's Care Center</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>10/09/2023</b>	
Organization or Group Contact Person <b>Mona Franck</b>	E-mail <b>mona@wccnd.com</b>	Telephone Number <b>701-237-5902</b>	
Business Address <b>103 University Dr N</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58102</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>Delta by Marriot</b>		County	
Site Physical Address <b>1635 42nd St SW</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58103</b>
Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)			

**PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)**

Game Type	Description of Prize	Exact Retail Value of Prize
Bingo	Designer Purse/Tote	\$1,000
Bingo	Black Hills at Terry Peak AirB&B 4 Nite Stay	\$1,400
Bingo	Landscaping Material and Debris Removal	\$2,000
Total (limit \$40,000 per year)		\$ <b>20,804</b>

Intended Uses of Gaming Proceeds

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)

Yes     No

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1 - June 30 (If yes, the organization or group does not qualify for a local permit or restricted event permit)

Yes     No

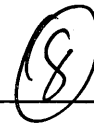
Has the organization or group received a local permit from an city or county for the fiscal year July 1 - June 30 (If yes, indicate the total retail value of all prizes previously awarded)

No     Yes - Total Retail Value: \_\_\_\_\_ (This amount is part of the total prize limit for \$40,000 per fiscal year)

Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be for political purposes.)

Yes     No

Name <b>Mona Franck</b>	Title <b>Office Manager / Events</b>	Telephone Number <b>701-237-5902</b>	E-mail Address <b>mona@wccnd.com</b>
Signature of Organization or Group's Top Official <i>Mona Franck</i>		Title <b>Office Manager</b>	Date <b>9/7/2023</b>



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. UR-22-B1

Type: Negative Final Balancing Change Order #5

Location: Citywide

Date of Hearing: 9/11/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>9/18/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Roger Kluck</u>

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, regarding Negative Final Balancing Change Order #5 in the amount of \$-62,377.95, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #5 in the amount of \$-62,377.95, bringing the total contract amount to \$316,767.05.

On a motion by Brenda Derrig, seconded by Ben Dow, the Committee voted to recommend approval of Negative Final Balancing Change Order #5 to Key Contracting.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Negative Final Balancing Change Order #5 in the amount of \$-62,377.95, bringing the total contract amount to \$316,737.05 to Key Contracting.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Storm Sewer Utility


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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
 \_\_\_\_\_  
 Tom Knakmuhs, P.E.  
 City Engineer



**CHANGE ORDER REPORT**  
**UTILITY REHAB/RECONSTRUCTION**  
**PROJECT NO. UR-22-B1**

Final Balancing  
Change Order

**SITE 1: 2701 1 AVE N; SITE 2: 4020 12 AVE N; SITE 3: DAKOTA DR N-DRAIN 3  
 OUTLET REPAIR; SITE 4: 3402 43 AVE S; SITE 5: 4475 7 AVE N LS 12; SITE 6: 3201  
 & 3202 4 AVE S; SITE 7: 3 AVE N & 45 ST N LS 50; SITE 8: 9 AVE S & 45 ST S LS 51;  
 SITE 9: 40 AVE S & 66 ST S LS 69**

**Change Order No** 5      **Change Order Date** 8/30/2023  
**Contractor** 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**      Change Order # 5  
 Final Balancing Change Order

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev		Curr		Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
					C/O Qty	Cont Qty	C/O Qty	Cont Qty			
Site 1-2701 1st Ave N New MH & Pipe Repair	11	Seeding Type B	SY	40	0	20	88	108	\$10.00	\$880.00	
	12	Mulching Type 1 Hydro	SY	40	0	20	88	108	\$10.00	\$880.00	
	13	Inlet Protection - Existing Inlet	EA	-4	0	2	-2	0	\$200.00	-\$400.00	
				<b>Site 1-2701 1st Ave N New MH &amp; Pipe Repair Sub Total</b>					<b>\$1,360.00</b>		
Site 3-Dakota Dr N/Drain 3 Outlet Repair	17	Sidewalk 5" Thick Reinf Conc	SY	15	0	15	-2	13	\$180.00	-\$360.00	
	22	F&I Curb & Gutter Standard (Type II)	LF	35	0	35	-35	0	\$140.00	-\$4,900.00	
	23	Seeding Type B	SY	77	0	40	105	145	\$15.00	\$1,575.00	

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Curr Cont Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)	
	38	F&I Pipe 12" Dia	LF	15	15	15	-15	0	0	\$10.00	-\$150.00	
	39	Repair Manhole Floor & Invert	EA	1	1	1	-1	0	0	\$200.00	-\$200.00	
	40	Repair Inlet Floor & Invert	EA	-1	1	1	-1	0	0	\$200.00	-\$200.00	
	<b>Site 4-3402 43 Ave S Pipe Repair Sub Total -\$10,080.00</b>											
Site 5-4475 7 Ave N LS 12 Access	43	Excavate & Haul - Excess Material	CY	175	175	175	-101	74	74	\$25.00	-\$2,525.00	
	45	F&I Woven Geotextile	SY	350	350	350	-183	167	167	\$4.00	-\$732.00	
	46	F&I Crushed Conc - 12" Thick	SY	350	350	350	-183	167	167	\$18.00	-\$3,294.00	
	47	Mulching Type 1 Hydro	SY	-68	0	200	-200	0	0	\$10.00	-\$2,000.00	
	48	Seeding Type B	SY	-68	0	200	-200	0	0	\$10.00	-\$2,000.00	
	49	Sediment Control Log 6" to 8" Dia	LF	30	30	30	-30	0	0	\$12.00	-\$360.00	
	50	Traffic Control - Type 1	LS	-3	0	1	-1	0	0	\$2,800.00	-\$2,800.00	
	<b>Site 5-4475 7 Ave N LS 12 Access Sub Total -\$13,711.00</b>											
Site 6-3201 & 3202 4 Ave S Pipe Repair	54	Topsoil - Strip & Spread	CY	60	60	60	-23	37	37	\$12.00	-\$276.00	
	55	Fill - Import	CY	70	70	70	-70	0	0	\$28.00	-\$1,960.00	
	56	Mulching Type 1 Hydro	SY	786	0	250	604	854	854	\$6.00	\$3,624.00	
	57	Seeding Type B	SY	786	0	250	604	854	854	\$6.00	\$3,624.00	
	58	Sediment Control Log 6" to 8" Dia	LF	60	60	60	-30	30	30	\$8.00	-\$240.00	



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 (\$)
	80	Mulching Type 1 Hydro	SY	-61	0	35	-28	7	\$15.00	-\$420.00
	81	Seeding Type B	SY	-61	0	35	-28	7	\$15.00	-\$420.00
		<b>Site 8-9 Ave S &amp; 45 St S LS 51 Access Sub Total</b>								<b>\$867.00</b>
Site 9-40 Ave S & 66 St S LS 69 Access	88	F&I Woven Geotextile	SY	90		90	-26	64	\$4.00	-\$104.00
	89	F&I Crushed Conc - 12" Thick	SY	90		90	-26	64	\$18.00	-\$468.00
	90	Rem & Repl Curb & Gutter	LF	10		10	5	15	\$120.00	\$600.00
	91	F&I Pavement 7" Thick Reinf Conc	SY	90		90	-26	64	\$120.00	-\$3,120.00
	92	Mulching Type 1 Hydro	SY	-46	0	50	-28	22	\$5.00	-\$140.00
	93	Seeding Type B	SY	-46	0	50	-28	22	\$5.00	-\$140.00
		<b>Site 9-40 Ave S &amp; 66 St S LS 69 Access Sub Total</b>								<b>-\$3,372.00</b>
Change Order 1	104	Repair Pavement - Patch Asph	SY	0.39999999999999997	0	3.4	2.4	5.8	\$1,000.00	\$2,400.00
	105	Mulching Type 1 Hydro	SY	-30	0	68	-30	38	\$5.00	-\$150.00
	106	Seeding Type B	SY	-30	0	68	-30	38	\$5.00	-\$150.00
	107	Inlet Protection - Existing Inlet	EA	-4	0	2	-2	0	\$200.00	-\$400.00
		<b>Change Order 1 Sub Total</b>								<b>\$1,700.00</b>
Change Order 2	114	Inlet Protection - Existing Inlet	EA	-3	0	2	-1	1	\$200.00	-\$200.00
Change Order 4	123	F&I Pavement 7" Thick Doweled Conc	SY	-3	170	170	-3	167	\$94.00	-\$282.00
		<b>Change Order 2 Sub Total</b>								<b>-\$200.00</b>

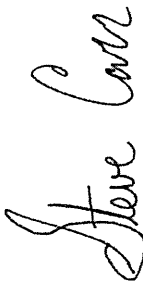

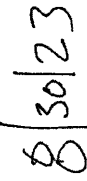
**Summary.**

**Source Of Funding**  
**Net Amount Change Order # 5 (\$)**  
**Previous Change Orders (\$)**  
**Original Contract Amount (\$)**  
**Total Contract Amount (\$)**

Storm Sewer Utility  
 ~\$62,377.95  
 \$86,058.00  
 \$293,057.00  
 \$316,737.05

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

**APPROVED**  
**For Contractor**  
**Title**

**APPROVED DATE**  
**Department Head**  
**Mayor**  
**Attest**



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

9

Project No.: SL-23-B1 Type: Cost Participation and Maintenance Agreement  
 NDDOT Project No.: CRP-8-984(178)

Location: Citywide Date of Hearing: 9/11/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>9/18/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Jeremy Gorden</u>

The Committee reviewed the accompanying correspondence from Division Engineer, Jeremy Gorden, regarding a Cost Participation and Maintenance Agreements (CPM) with NDDOT for the following project:

- Street Lighting Fixture Replacement Project  
 City Project No. SL-23-B1  
 NDDOT Project No. CRP-8-984(178)

Funding for the projects will consist of Federal Highway Funds from the NDDOT's Carbon Reduction Program (CRP) and City of Fargo Street Lighting & Traffic Control Device Utility Funds. This project is set to be bid in Bismarck on November 17, 2023 and is scheduled to have a substantial completion date of October 31, 2024.

Staff is recommending approval of the CPM Agreement.

On a motion by Nicole Crutchfield, seconded by Brenda Derrig, the Committee voted to recommend approval of the CPM Agreement with the NDDOT.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve the CPM Agreements with the NDDOT.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Federal Hwy Fund & St Light & Traffic Utility Fund


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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u><input checked="" type="checkbox"/></u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs, P.E.  
 City Engineer

# Memorandum

**To:** Members of PWPEC

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

**Date:** September 7, 2023

**Re:** Approval of Cost, Participation and Maintenance (CPM) Agreement with  
NDDOT for Street Lighting Fixture Replacement Project  
NDDOT Project No. CRP-8-984(178)  
City of Fargo Project No. SL-23-B1

---

## **Background:**

I have attached a CPM Agreement from the Local Government Division of the NDDOT for the Street Lighting Fixture Replacement Project. Funding for the project will consist of Federal Highway Funds from the NDDOT's Carbon Reduction Program (CRP), and our Street Lighting & Traffic Control Device Utility Fund.

The estimated construction cost breakout is as follows:

Estimated Project Cost:	\$ 1,222,075
Federal Share:	\$ 937,883 (capped)
City Share:	\$ 284,192

This project is set to be bid in Bismarck on November 17, 2023 and is scheduled to have a Substantial Completion Date of October 31, 2024.

## **Recommended Motion:**

I recommend approval of the CPM Agreement.

JMG/klb  
Attachment

**MEMO TO:** Chad Orn  
Deputy Director for Planning

**FROM:** Marohl, Sengaroun H., 328-4449  
Local Government Division

**DATE:** 09/06/2023

**SUBJECT:** Cost Participation, Construction and Maintenance Agreement for Project  
CRP-8-984(178) PCN 24017

This contract is a Cost Participation, Construction and Maintenance (CPM) agreement with City of Fargo on Citywide LED Lighting project.

Contract # 38231195

- The type of work is LED Lighting
- The CRP Federal Funds for this project is limited to \$ 937,883.
- Any costs over the above limited amount will be City responsibility.
  
- No one time changes on the standard agreement template.

38/sm

Contract routing:  
Seng Marohl - Contract Owner  
Stacey Hanson  
Paul Benning  
Shannon Sauer  
Jeremy Gorden - Transportation Division Engineer  
City of Fargo Officials  
Seng Marohl  
Legal  
Chad Orn  
Stacey Hanson

**North Dakota Department of Transportation  
COST PARTICIPATION, CONSTRUCTION, AND MAINTENANCE AGREEMENT  
LPA FEDERAL AID PROJECT**

**Federal Award Information – to be provided by NDDOT**

Assistance Listing No: 20.205

Assistance Listing Title: Highway Planning & Construction

Award Name: Federal Aid Highway Program

Awarding Fed. Agency: Federal Highway Admin

NDDOT Program Mgr: Marohl, Sengaroun

Telephone: 701-328-4449

**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.**

**For NDDOT use only.**

**FHWA Authorization date:**

**Project No. CRP-8-984(178) PCN: 24017**

**LPA: CITY FARGO**

**Location: FARGO CITYWIDE**

**Type of Improvement: LED LIGHTING**

**Length: N/A**

This agreement 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 the Local Public Agency (LPA) of City Fargo, North Dakota, hereinafter referred to as the LPA, who agree that:

It is in the best interest of both parties to have the LPA construct and maintain this project according to the terms and conditions set forth in this agreement. NDDOT will assist the LPA with the preparation and distribution of the bid documents and include the project in a scheduled bid opening.

The LPA agrees to the terms and conditions required for this project by the Federal Highway Administration (FHWA).

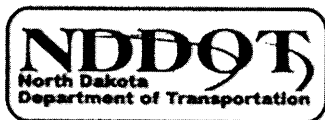
NDDOT will procure federal funds for the construction of the project, pursuant to Title 23 of the United States Code.

Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project cost up to a maximum of \$937,883. The balance of the project is the obligation of the LPA.

Additional Funding Clause

None

The total eligible project costs include the cost of those items shown in the engineer's detailed estimate as approved for federal funds and any project changes approved by NDDOT for the use of federal funds.



Federal funds may not be obligated by the LPA, prior to FHWA approval of the program documents for the project.

## PART I

LPA Obligation:

1. To comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The LPA 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 LPA 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 LPA of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. Seq.).

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 solicitation, 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 NDDOT deems appropriate.

2. To comply with requirements of 23 CFR Part 633, Required Contract Provisions, and 23 CFR Part 635, Construction and Maintenance.
3. To construct the project in conformity with the construction contract, changes to the plans shall meet the requirements of 23 CFR Part 625, Design Standards for Highways and the current edition of the NDDOT's *Local Government Manual*.
4. To construct the project in conformity with the approved environmental documents and provide for the implementation of any measures mitigating the environmental impact of the project.
5. To comply with the procedures outlined in the current edition of NDDOT's *Local Government Manual*.
6. To comply with the current edition of NDDOT's *Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects*.
7. The LPA will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this project, such as changes in the grades of streets, inconvenience to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance,
8. To comply with the requirements of Appendices A and E of the Title VI Assurances, attached and incorporated by reference herein.



**PART II**

## Contracting and Construction:

1. On behalf of the LPA, NDDOT will:
  - a. Prepare the bid package, solicit proposals, and include the project in a scheduled bid opening as provided in the North Dakota Century Code, Chapter 24-02.
  - b. Evaluate the bids as to the sufficiency of Disadvantaged Business Enterprise (DBE) participation and the bidder's good faith efforts in satisfying the requirements of the current edition of the DBE special provision, and 49 CFR Part 26. NDDOT shall have exclusive authority in evaluating the adequacy of DBE participation.
  - c. Tabulate the bids and send to the LPA.
  - d. Concur in the award of the contract, after the LPA has executed the contract, for the sole purpose of enabling the LPA to procure federal aid for the construction of the project.
2. The LPA will:
  - a. Review bids to determine the lowest responsible bidder.
  - b. Execute the contract.
  - c. Distribute copies of the executed contract and contract bond to NDDOT.
3. During the construction of the project, the LPA will:
  - a. Provide engineering services, material testing, and inspection of the work as required by the contract documents and the current editions of NDDOT's *Sampling and Testing Manual* and the *Standard Specifications for Road and Bridge Construction*.
  - b. Keep all project records and documentation as required in NDDOT's current editions of the *Construction Records Manual* and the *Construction Automated Records System*.
  - c. Make all records available to NDDOT and FHWA for inspection upon request. The LPA will submit all documents and records to NDDOT for review before final payment is made. NDDOT will maintain the project records for three years from the final voucher date of FHWA and then return them to the LPA.
  - d. Be responsible for any changes in plan, character of work, quantities, site conditions, or any claim for extra compensation. NDDOT will review all contract adjustments to determine if the adjustments are eligible for federal aid. Federal aid shall be limited to the amount stated on page one of this agreement.

**PART III**

## Post Construction:

After the project is completed the LPA agrees to:

1. Control the length and location of curb openings for future entrances and to not permit the length of curb openings for entrances to exceed the length shown on the plans or as shown on a sketch of typical





entrances for similar entrances; and prohibit the construction or use of any entrances along the project within the LPA other than those shown on the plans, without prior approval of NDDOT.

2. Prohibit double parking and diagonal parking within the limits of the project. Additional parallel parking will be allowed within the limits of the project if designed considering the effects the added parking will have on the entire traffic corridor. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.
3. If the traffic corridor intersects a state highway, the LPA must justify to NDDOT that any new access allowed will have minimal impact to the state highway. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.
4. Prohibit the installation of traffic signals and pedestrian beacons on or in connection with the project, including those installed at the sole cost and expense of the LPA or by others, without NDDOT approval.
5. Maintain all traffic control devices on the project according to the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways*, as supplemented and amended.
6. Restrict the speed limit on the project at or below the maximum design speed. Any changes to the speed limit will be pursuant to North Dakota Century Code, Chapter 39-09.
7. Provide maintenance to the completed project at its own cost and expense.
8. Prohibit access and encroachments upon the right of way pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

#### PART IV

General:

1. NDDOT will make all contract payments on behalf of the LPA. Payment will be made upon receipt of the engineer's estimate. The LPA will reimburse NDDOT for payments made less the amount paid by FHWA. No costs will be incurred by NDDOT for the construction and maintenance of this project.

If the LPA fails to reimburse NDDOT within 60 days after billing for funds advanced on behalf of the LPA, this document will constitute an assignment of funds now or hereafter coming into the hands of the state treasurer, which would otherwise be distributed to the LPA out of the highway tax distribution fund, NDCC 54-27-19. The state treasurer is hereby directed to pay NDDOT all such funds until the total equals the sum billed pursuant to this agreement.

2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. No official, employee, or other person performing services for the LPA who is authorized to negotiate or approve any contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract. No officer or employee of such person retained by the LPA shall have any financial or other personal interest in any real property acquired for the project unless such interest is openly disclosed upon public records of NDDOT and of the LPA, and such officer, employee, or person has not participated in such acquisition for and in behalf of the LPA.
4. The failure of the state to enforce any provisions of this contract shall not constitute a waiver by the state of that or any other provision.



5. 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.
6. All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at the respective places of business as set forth below or at a place designated hereafter in writing by the parties.

Local Government Engineer  
ND Department of Transportation  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

7. The LPA is advised that its signature on this contract or agreement certifies that any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.
8. 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. The LPA, by the signature below of its authorized representative, hereby acknowledges that the LPA has read this agreement, understands it, and agrees to be bound by its terms and conditions.



Executed by the LPA of City of Fargo, North Dakota, the date last below signed.

APPROVED:

\_\_\_\_\_  
LPA/STATES ATTORNEY (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

LPA of City of Fargo

\*

Dr. Timothy J. Mahoney

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\*

Mayor

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

ATTEST:

Steve Sprague

\_\_\_\_\_  
AUDITOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Executed by the North Dakota Department of Transportation the date last below signed.

APPROVED as to substance:

Paul Benning

\_\_\_\_\_  
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SH

Paul Benning  
SIGNATURE

09/06/23  
DATE

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
DIRECTOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE SS

\_\_\_\_\_  
DATE

\*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)  
L.D. Approved 4-12-93; 10-22



**CERTIFICATION OF LOCAL MATCH**

It is hereby certified that the LPA of City of Fargo will provide non-federal funds, whose source is identified below, as match for the amount the LPA 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 by LPA.** Please designate the source(s) of funds in the LPA budget that will be used to match the federal funds obligated for this project through the North Dakota Department of Transportation.

**Source:**

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

Executed at Fargo, North Dakota, the last date below signed.

ATTEST:

APPROVED:

Steve Sprague  
AUDITOR (TYPE OR PRINT)

LPA of City of Fargo

\_\_\_\_\_  
SIGNATURE

Dr. Timothy J. Mahoney  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\* Mayor  
TITLE

\_\_\_\_\_  
DATE

\*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)  
L.D. Approved 4-12-93; 1-23



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX A OF THE TITLE VI ASSURANCES**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.



**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX E OF THE TITLE VI ASSURANCES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



## Risk Management Appendix

### Routine\* Service 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 **\$500,000 per person** and **\$2,000,000 per occurrence**. The minimum limits of liability required of the State are **\$500,000 per person** and **\$2,000,000 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, its 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 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 \$500,000 per person and \$2,000,000 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. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. 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 07-23



STATE <b>ND</b>	PROJECT NO. <b>CRP-8-984(178)</b>	PCN <b>24017</b>	SECTION NO. <b>1</b>	SHEET NO. <b>1</b>
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## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

**CRP-8-984(178)**

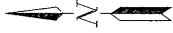
Cass County  
City of Fargo

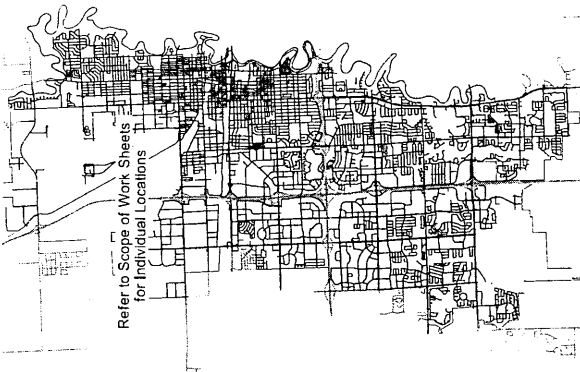
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LED Lighting

GOVERNING SPECIFICATIONS	Date Published and Adopted by the North Dakota Department of Transportation
Standard Specifications	4/1/2023
Supplemental Specifications	NONE

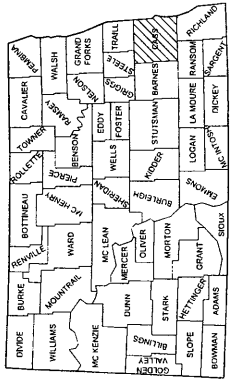
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CRP-8-984(178)







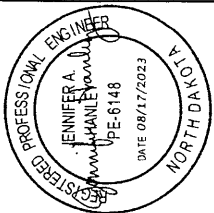
**STATE COUNTY MAP**

DESIGNER Matthew Huetli, PE	
DESIGNER Raphael Schill, EI	
DESIGNER Erib Arigoni, EI	
DESIGNER Jim Anderson	

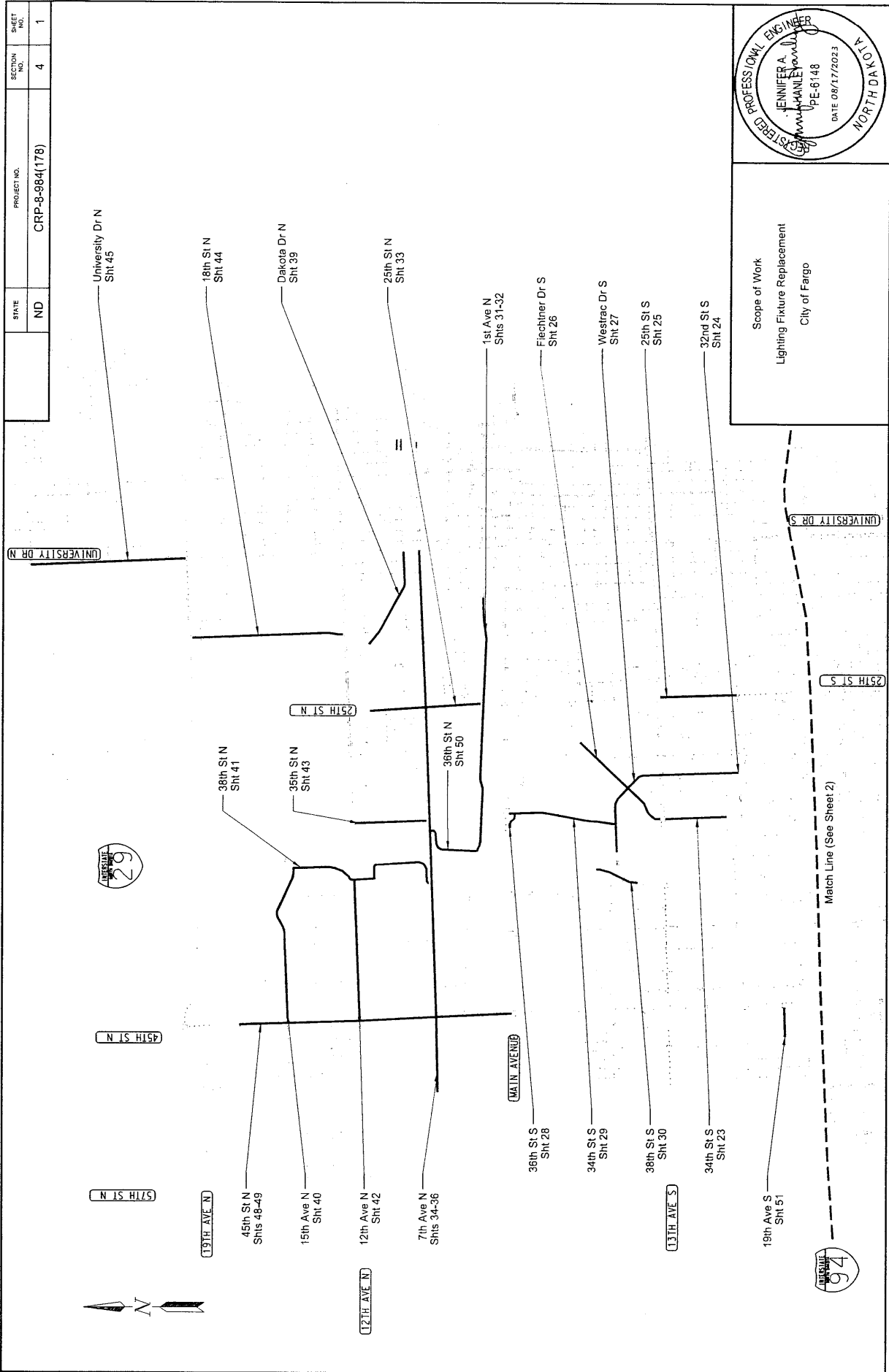
CITY OF FARGO

Digitally signed by Tom  
Knaakmuhs  
Date: 2023.08.18 12:19:49  
-05'00'

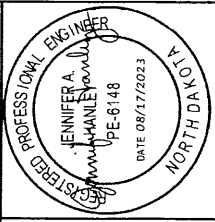




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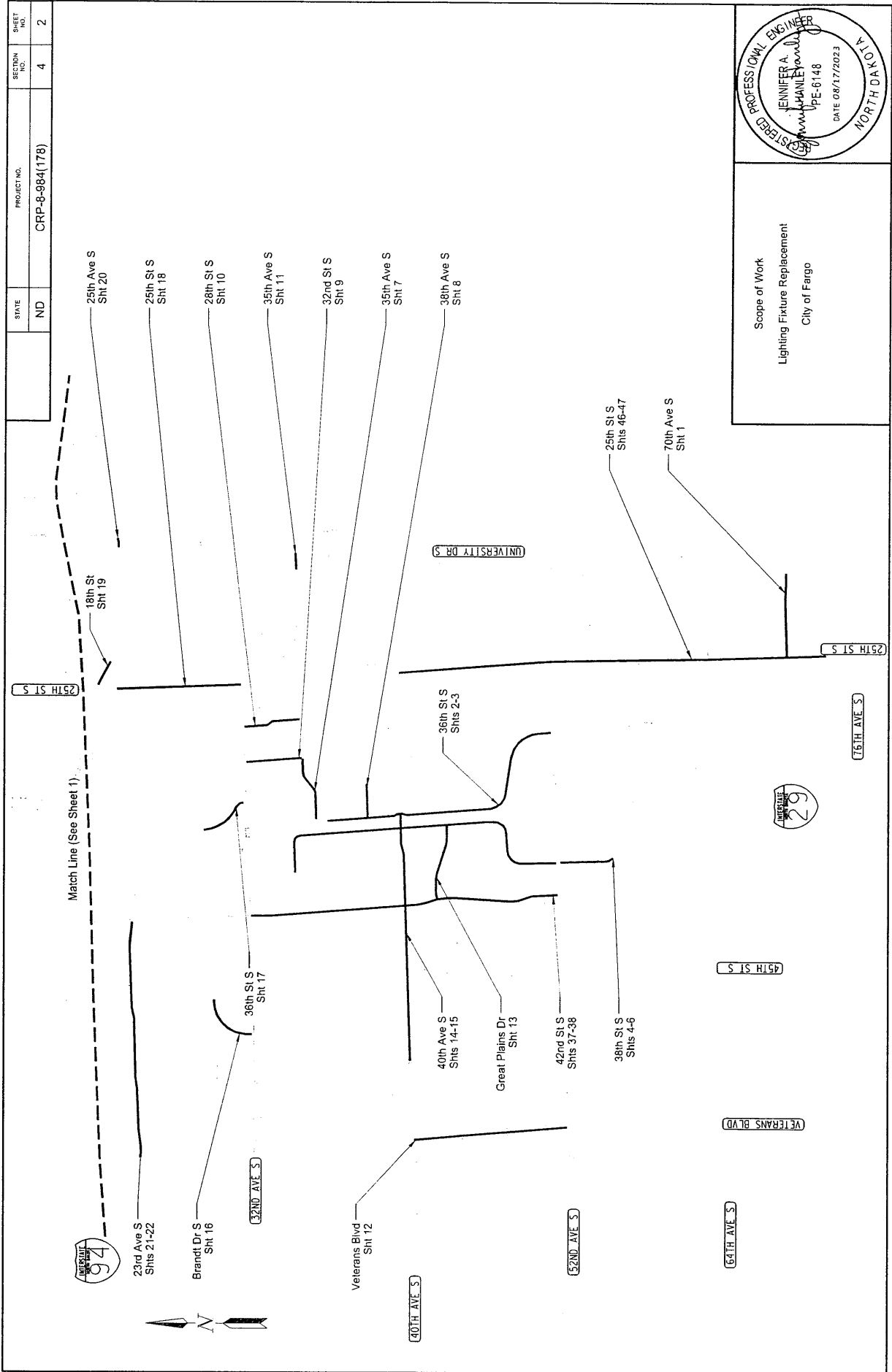
STATE	PROJECT NO.	SHEET NO.
ND	CRP-8-984(178)	4
		1



Scope of Work  
 Lighting Fixture Replacement  
 City of Fargo

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**Certificate Of Completion**

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 Contract Number: 38231195  
 PCN: 24017  
 Source Envelope:  
 Document Pages: 14 Signatures: 2 Envelope Originator:  
 Certificate Pages: 4 Initials: 4 Sengaroun Marohl  
 AutoNav: Enabled 608 E Boulevard Ave  
 EnvelopeId Stamping: Enabled Bismarck, ND 58505  
 Time Zone: (UTC-06:00) Central Time (US & Canada) smarohl@nd.gov  
IP Address: 165.234.92.5

**Record Tracking**

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 Security Appliance Status: Connected Pool: StateLocal  
 Storage Appliance Status: Connected Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD Location: DocuSign

**Signer Events**

Stacey Hanson  
 smhanson@nd.gov  
 Assistant Local Government Engineer  
 Carahsoft OBO North Dakota Department of Transportation CLOUD  
 Security Level: Email, Account Authentication (None), Authentication

**Signature**

*St*  
 Signature Adoption: Pre-selected Style  
 Using IP Address: 165.234.253.12

**Timestamp**

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 Phone: +1 701-527-8879

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Paul Benning  
 pbenning@nd.gov  
 Local Government Director  
 Security Level: Email, Account Authentication (None), Authentication

*Paul Benning*  
 Signature Adoption: Pre-selected Style  
 Using IP Address: 165.234.253.12

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 Phone: +1 701-214-2502

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 Not Offered via DocuSign

**Signer Events**

Shannon Sauer  
ssauer@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

**Signature**

SS

Signature Adoption: Pre-selected Style  
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**Electronic Record and Signature Disclosure:**  
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Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Sengaroun Marohl  
smarohl@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Clint Morgenstern  
cdmorgenstern@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**  
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Chad Orn  
corn@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

**Signer Events**

**Electronic Record and Signature Disclosure:**  
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Stacey Hanson

smhanson@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Signature**

**Timestamp**

**In Person Signer Events**

**Signature**

**Timestamp**

**Editor Delivery Events**

Sengaroun Marohl

smarohl@nd.gov

Carahsoft OBO North Dakota Department of  
Transportation CLOUD

Security Level: Email, Account Authentication  
(None)

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**Agent Delivery Events**

Jeremy Gorden

JGorden@FargoND.gov

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**Status**

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**Certified Delivery Events**

**Status**

**Timestamp**

**Carbon Copy Events**

**Status**

**Timestamp**

Legal Admin

dotlegaladmin@nd.gov

Security Level: Email, Account Authentication  
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**Electronic Record and Signature Disclosure:**  
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Legal Admin

dotlegaladmin@nd.gov

Security Level: Email, Account Authentication  
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**Electronic Record and Signature Disclosure:**  
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District Engineer

amurra@nd.gov

Security Level: Email, Account Authentication  
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**Electronic Record and Signature Disclosure:**  
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**Witness Events**

**Signature**

**Timestamp**

**Notary Events**

**Signature**

**Timestamp**

**Envelope Summary Events**

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**Payment Events**

**Status**

**Timestamps**

(10)

September 7, 2023

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

**Re: Declaration of Easement (Utility) – 6375 31<sup>st</sup> St S**

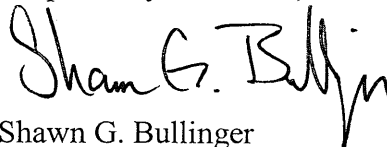
Dear Commissioners:

Enclosed and delivered to the City Commission office for review and approval is a declaration of easement document for the dedication of a public utility easement across a city owned lot. The easement will align with adjacent utility easements and provide for future utility installations. The declaration has been reviewed and the City Engineers office is recommending approval.

RECOMMENDED MOTION: I/we hereby move to approve the declaration of easement.

Please return the signed original.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Nancy Morris  
Thomas Knakmuhs

**DECLARATION OF EASEMENT**  
**(Utility)**

The city of Fargo, a North Dakota municipal corporation (the “Declarant”) is the owner of certain real property located in the city of Fargo, County of Cass, State of North Dakota, described as:

Lot 28, Block 1 of MAPLE VALLEY SECOND ADDITION to the City of Fargo, Cass County, North Dakota.

The Declarant does hereby declare a portion of such property for a permanent public utility easement, such property being more fully described as follows:

A tract of land in Lot 28, Block 1 of MAPLE VALLEY SECOND ADDITION to the City of Fargo, according to the recorded plat thereof on file and of record in the Office of the County Recorder, Cass County, North Dakota, more particularly described as follows:

The westerly 10.00 feet together with the southerly 10.00 feet together with the easterly 10.00 feet all being of said Lot 28.

Said tract contains 7,072 square feet, more or less.

(Signatures on the following page)



IN WITNESS WHEREOF, Declarant has set its hand and caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 2023.

City of Fargo, a North Dakota municipal corporation

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

ATTEST

\_\_\_\_\_  
Steven Sprague

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

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, a notary public in and for said county and state, personally appeared Dr. Timothy J. Mahoney and Steven Sprague, to me known to be the Mayor and Auditor, respectively, of the City of Fargo, described in and who have executed the within and foregoing instrument, and acknowledged to me that they executed the same.

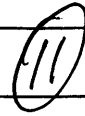
(SEAL)

\_\_\_\_\_  
Notary Public  
Cass County, North Dakota

The legal description was prepared by:  
City of Fargo Engineering  
225 4<sup>th</sup> Street North  
Fargo, ND 58102  
(701) 241-1545

This document was prepared by:  
Nancy J. Morris  
City Attorney  
Serkland Law Firm  
10 Robert Street  
Fargo, ND 58102  
(701) 232-8957  
nmorris@serklandlaw.com

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE



Type: Emergency Water Main Replacement (EM23170)

Location: Mills Avenue North

Date of Hearing: 9/11/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>9/18/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Leonard</u>

The Committee reviewed the attached correspondence from Division Engineer, Jason Leonard, regarding an Emergency Water Main Replacement on Mills Avenue North.

The existing 8" CIP water main on Mills Avenue North adjacent to the Sanford Medical Center has had seven repair sleeves installed and is in need of replacement. Staff has been coordinating with Sanford to replace the water main as Sanford has expressed their concerns with the water main potentially breaking during the winter, which would cause impacts to their operations. Staff has discussed with Sanford the tight timelines to complete in 2023 and as a result, they are willing to contribute financially to this repair.

Engineering feels the least impactful and cost effective repair is to burst the existing water main pipe. The estimated cost to complete this work is \$100,000. We are proposing to treat this as if it was a water main replacement project in the DMU district with front foot special assessment cost being \$63.67 per linear foot. Therefore, with Sanford owning both sides of the avenue their cost would be \$41,385.50. The remaining amount will be covered by water utility funds.

On a motion by Ben Dow, seconded by Tim Mahoney, the Committee voted to recommend approval of the Emergency Water Main Replacement on Mills Avenue North

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Emergency Water Main Replacement on Mills Avenue North.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sanford Medical Center & Water Utility Funds


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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>✓</u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

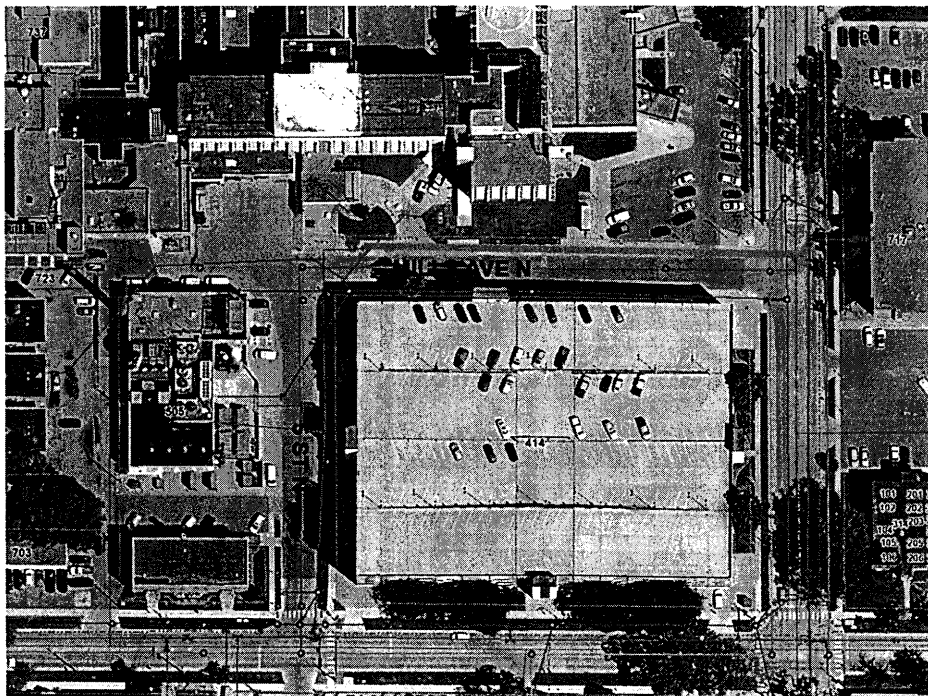
  
 Tom Knakmuhs, P.E.  
 City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Jason Leonard, Division Engineer  
**Date:** September 8, 2023  
**Re:** Emergency Water Main Replacement – Mills Avenue North  
Reference #EM23170

---

The existing 8" CIP water main on Mills Avenue North adjacent to the Sanford Medical Center has had seven repair sleeves installed and is in need of replacement. Staff has been coordinating with Sanford to replace the water main on Mills Avenue North as Sanford has expressed their concerns with the water main potentially breaking during the winter, which would cause impacts to their operations. Staff has discussed with Sanford the tight timelines to complete in 2023 and as a result they are willing to contribute financially to this repair. The image below is showing the water main needing replacement highlighted in orange.



PWPEC  
Emergency Water Main Replacement  
Page 2

Engineering Staff feels the least impactful and cost effective repair is to burst the existing water main pipe. The estimated cost to complete this work is \$100,000. We are proposing to treat this as if it was a water main replacement project in the DMU district with front foot special assessment cost being \$63.67 per linear foot. Therefore with Sanford owning both sides of the avenue their cost would be \$41,385.50. The remaining \$58,614.50 amount will be covered by the water utility funds. This has been coordinated with the Water Utility Department and they have funds available for this replacement.

**Recommended Motion:**

Direct staff to proceed with this proposed water main repair on Mills Avenue North with the cost splits proposed.

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

12

Type: Developer Agreements

Location: Interstate Business District Addition

Date of Hearing: 9/11/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>9/18/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Nathan Boerboom</u>

The Committee reviewed the accompanying correspondence from Division Engineer, Nathan Boerboom, regarding Developer Agreements for Interstate Business District Addition with ARD Properties, LLC and North Fargo Land, LLC.

Staff have been coordinating with the two property owners who have developed the proposed plat. As a result of this coordination, we have developed two Developer Agreements to accompany the plat. Due to the delay in construction of 45<sup>th</sup> Street North, these Agreements include the two property owners agreeing to waive their right to protest the resolution of necessity for the future project. In addition to the waiver of protest, the Developer's Agreement for ARD Properties includes provisions for the regional storm water pond dedication.

The purchase price of the land, as described in item 4 of the Developer Agreement, was also discussed. Nathan Boerboom informed the Committee that a purchase price of \$1.75/sf was agreed upon by the Developer and the City.

On a motion by Nicole Crutchfield, seconded by Tim Mahoney, the Committee voted to recommend approval of the Developer Agreements with ARD Properties, LLC and North Fargo Land, LLC for Interstate Business District Addition.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Developer Agreements with ARD Properties, LLC and North Fargo Land, LLC for Interstate Business District Addition.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u><input checked="" type="checkbox"/></u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

  
 Tom Knakmuhs, P.E.  
 City Engineer

C: Kristi Olson

## Memorandum

**To:** Members of PWPEC  
**From:** Nathan Boerboom, Assistant City Engineer  
**Date:** September 7, 2023  
**Re:** Developer Agreement for Interstate Business District Addition

---

Staff has been coordinating with the two property owners (ARD Properties, LLC and North Fargo Land, LLC) who have developed the proposed plat for the Interstate Business District Addition. As a result of this coordination, we have developed two Developer Agreements to accompany the plat.

Both Developer Agreements consider the eventual construction of 45<sup>th</sup> Street North, adjacent to the west side of this Addition. The construction of 45<sup>th</sup> Street North is not immediately required to support the development of this Addition, but instead will be constructed at a future date to be determined by the City. Due to this delay in construction, these Agreements include the two property owners agreeing to waive their right to protest the resolution of necessity for the future project. Staff is recommending approval of this Agreement so that there is certainty to being able to construct the future project, 45<sup>th</sup> Street North, when it is determined necessary without the risk of it being protested.

In addition to the waiver of protest, the Developers Agreement for ARD Properties includes provisions for the regional storm water pond dedication. Within the plat for this Addition is the dedication of Lot Two, Block One to the City for the purpose of providing a regional storm water retention pond. Due to this pond providing benefit to more than just the property owned by ARD Properties, it is proposed that the City will purchase the portion of land within Lot Two, Block One that will be serving properties not owned by ARD Properties. The purchase price of this land will be special assessed back to the properties benefiting from the pond.

Attached with this memorandum are the full versions of the Developer Agreements with ARD Properties and North Fargo Land, which provides further information on the items that the City and property owners agree upon to serve the Interstate Business District Addition with City infrastructure.

### **Recommended Motion:**

Approve the two Developer Agreements with ARD Properties, LLC and North Fargo Land, LLC for the Interstate Business District Addition.

## **Developer Agreement**

This Agreement, made and entered into between North Fargo Land, LLC, a North Dakota limited liability company (“Developer”) and the City of Fargo, a municipal corporation (“City”), is for the purpose of establishing public infrastructure for the property identified below and legally described on the attached Exhibit A (the “Development Property”). For good and valuable consideration hereby acknowledged, the parties agree as follows:

1. Developer holds all right, title and interest in the following portions of the Development Property: Lot One in Block One of the Interstate Business District Addition in the City of Fargo, Cass County, North Dakota. Developer intends to develop the Development Property.
2. Developer agrees to make a request for infrastructure to the City for the bidding and construction administration of public infrastructure of 44<sup>th</sup> Street North within the Development Property. The funding of this initial request for infrastructure will follow the City’s Infrastructure Funding Policy in effect at the time of creation of the improvement district for this project.
3. City shall complete street construction and improvements of 45<sup>th</sup> Street North, from 40<sup>th</sup> Avenue North to 52<sup>nd</sup> Avenue North, at a future date to be determined by the City, which shall be determined at the sole discretion of the City. The funding of the future 45<sup>th</sup> Street North improvements will follow the City’s Infrastructure Policy in effect at the time of creation of the improvement district for this project.
4. Developer hereby waives its right to protest the resolution(s) of necessity for the infrastructure and improvements for which such resolutions are required pursuant to North Dakota Century Code, Section 40-22-17, and specifically consents to the construction of the infrastructure and improvements as described in Paragraphs 2 and 3 above, and to the assessment of the costs thereof to the Development Property.

Developer further waives its right to protest the amount, benefit, or any other assessment attribute related to the installation and construction of the infrastructure and improvements as described in Paragraphs 2 and 3 above. Project costs which may be assessed against the Development Property include all costs of completing the construction of the infrastructure and improvements.

5. This Agreement shall be binding upon the respective successors and assigns of the parties hereto, including a purchaser of any portion of the Development Property. Developer agrees to inform any purchasers of the Development Property of the existence and context of this Agreement. Developer also hereby agrees to notify the City no later than 10 days prior to an assignment or sale of the Development Property.
6. The parties hereby agree that this Agreement may be recorded against the Development Property.
7. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.
8. The failure or delay of a party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver by that party of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of the party to enforce each and every term of this Agreement.
9. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.
10. This Agreement, together with any related documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement.
11. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.



Developer

North Fargo Land, LLC

Dated: 9-11-23

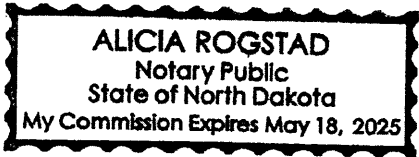
[Signature]

By: Ronald Knutsen

Its: Member

STATE OF North Dakota  
COUNTY OF Burleigh ) ss.

On this 11 day of September, 2023, before me, a notary public in and for said county and state, personally appeared Ronald Knutsen, an authorized signatory of North Fargo Land, LLC, the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.



[Signature]  
Notary Public  
Cass County, ND  
My Commission expires:

(SEAL)

City of Fargo, a municipal corporation

Dated: \_\_\_\_\_

Timothy J Mahoney, Mayor

ATTEST

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

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

(SEAL)

Exhibit A- Development Property

Lots One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, and Fifteen in Block One of the Interstate Business District Addition in the City of Fargo, Cass County, North Dakota

### **Developer Agreement**

This Agreement, made and entered into between ARD Properties, LLC, a North Dakota limited liability company (“Developer”) and the City of Fargo, a municipal corporation (“City”), is for the purpose of establishing public infrastructure for the property identified and legally described on the attached Exhibit A (the “Development Property”). For good and valuable consideration hereby acknowledged, the parties agree as follows:

1. Developer holds all right, title and interest in the following portions of the Development Property: Lots Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, and Fifteen in Block One of the Interstate Business District Addition in the City of Fargo, Cass County, North Dakota. Developer intends to develop these portions of the Development Property. The parties hereby acknowledge that Developer intends to dedicate Lot Eight in Block One of the Interstate Business District Addition to Southeast Cass Water Resource District upon recording of the plat.
2. Developer agrees to make a request for infrastructure to the City for the bidding and construction administration of public infrastructure of 44<sup>th</sup> Street North within the Development Property. The funding of this initial request for infrastructure will follow the City’s Infrastructure Funding Policy in effect at the time of creation of the improvement district for this project.
3. City shall complete street construction and improvements of 45<sup>th</sup> Street North, from 40<sup>th</sup> Avenue North to 52<sup>nd</sup> Avenue North, at a future date to be determined by the City, at its sole discretion. The funding of the future 45<sup>th</sup> Street North improvements will follow the City’s Infrastructure Funding Policy in effect at the time of creation of the improvement district for this project, and the lots within the Development Property will be assessed per the Arterial Indirect category of the City’s Infrastructure Funding Policy.

4. Developer agrees to dedicate 203,074 square feet of Lot Two, Block One to the City for the purpose of providing a regional storm water retention pond for the Development Property as well as the unplatted land located at 5151 45<sup>th</sup> Street North, (the “Opp Property”) and the unplatted land south of Lot Fifteen, Block One, north of 40<sup>th</sup> Avenue North (the “Knutson Property”). Due to the regional storm water retention pond providing benefit to properties not owned by the Developer (Lot 1, Block 1 of Development Property, Opp Property, & Knutson Property), the City agrees to purchase the remainder, 95,564 square feet, of Lot Two, Block One of the Development Property. This area equates to the land necessary to provide storm water retention for those properties not owned by the Developer. The purchase price shall be \$1.75 per square foot, for a total of \$167,237.00.
5. Developer agrees to dedicate an access and utility easement along the western property line of Lot Nine, Block One for the use of the unplatted land located at 5151 45<sup>th</sup> Street North (the Opp Property), as well as, access to the existing Billboard Easement as shown on the plat.
6. Developer hereby waives its right to protest the resolution(s) of necessity for the infrastructure and improvements for which such resolutions are required pursuant to North Dakota Century Code, Section 40-22-17, and specifically consents to the construction of the infrastructure and improvements as described in Paragraphs 2 and 3 above, and to the assessment of the costs thereof to the Development Property. Developer further waives its right to protest the amount, benefit, or any other assessment attribute related to the installation and construction of the infrastructure and improvements as described in Paragraphs 2 and 3 above. Project costs which may be assessed against the Development Property include all costs of completing the construction of the infrastructure and improvements.
7. This Agreement shall be binding upon the respective successors and assigns of the parties hereto, including a purchaser of any portion of the Development Property. Developer agrees to inform any purchasers of the Development Property of the existence and context of this Agreement. Developer also hereby agrees to notify the City no later than 10 days prior to an assignment or sale of the Development Property.
8. The parties hereby agree that this Agreement may be recorded against the Development Property.
9. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in District Court in Cass County, North Dakota, and the parties waive any objection to personal

jurisdiction.

10. The failure or delay of a party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver by that party of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of the party to enforce each and every term of this Agreement.
11. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.
12. This Agreement, together with any related documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement.
13. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

*[The remainder of this page intentionally left blank – signature pages follow]*

Developer

ARD Properties, LLC

Dated: 9-11-23

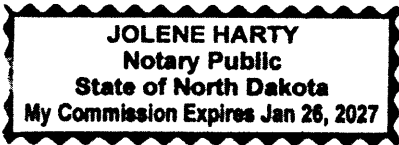
[Signature]

By: Trent Duda

Its: President / owner

STATE OF North Dakota )  
 ) ss.  
COUNTY OF Cass )

On this 11 day of September, 2023, before me, a notary public in and for said county and state, personally appeared Trent Duda, an authorized signatory of ARD Properties, LLC, the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.



[Signature]  
Notary Public  
Cass County, ND  
My Commission expires:

(SEAL)

City of Fargo, a municipal corporation

Dated: \_\_\_\_\_

Timothy J Mahoney, Mayor

ATTEST

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

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

(SEAL)



Exhibit A- Development Property

Lots One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, and Fifteen in Block One of the Interstate Business District Addition in the City of Fargo, Cass County, North Dakota



43

**Engineering Department**  
225 4<sup>th</sup> Street North  
Fargo, ND 58102  
Phone: 701.241.1545 | Fax: 701.241.8101  
Email: feng@FargoND.gov  
www.FargoND.gov

September 13, 2023

Honorable Board of City  
Commissioners  
City of Fargo  
Fargo, ND

Re: Project No. BP-23-02

Dear Commissioners:

Bids were opened at 11:45 am on Wednesday, September 13, 2023, for Monarch Photo Bldg Demo, Project No. BP-23-02, located at 2414 7 Avenue North.

The bids were as follows:

Master Construction Co Inc	\$305,425.00
Pioneer, LLC	\$321,378.48
Veit & Company, Inc	\$379,391.25
LinnCo	\$398,977.00
Burski Excavating, Inc.	\$443,866.00
Excavating, Inc - Fargo	\$446,083.32
Industrial Builders Inc	\$649,695.00
Engineers Estimate	\$438,970.00

Private financial security is not needed.

No protests have been received.

This office recommends award of the contract to Master Construction Co Inc. in the amount of \$305,425.00 as the lowest and best bid.

Sincerely,

A handwritten signature in black ink, appearing to read 'TKM', written over a horizontal line.

Thomas Knakmuhs, PE

City Engineer

**Engineer's Statement Of Cost**

Project # BP-23-02

Monarch Photo Bldg Demo

2414 7 Ave N

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

NOW THEREFORE Thomas Knakmuhs, do hereby certify as follows:

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

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

Monarch Photo Bldg Demo Project # BP-23-02 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
<b>Miscellaneous</b>					
1	Mobilization	LS	1.00	7,500.00	7,500.00
2	Remove Fence	LF	150.00	10.00	1,500.00
3	Remove Tree	EA	7.00	400.00	2,800.00
4	Eliminate Sewer Service	EA	1.00	15,000.00	15,000.00
5	Eliminate Water Service	EA	2.00	4,000.00	8,000.00
6	Topsoil - Import	CY	285.00	17.00	4,845.00
7	Fill - Import	CY	2,000.00	12.50	25,000.00
8	Site Grading	LS	1.00	2,500.00	2,500.00
9	F&I Edge Drain 4" Dia PVC	LF	110.00	5.00	550.00
10	Rem & Repl Curb & Gutter	LF	145.00	90.00	13,050.00
11	Rem & Repl Pavement 10.5" Thick Reinf Conc	SY	330.00	180.00	59,400.00
12	F&I Sidewalk 4" Thick Reinf Conc	SY	85.00	90.00	7,650.00
13	Remove Sidewalk All Thicknesses All Types	SY	85.00	10.00	850.00
14	Remove Driveway All Thicknesses All Types	SY	580.00	12.00	6,960.00
15	Mulching Type 1 Hydro	SY	1,600.00	1.20	1,920.00
16	Seeding Type C	SY	1,600.00	1.20	1,920.00
17	Stormwater Management	LS	1.00	500.00	500.00
18	Temp Construction Entrance	EA	1.00	500.00	500.00
19	Sediment Control Log 6" to 8" Dia	LF	300.00	3.20	960.00
20	Inlet Protection - Existing Inlet	EA	7.00	220.00	1,540.00
21	Demolition	EA	1.00	65,000.00	65,000.00
22	Remove Foundation All Types	EA	1.00	45,000.00	45,000.00

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
23	Remove Landscaping	LS	1.00	2,500.00	2,500.00
24	Traffic Control - Type 1	LS	1.00	5,900.00	5,900.00
25	F&I Detection In-Ground Loop	EA	2.00	8,000.00	16,000.00
26	F&I Grooved Plastic Film 8" Wide	LF	112.00	20.00	2,240.00
27	F&I Grooved Contrast Film 7" Wide	LF	120.00	30.00	3,600.00
28	F&I Grooved Thermoplastic Pavement Marking Message	SF	32.00	70.00	2,240.00
Miscellaneous Total					<b>305,425.00</b>
<b>Total Construction in \$</b>					<b>305,425.00</b>

Contingency	5.00%	15,271.25
<b>Total Estimated Costs</b>		<b>320,696.25</b>
Building Project Funds - 402		320,696.25
<b>Unfunded Costs</b>		<b>0.00</b>

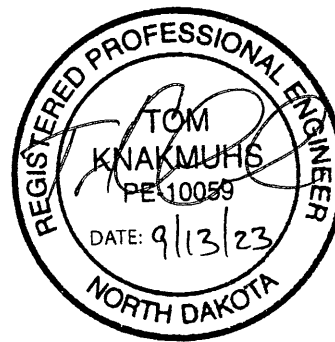
IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 09/13/2023



Thomas Knakmuhs

City Engineer



COVER SHEET  
CITY OF FARGO PROJECTS



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 Project as it will appear in the Contract:

SHARED USE PATH & INCIDENTALS

Project No. SN-23-A

Call For Bids September 18, 2023

Advertise Dates September 27 & October 4, 2023

Bid Opening Date October 13 (NDDOT), 2023

Substantial Completion Date October 11, 2024

Final Completion Date November 1, 2024

N/A PWPEC Report (Attach Copy) **(Part of the 2023 C.I.P.)**

X Engineer's Report (Attach Copy)

N/A Direct City Auditor to Advertise for Bids **(To be Bid by NDDOT)**

N/A Bid Quantities (Attach Copy for Auditor's Office Only)

N/A Notice to Property Owners (Dan Eberhardt)

Project Engineer Eric Hodgson

Phone No. (701) 241-1545

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:

N/A Create District (Attach Copy of Legal Description)

N/A Order Plans & Specifications

N/A Approve Plans & Specifications

N/A Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

N/A Assessment Map (Attach Copy for Auditor's Office Only)

ENGINEER'S REPORT  
PAVING AND UTILITY REHAB/RECONSTRUCTION  
PROJECT NUMBER NO. SN-23-A1

**Nature & Scope**

The City of Fargo in cooperation with the North Dakota Department of Transportation, Federal Highway Administration, and Fargo Park District is proposing an off-road shared used path improvement that would connect the Bison Village neighborhood to the metro area path system.

The path is located between 32<sup>nd</sup> Avenue North and 36<sup>th</sup>/37<sup>th</sup> Avenue North at 10<sup>th</sup> Street North, and will consist of concrete sidewalk with curb ramps.

**Purpose**

This project is necessary because it expands the City's pedestrian infrastructure needed to maintain proper movement patterns for the residents of Fargo.

The City of Fargo, the Fargo Park District, and Metro COG have planned for an extensive off-street system of shared use paths necessary to expand the City's pedestrian infrastructure. This project is one that has been identified by all parties to move forward.

**Feasibility**


The estimated cost of construction is \$ 423,946.00. The project will be funded by Federal, Fargo Park District, and Infrastructure Sales Tax Funds. The cost breakdown is as follows:

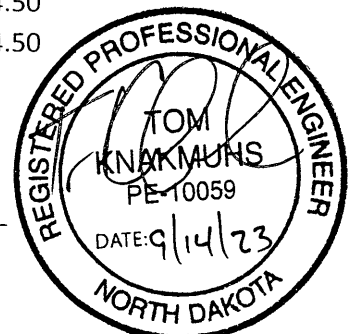
<u>Construction Cost</u>	\$	423,946.00
Plus 10% Engineering Fee:	\$	42,395.00
Plus 4% Administration Fee:	\$	16,958.00
Plus 4% Interest Fee:	\$	16,958.00
Plus 3% Legal/Miscellaneous Fee:	\$	12,718.00
Plus 10% Contingency:	\$	42,395.00
<b>Total Estimated Construction Cost:</b>	<b>\$</b>	<b>555,369.00</b>

<u>Miscellaneous Costs</u>		
Plus Lan/Easements/ROW Fee:	\$	1,000.00
<b>Total Estimated Project Cost:</b>	<b>\$</b>	<b>556,369.00</b>

<u>Project Funding Summary</u>			
Federal TAP Funds	47.80%	\$	266,000.00
Fargo Park District	26.10%	\$	145,184.50
Infrastructure Sales Tax	26.10%	\$	145,184.50

We believe this project to be cost effective.

  
 \_\_\_\_\_  
 Thomas Knakmuhs, P.E.  
 City Engineer



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

15

Improvement District No. BR-23-F1 Type: Change Order #2 & Time Extension
Location: NP Ave, 10th St – 8th St Date of Hearing: 9/11/2023

Routing Date
City Commission 9/18/2023
PWPEC File X
Project File Rick Larson

The Committee reviewed the accompanying correspondence from Project Manager, Rick Larson, related to Change Order #2 in the amount of \$7,046.15 for additional work along with a 2-day time extension as follows:

Table with 2 columns: Original Completion Dates, Revised this Memo. Rows include Phase 2 Interim, Substantial, Milestone, and Final dates for 2023 and 2024.

Staff is recommending approval of Change Order #2 in the amount of \$7,046.15 and the 2-day time extension as described above.

On a motion by Brenda Derrig, seconded by Ben Dow, the Committee voted to recommend approval of Change Order #2 and the time extensions to R & R Excavating.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #2 in the amount of \$7,046.15, bringing the total contract amount to \$2,961,523.86 and the time extension to the 2-day time extension to Dirt Dynamics

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: State Funds & Special Assessments

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

COMMITTEE

Table with 4 columns: Present, Yes, No, Unanimous. Lists committee members: Tim Mahoney, Mayor; Nicole Crutchfield, Director of Planning; Steve Dirksen, Fire Chief; Brenda Derrig, Assistant City Administrator; Ben Dow, Director of Operations; Steve Sprague, City Auditor; Tom Knakmuhs, City Engineer; Susan Thompson, Finance Director.

ATTEST:

C: Kristi Olson

Handwritten signature of Tom Knakmuhs, P.E. City Engineer



# Memorandum

**To:** Members of PWPEC  
**From:** Rick Larson, Project Manager  
**Date:** September 7, 2023  
**Re:** Improvement District No. BR-23-F1 – Change Order #2 & Time Extension

**Background:**

Improvement District No. BR-23-F1 is for the reconstruction of N.P. Avenue North (10th Street North to Robert’s Street North) This project is for the replacement of the water main and services, sanitary sewer main and services, storm sewer main and inlet leads, concrete curb & gutter, sidewalk, driveways, and street scape.

1. Change Order # 2 – The business owner at 11 10<sup>th</sup> Street North requested to have their driveway widened coming out to 8<sup>th</sup> Street North. Since this driveway was just outside of the original project limits, additional time and quantities will need to be added to the contract to accommodate this request. The property owner will be responsible for the cost to widen the driveway. Additional sidewalk was extended to this driveway for continuity on the project as a project cost. The total contract price adjustment for this work is estimated at \$7,046.15 and the Contractor is requesting 2 additional days be added to the contract.

**Recommended Motion:**

Approve Change Order #2 in the amount of \$7,046.15 and time extension of 2 additional calendar days.

Original Completion Dates	Revised Previously	Revised This Memo
Phase 2 Interim – Sept. 13, 2023		Phase 2 Interim – Sept. 15, 2023
Substantial – Sept. 30, 2023	-	Substantial – October 2, 2023
Milestone – Oct. 30, 2023	-	Milestone – Nov. 1, 2023
Final – June 15, 2024	-	Final – June 15, 2024



**CHANGE ORDER REPORT**  
**PAVING AND UTILITY REHAB/RECONSTRUCTION**  
**IMPROVEMENT DISTRICT NO. BR-23-F1**  
**ON NORTHERN PACIFIC AVENUE NORTH FROM 10TH STREET TO 8TH STREET**

Change Order No      2      Change Order Date      9/7/2023  
 Contractor      R & R Excavating, 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**      Change Order # 2

Change Order # 2 - The business owner at 11 10th St N requested to have their driveway widened coming out to 8th St N. Since this driveway was just outside of the original project limits, additional time and quantities will need to be added to the contract to accommodate this request. The property owner will be responsible for the cost to widen the driveway. Additional sidewalk was extended to this driveway for continuity on the project as a project cost. The total contract price adjustment for this work is estimated at \$7,046.15 and the Contractor is requesting 2 additional days be added to the contract. The Final Completion Dates on this change order reflect the Milestone Completion Dates on the Memo.

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 (\$)
Change Order 2	13	Saw Pavement All Thicknesses All Types	LF	0		0	50	50	\$9.90	\$495.00
Paving	56	Remove Curb & Gutter	LF	1711		1711	15	1726	\$9.10	\$136.50
	57	Remove Sidewalk All Thicknesses All Types	SY	1464		1464	12	1476	\$13.20	\$158.40
	58	Remove Driveway All Thicknesses All Types	SY	419		419	16	435	\$15.50	\$248.00
	71	F&I Curb & Gutter Standard (Type II)	LF	1645		1645	15	1660	\$32.50	\$487.50
	74	F&I Sidewalk 4" Thick Reinf Conc	SY	1202		1202	12	1214	\$95.35	\$1,144.20
	75	F&I Sidewalk 6" Thick Reinf Conc	SY	88		88	0	88	\$111.35	\$0.00
<b>Change Order 2 Sub Total</b>										<b>\$495.00</b>

09/07/2023 04:19 pm

Page 2 of 4

Change Order Report: BR-23-F1

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 (\$)
	77	F&I Driveway 6" Thick Reinf Conc	SY	447		447	30	477	\$115.25	\$3,457.50
	78	F&I Asphalt Pavement FAA 43 w/ PG58H-34	Ton	138		138	3.3	141.3	\$278.50	\$919.05
<b>Paving Sub Total</b>										<b>\$6,551.15</b>

Summary.

Source Of Funding	Special Assessments and State Funds-Prairie Dog
Net Amount Change Order # 2 (\$)	\$7,046.15
Previous Change Orders (\$)	\$6,857.74
Original Contract Amount (\$)	\$2,947,619.97
Total Contract Amount (\$)	\$2,961,523.86

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

CONTRACT DATES

Current Substantial Completion Date	9/30/2023	Current Final Completion Date	10/30/2023
Additional Days Substantial Completion	2	Additional Days Final Completion	2
New Substantial Completion Date	10/2/2023	New Final Completion Date	11/1/2023
Interim Completion Dates			

APPROVED  
For Contractor  
Title

*[Handwritten Signature]*  
Project Manager

APPROVED DATE  
Department Head  
Mayor  
Attest

*[Handwritten Signature]*

1149 Hwy 22 S.  
Hutchinson MN 55350



(320) 587-5918  
Fax (320) 587-1044

Change Order Billing -

Project / Job Name : Fargo BR-23-F1

Date : 8/17/2023

Requested By : R&R Excavating

<u>Change Order Work Requested</u>	<u>Cost</u>
Remove Curb & Gutter 15 LF @ \$9.10	\$136.50
Remove Sidewalk All Thicknesses All Types 12 SY @ \$13.20	\$158.40
Remove Driveway All Thicknesses All Types 16 SY @ \$15.50	\$248.00
F&I Curb and Gutter Standard Type II 15 LF @ \$32.50	\$487.50
F&I Sidewalk 4" Thick Reinf Concrete 12 SY @ \$95.32	\$1,144.20
F&I Driveway 6" Thick Reinf Concrete 30 SY @ \$115.25	\$3,457.50
F&I Asphalt Pavement FAA 43 with PG58H-43 3.3 Ton @ \$278.50	\$919.05
Full Depth Saw Cutting 50 LF @ \$9.00	\$450.00
Saw Cutting 10% Prime Contractor Mark-Up	\$45.00
R&R is requesting an additional 2 days to be added to the	
substantial completion, milestone completion, interm completion	
phase 2 for the project.	

**Total Cost** \$7,046.15

Submitted By R&R Excavating Inc.

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

Accepted By Project Engineer / City Representative

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



☉ P.O. Box 2871  
 Fargo, ND 58108-2871  
 ☎ Business - 701.281.1212  
 ☎ Fax - 701.277.8005

### Change Order

<b>Project:</b> City of Fargo BR-23-F1	<b>Date:</b> August 17, 2023
<b>Description:</b> Paving and Utility Rehab / Reconstruction NP Ave North from 10th St. to 8th St.	<b>No.:</b> 1

<b>General Contractor:</b> R & R Excavating	<b>Project Superintendent:</b> Curt Anderson
<b>Address:</b> 1149 Hwy 22 So. Hutchinson, MN 55350	<b>Project Coordinator:</b> Lance Strum
<b>Phone:</b> 320-587-5918	<b>Opp Job Number:</b> 23-F1-515
<b>Contact:</b> Gregor Fraser	

#### Additional Work

Item No.	Description	Approx. Quantity	Unit	Unit Price	Amount
69	F&I Sidewalk 4" Thick Reinf Conc	9.11	SY	82.00	747.02
72	F&I Driveway 6" Thick Reinf Conc	30.33	SY	99.00	3,002.67
MISC	Full Depth Sawing	50.00	LF	9.00	450.00
<b>Total \$</b>					<b>4,199.69</b>

**Notes:**

- Quantities listed above are approximate. Actual payment based on field measurements and original unit prices a the time of bid.
- Based on the items and quantities listed above, we request an additional 1 day to complete the above work.

Respectfully Submitted,

Lance Strum  
 Sr. Project Manager  
 Opp Construction

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

116

Improvement District No.: BR-23-J1

Type: Temporary Access Agreement

Location: 20 7<sup>th</sup> Street South

Date of Hearing: 9/11/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>9/18/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Leonard</u>

The Committee reviewed the attached correspondence from Division Engineer, Jason Leonard, regarding a Temporary Access Agreement with the Neuropsychiatric Institute.

Improvement District No. BR-23-J1 on 1<sup>st</sup> Avenue South between 4<sup>th</sup> Street South and 7<sup>th</sup> Street South impacted the underground parking access to the Waldorf Square Apartments at 20 7<sup>th</sup> Street South. In an effort to accommodate the residence, the City of Fargo Engineering Department sought out potential parking lot locations. The Neuropsychiatric Institute was contacted and has agreed to enter into a Temporary Access Agreement with the City of Fargo to provide temporary parking.

On a motion by Tom Knakmuhs, seconded by Brenda Derrig, the Committee voted to recommend approval of the Temporary Access Agreement with The Neuropsychiatric Institute.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Temporary Access Agreement with the Neuropsychiatric Institute.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A


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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<input checked="" type="checkbox"/>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs, P.E.  
 City Engineer



# Memorandum

**To:** Members of PWPEC  
**From:** Jason Leonard, Division Engineer  
**Date:** September 7, 2023  
**Re:** Improvement District No. BR-23-J1 - Temporary Access Agreement with  
The Neuropsychiatric Institute

---

## Background:

Improvement District No. BR-23-J1 on 1<sup>st</sup> Avenue South between 4<sup>th</sup> Street South and 7<sup>th</sup> Street South impacted the underground parking access to the Waldorf Square Apartments facilities at 20 7<sup>th</sup> Street South. In an effort to accommodate the residence, the City of Fargo Engineering Department sought out potential parking lot locations. The Neuropsychiatric Institute was contacted and has agreed to enter into a Temporary Access Agreement with the City of Fargo to provide temporary parking for the residence of the above said property impacted by Improvement District No. BR-23-J1.

## Recommended Motion:

Approve the Temporary Access Agreement with The Neuropsychiatric Institute for temporary parking due to the impacts of Improvement District No. BR-23-J1.

JTL/klb  
Attachments

**EASEMENT**  
**(Temporary Access Easement)**

**KNOW ALL MEN BY THESE PRESENTS** that **Sanford Research North**, a North Dakota nonprofit corporation (successor by merger to **The Neuropsychiatric Institute**, a North Dakota nonprofit corporation) hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO** the **City of Fargo, Cass County, North Dakota**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary access easement for use of parking spaces in the red cross-hatched areas attached hereto as Exhibit "A" (the "Temporary Easement Area") by the Grantee and adjoining property owners and their guests, said land being more fully described, to-wit:

Lots 4, 5, and 6, Block 18, Original Townsite of the City of Fargo, Cass County, North Dakota, according to the certified plat thereof.

AND

Lot 10, Block 18, of the Original Townsite of the City of Fargo, according to the certified plat thereof.

AND

Lots 11 and 12, in Block 18, in the Original Townsite of the City of Fargo.

Grantor warrants that it is the owner of the above-described premises and has the lawful right and authority to convey and grant the Temporary Easement Area.

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's employees, agents, servants, invitees, contractors and customers may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform

any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees they will not disturb, injure, molest or in any manner interfere with said parcel to be used for access during the construction of the adjacent roadway, and Grantor expressly warrants and states that no obstacles of any kind shall be placed or located upon the Temporary Easement Area so as to interfere in any manner with the Temporary Easement Area.

Grantee agrees that it will, during any use of the Temporary Easement Area, use due care to protect the parking lot and maintain the parking lot in as good of condition as it exists upon commencement of the Temporary Easement Area, and that upon discontinuance, Grantee will, to the extent necessary, restore the Temporary Easement Area to the condition in which existed upon commencement of this easement.

Grantee, by acceptance of this easement, agrees, to the fullest extent permitted by law, to indemnify and hold Grantor harmless from any and all claims, demands, damages, costs, expenses, and legal fees, including the cost of defense, for any loss, injury, death or damage to persons or property, which, at any time, is suffered or sustained by the Grantor, its employees, the public, or by any person whosoever may be using, occupying, visiting, or maintaining the Temporary Easement Area, or may be on or about the Temporary Easement Area when such loss, injury, death or damage is asserted to have been caused by any negligent act or omission, or intentional act or misconduct of the Grantee, its agents, servants, employees, invitees, or contractors, or by the breach of this easement by the Grantee or its agents, servants, employees, invitees, or contractors. In case of any action or proceeding brought against the Grantor, by reason of such a claim, upon notice from the Grantor, Grantee shall cover the cost to defend such action or proceeding. The Grantor shall not be liable and the Grantee waives and releases the Grantor from all claims for damage to persons or property sustained by the Grantee, or the Grantee's employees, agents, servants, invitees, contractors and customers resulting by reason of occupying or visiting the Temporary Easement Area and/or pertaining to any equipment or appurtenances being used, save for Grantor's negligence.

This temporary access easement shall automatically terminate on November 1, 2023.

[The remainder of this page left blank. Signature pages follow.]

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed this 8<sup>th</sup> day of September, 2023.

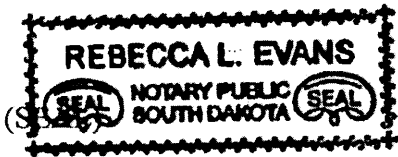
GRANTOR:  
**Sanford Research North**

By: Bill Marlette

Its: Bill Marlette - CFO

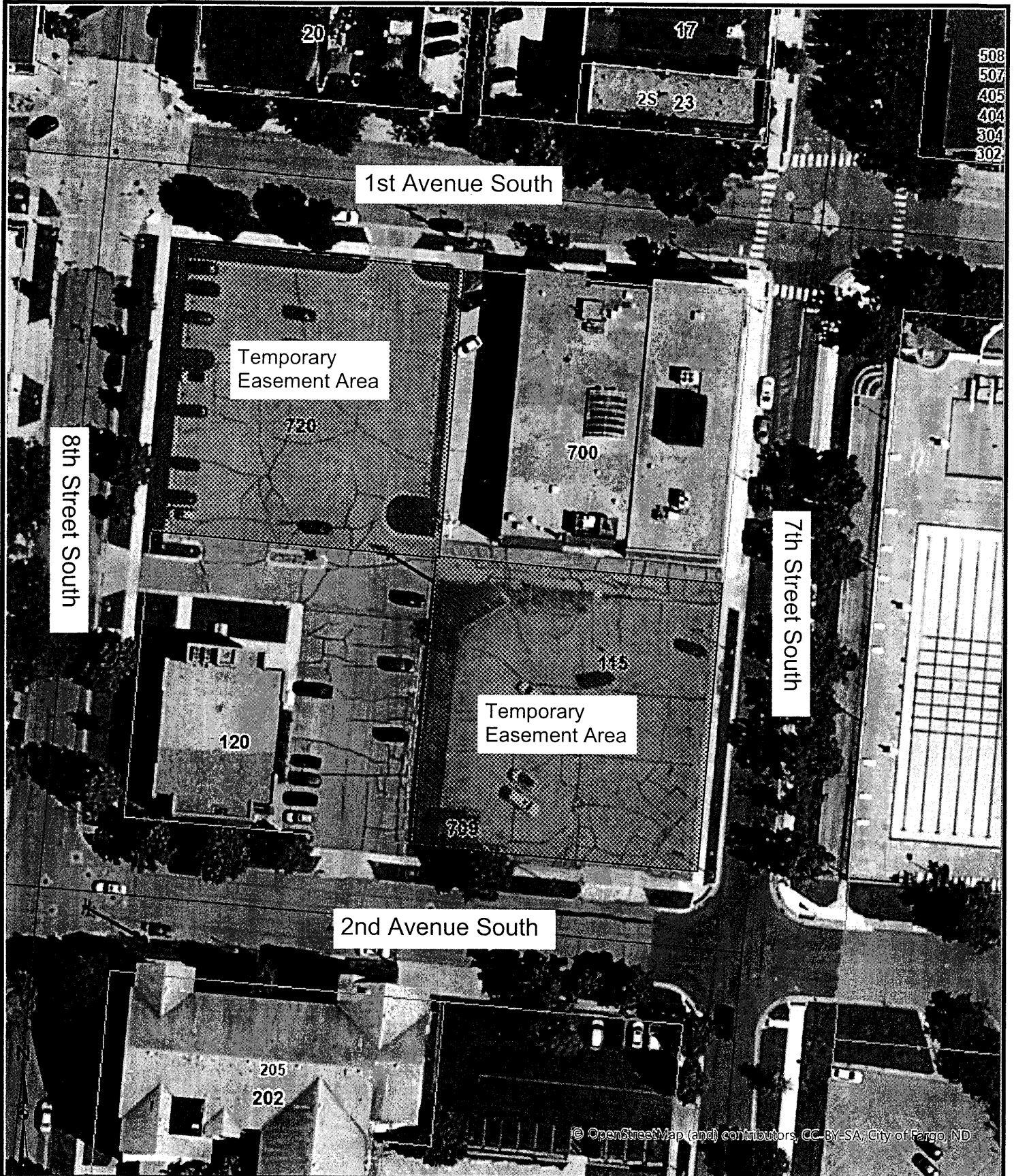
STATE OF NORTH DAKOTA    )  
                                          ) ss:  
COUNTY OF CASS            )

On this 8<sup>th</sup> day of September, 2023, before me, a notary public in and for said county and state, personally appeared Bill Marlette, to me known to be the CFO of **Sanford Research North**, described in and who has executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.



Rebecca L. Evans  
Notary Public  
~~Cass County, North Dakota~~  
Minnehaha County, South Dakota





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.

# Exhibit A

1:1,128	9/5/2023 5:01 PM
This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.	



© OpenStreetMap (and) contributors, CC BY-SA, City of Fargo, ND

REPORT OF ACTION

17

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. UR-23-C1 (EM23135)

Type: Change Order #1

Location: 3rd Ave S & 24th St South

Date of Hearing: 9/11/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>9/18/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Leonard</u>

The Committee reviewed the accompanying correspondence from Division Engineer, Jason Leonard, regarding Change Order #1 in the amount of \$83,176.80 for an emergency sewer repair.

Staff is recommending approval of Change Order #1 in the amount of \$83,176.80, bringing the total contract amount to \$357,689.80.

On a motion by Brenda Derrig, seconded by Ben Dow, the Committee voted to recommend approval of Change Order #1 to Key Contracting.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Change Order #1 in the amount of \$83,176.80, bringing the total contract amount to \$357,689.80 to Key Contracting.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sewer Utility Funds


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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
 \_\_\_\_\_  
 Tom Knakmuhs, P.E.  
 City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Jason Leonard, Division Engineer  
**Date:** September 7, 2023  
**Re:** Emergency Sewer Spot Repair – UR-23-C1 Change Order #1 (EM23135)

---

### Background:

The Engineering Department has been working with the Public Works Department to address two recently discovered sanitary sewer issues at the intersection of 24<sup>th</sup> Street South and 3<sup>rd</sup> Avenue. Key Contracting is the Prime Contractor for this Emergency Sewer Repair - Project #UR-23-C1.



Location of the two failures shown on the image above.

When Key Contracting was repairing the gravity pipe on the north side of 3<sup>rd</sup> Avenue South, the sanitary sewer force main out of sanitary sewer lift station #6 collapsed into the excavation. The Contractor tried to find good pipe to connect to and didn't have any luck. Engineering collaborated with the Water Reclamation Department and it was decided to replace the existing 6" force main. The cost to replace the force main is \$72,676.80. In addition, the existing sanitary sewer manhole's interior just south of SS LS #6 is in bad condition and need to be coated. The Water Reclamation Department agreed to this repair at a cost of \$10,500.

### Recommended Motion:

Approve Change Oder #1 in the amount of \$83,176.80 to perform the emergency sewer repair, paid by Sewer Utility Funds.

JTL/klb  
Attachments





**CHANGE ORDER REPORT  
 SANITARY SEWER REPAIR  
 PROJECT NO. UR-23-C1  
 3RD AVE S & 24TH ST S**

**Change Order No** 1      **Change Order Date** 9/7/2023  
**Contractor** 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**      Change Order # 1

When Key Contracting was repairing the gravity pipe on the north side of 3rd Avenue South, the sanitary sewer force main out of sanitary sewer lift station #6 collapsed into the excavation. The Contractor tried to find good pipe to connect to and didn't have any luck. Engineering collaborated with the water reclamation department and it was decided to replace the existing 6 inch force main. The cost to replace the force main is \$72,676.00. In addition, the existing sanitary sewer manhole's interior just south of SS LS #6 is in bad condition and need to be relined. The Water Reclamation Department agreed to this repair at a cost of \$10,500.

Section	Line No	Item Description	Unit	Orig Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Change Order 1	10	Modify Manhole	EA	0	0	0	1	1	\$10,500.00	\$10,500.00
	11	F&I Force Main 6" Dia	LF	0	0	0	120	120	\$605.64	\$72,676.80
<b>Change Order 1 Sub Total</b>										<b>\$83,176.80</b>

Summary

Source Of Funding  
 Net Amount Change Order # 1 (\$)   
 Previous Change Orders (\$)   
 Original Contract Amount (\$)   
 Total Contract Amount (\$)

Wastewater Utility Fund  
 \$83,176.80  
 \$0.00  
 \$274,513.00  
 \$357,689.80

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

*Steve Carr*  
 VP  
 Key Contracting

APPROVED  
 For Contractor  
 Title

APPROVED DATE  
 Department Head  
 Mayor  
 Attest

*T-Cell*

**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**

Submitted To: City of Fargo  
 Attention: Jason Leonard  
 Date: 8/29/2023  
 Project: UR-23-C1  
 Project Location: 24th Street and 3rd Ave. S  
 Total Price: **\$72,676.00**

**Key Contracting, Inc., hereby submits an estimate for all labor and materials for:**

Description	Measure	Quantity	Unit Price	Amount
Remova and replace 120 lf of 6" C900 forcemain. Price includes tie ins, shoring, gravel backfill, asphalt repair and site restoration.	ls	1	\$ 68,076.00	\$ 68,076.00
Sanitary Sewer By Pass	days	4	\$ 1,150.00	\$ 4,600.00

\$ 72,676.00

All materials are guaranteed as specified. All items are tied.  
 All work shall be completed in a workman like manner and according to standard practice.  
 Any alteration or deviation from the specifications shall be upon written change orders only.  
 This proposal shall be deemed to be withdrawn unless accepted in writing within **14 days**.

Dated as noted above.

Accepted on: \_\_\_\_\_

Randy Theis

Key Contracting, Inc.  
 Contact: Randy Theis  
 Cell (701) 630-2171

\_\_\_\_\_

**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**

Submitted To: Jason Leonard, City of Fargo  
 Date: 8/24/2023  
 Project: Manhole Rehab for UR-23-C1  
 Project Location: Fargo, ND  
 Addendum: NA

**Key Contracting, Inc., hereby submits an estimate for all labor and materials for:**

Bid Item	Description	Unit	Quantity	Price
1	Rehab 23' deep Sanitary Manhole SS1. Mainstay ML-72 Mortar, Mainstay DS-5 Epoxy, Inject PrimeFlex 920 as required to stop water.	EA	1	\$ 10,500.00

Notes:

1. Key is a Mainstay certified applicator with more than 15 years experience.
2. Testing, if required, by others.
3. Add 2.5% if bond is required for the project.
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.

Substantial Completion NA  
 Final Completion: NA

Dated as noted above.

Accepted on: \_\_\_\_\_

***Randy Berggren***

Key Contracting, Inc.  
 Contact: Randy Berggren  
 Cell (701) 238-4825



August 31, 2023

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

**Re: Minimum Payment Policy Waiver and Election Form  
Permanent & Temporary Easements – Improvement District #SN-23-A1**

Dear Commissioners:

Enclosed and delivered to the City Commission office is a Minimum Payment Policy Waiver and Election Form for the acquisition of a permanent & temporary easement in association with Improvement District #SN-23-A1. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize the purchase of a permanent & temporary easement from **EA Children Properties LLC** in association with Improvement District #SN-23-A1 and that the Mayor is instructed to execute the easement documents on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,

A handwritten signature in black ink that reads 'Shawn G. Bullinger'.

Shawn G. Bullinger  
Land Acquisition Specialist

C: Jeremy Gorden  
Kasey McNary

MINIMUM PAYMENT POLICY  
WAIVER AND ELECTION FORM

Project No. SN-23-A1

Owner(s) EA Children Properties, LLC

Legal Description: As found on Easement Document(s) provided.

A person whose real property is acquired may make a gift or donation of such property, or any part thereof, after being fully informed of the right to receive just compensation, or in appropriate circumstances an appraisal, for the acquisition of the property. A valuation has been completed and the Memorandum of Offer represents the value of the property interest being acquired.

An amount has been established which is believed to be just compensation. The Memorandum of Offer provides a written summary of the amount determined to be just compensation, and an offer to acquire the property interest for the full amount established.

On this form, you may elect to donate the property interest, receive the minimum payment, or receive the amount determined to be just compensation.

---

I/we, the undersigned, understand that we are entitled to receive just compensation for our property being acquired by the city of Fargo.

- I/we wish to donate the area, or a portion thereof, necessary for construction as shown on the easement map.
- I/we wish to receive the minimum payment described below:
  - Temporary construction easement only, minimum payment of \$300.
  - Permanent easement only, minimum payment of \$600.
  - Permanent easement & temporary easement, minimum payment of \$900.
- I/we wish to receive just compensation as stated in the Memorandum of Offer.

Any changes in the existing plans adverse to my property will make this agreement null and void.

E. A. Children Properties LLC  
Owner Name

9-18-23  
Date

[Signature]  
Owner Name

9-18-23  
Date

**PERMANENT EASEMENT**  
(Bike Trail)

**KNOW ALL MEN BY THESE PRESENTS** that **EA CHILDREN PROPERTIES, LLC**, a North Dakota limited liability company, hereinafter referred to as “Grantor”, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to them in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as “Grantee”, a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of constructing and maintaining a bike trail/shared use path and associated improvements, together with the customary appurtenances, said tracts being more particularly described as follows:

A tract of land in **REPLAT OF COLONY ADDITION** to the City of Fargo in the Southwest Quarter of Section 19, Township 140 North, Range 48 West of the Fifth Principal Meridian, Cass County, North Dakota described as follows:

Commencing at the southeast corner of **REPLAT OF RIVIERA HEIGHTS FIRST ADDITION** to the City of Fargo on file as document number 433621 at the Cass County Recorder's Office; thence North 06°24'34" East, on the easterly line of 10th Street North, said easterly line also being the westerly line of Lot 4 of said **REPLAT OF COLONY ADDITION**, a distance of 22.82 feet to the point of beginning; thence North 06°24'34" East, continuing on said westerly line of Lot 4, a distance of 12.55 feet to the northwest corner of said Lot 4; thence South 83°34'44" East, on the northerly line of said Lot 4, a distance of 3.77 feet; thence 13.13 feet on a non-tangential curve, concave to the northwest, said curve having a central angle of 11°08'41", a radius of 67.50 feet and a chord bearing of South 23°08'22" West, to the point of beginning.

Said tract contains 26 square feet, more or less.

Said easement areas are pictorially represented on Exhibit A attached hereto and incorporated herein by reference.

Grantor, their successors and assigns, hereby covenant to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above described tract of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, their successors and assigns, further agree that they will not disturb, injure, molest or in any manner interfere with said bike trail/shared use path and customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above described premises, and Grantor expressly warrants and states that no buildings, trees or other obstacles of any kind shall be placed or located upon the tract so as to interfere in any manner with the construction, operation, maintenance or repair of said bike trail/shared use path, including customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said bike trail/shared use path and customary appurtenances was begun.

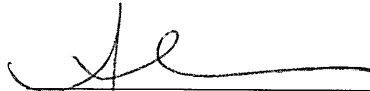
[Signature pages to follow]



IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this 24 day of August, 2023.

**GRANTOR:**

EA CHILDREN PROPERTIES, LLC

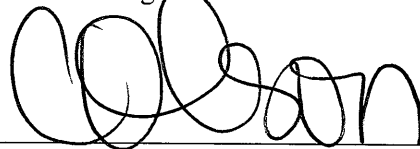
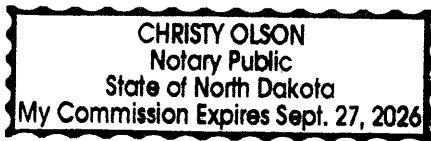


By: Elizabeth Anda  
Its: Manager

STATE OF North Dakota )  
COUNTY OF Cass )

On this 24 day of August, 2023, before me, a notary public in and for said county and state, personally appeared Elizabeth Anda to me known to be the manager of EA CHILDREN PROPERTIES, LLC, and executed the within and foregoing instrument, and acknowledged the same.

(SEAL)



Notary Public  
My Commission Expires:

**GRANTEE:**

City of Fargo, North Dakota, a North Dakota  
Municipal Corporation

---

Timothy J. Mahoney, Mayor

**ATTEST:**

---

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA     )  
                                                                                   )  
COUNTY OF CASS             )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me a notary public in and for said county and state, personally appeared Timothy J. Mahoney and Steve Sprague, known to me to be the Mayor and City Auditor, respectively, of the city of Fargo, the Grantee described in and that executed the within and foregoing instrument, and acknowledged to me that said Grantee executed the same.

(SEAL)

---

Notary Public  
My Commission Expires:

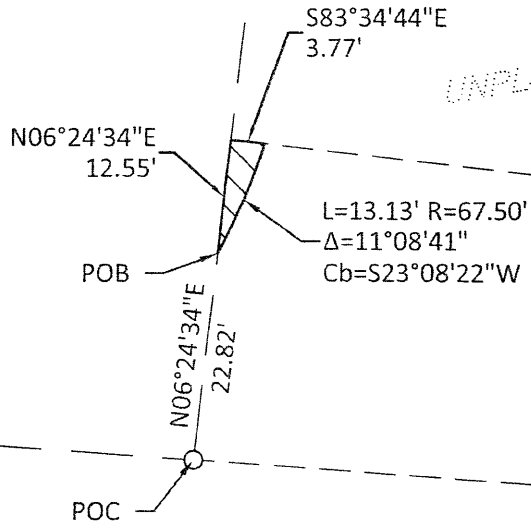
The legal description was prepared by:  
Brent W. Wacha (LS-5068)  
Professional Land Surveyor  
City of Fargo – Engineering Dept.  
225 4th St N  
Fargo ND 58102  
(701) 476-6796

This document prepared by:  
Kasey D. McNary (ND# 06590)  
Assistant City Attorney  
SERKLAND LAW FIRM  
10 Roberts Street N | PO Box 6017  
Fargo, ND 58102  
(701) 232-8957

# EXHIBIT A

REPLAT OF RIVIERA HEIGHTS FIRST ADDITION

10 ST N



UNPLATTED

LOT 4

REPLAT OF COLONY ADDITION

BISON VILLAGE ADDITION

LOT 2  
BLOCK 1




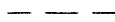

**Description:**

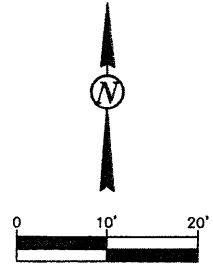
A tract of land in REPLAT OF COLONY ADDITION to the City of Fargo in the Southwest Quarter of Section 19, Township 140 North, Range 48 West of the Fifth Principal Meridian, Cass County, North Dakota described as follows:

Commencing at the southeast corner of REPLAT OF RIVIERA HEIGHTS FIRST ADDITION to the City of Fargo on file as document number 433621 at the Cass County Recorder's Office; thence North 06°24'34" East, on the easterly line of 10th Street North, said easterly line also being the westerly line of Lot 4 of said REPLAT OF COLONY ADDITION, a distance of 22.82 feet to the point of beginning; thence North 06°24'34" East, continuing on said westerly line of Lot 4, a distance of 12.55 feet to the northwest corner of said Lot 4; thence South 83°34'44" East, on the northerly line of said Lot 4, a distance of 3.77 feet; thence 13.13 feet on a non-tangential curve, concave to the northwest, said curve having a central angle of 11°08'41", a radius of 67.50 feet and a chord bearing of South 23°08'22" West, to the point of beginning.

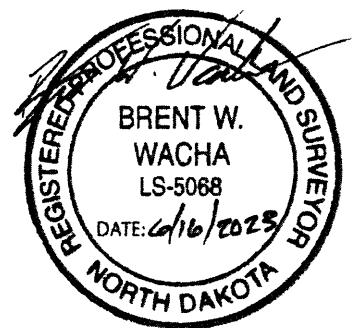
Said tract contains 26 square feet, more or less.

**LEGEND**

-  PERMANENT EASEMENT AREA
-  MONUMENT FOUND
-  MONUMENT SET
-  EXISTING LOT LINE
-  EXISTING RIGHT-OF-WAY



BEARINGS BASED ON  
CITY OF FARGO GROUND COORDINATE  
SYSTEM, DECEMBER 1992



**PERMANENT EASEMENT**

LOT 4, REPLAT OF COLONY ADDITION,  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

ENGINEERING DEPT.	DRAWN BY: BWW	APPROVED BY: BWW	DATE: JUNE 16, 2023	SHEET 1 OF 1
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**EASEMENT**  
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **EA CHILDREN PROPERTIES, LLC**, hereinafter referred to as “Grantor”, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as “Grantee”, a temporary construction easement under, over, upon and in the land hereinafter described for the purpose of constructing a bike trail/shared use path, together with the customary appurtenances, said tract being described as follows:

A tract of land in REPLAT OF COLONY ADDITION to the City of Fargo in the Southwest Quarter of Section 19, Township 140 North, Range 48 West of the Fifth Principal Meridian, Cass County, North Dakota described as follows:

The most westerly 15.00 feet of Lot 4 of said REPLAT OF COLONY ADDITION.

Said tract contains 526 square feet, more or less.

Said temporary easement area is pictorially represented on Exhibit A attached hereto and incorporated herein by reference.

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee’s officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agree that they will not disturb, injure, molest or in any manner interfere with said parcel to be used for construction and all other construction activities during the construction phase of said project, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel during the construction phase. Grantee, at its own expense, shall leave the premises in as good condition as it was prior to the time construction activities began.


This Easement shall terminate on November 30, 2024, or upon completion of construction, whichever occurs later.

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this 18<sup>th</sup> day of August, 2023.

GRANTOR:

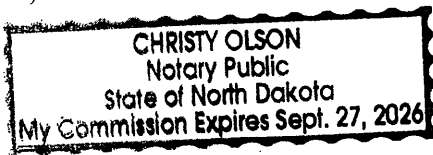
EA CHILDREN PROPERTIES, LLC

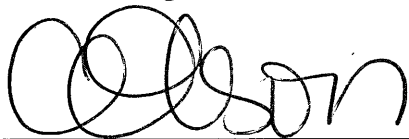
  
By \_\_\_\_\_  
Its: grantor

STATE OF North Dakota,  
COUNTY OF Cass }

On this 18 day of August, 2023, before me, a notary public in and for said county and state, personally appeared Elizabeth Anda to me known to be the manager of EA CHILDREN PROPERTIES, LLC, and executed the within and foregoing instrument, and acknowledged the same.

(SEAL)



  
\_\_\_\_\_  
Notary Public  
My Commission Expires:

**GRANTEE:**

City of Fargo, North Dakota, a North Dakota  
Municipal Corporation

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

**ATTEST:**

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

STATE OF NORTH DAKOTA   )  
                                          )  
COUNTY OF CASS                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me a notary public in and for said county and state, personally appeared Timothy J. Mahoney and Steve Sprague, known to me to be the Mayor and City Auditor, respectively, of the city of Fargo, the Grantee described in and that executed the within and foregoing instrument, and acknowledged to me that said Grantee executed the same.

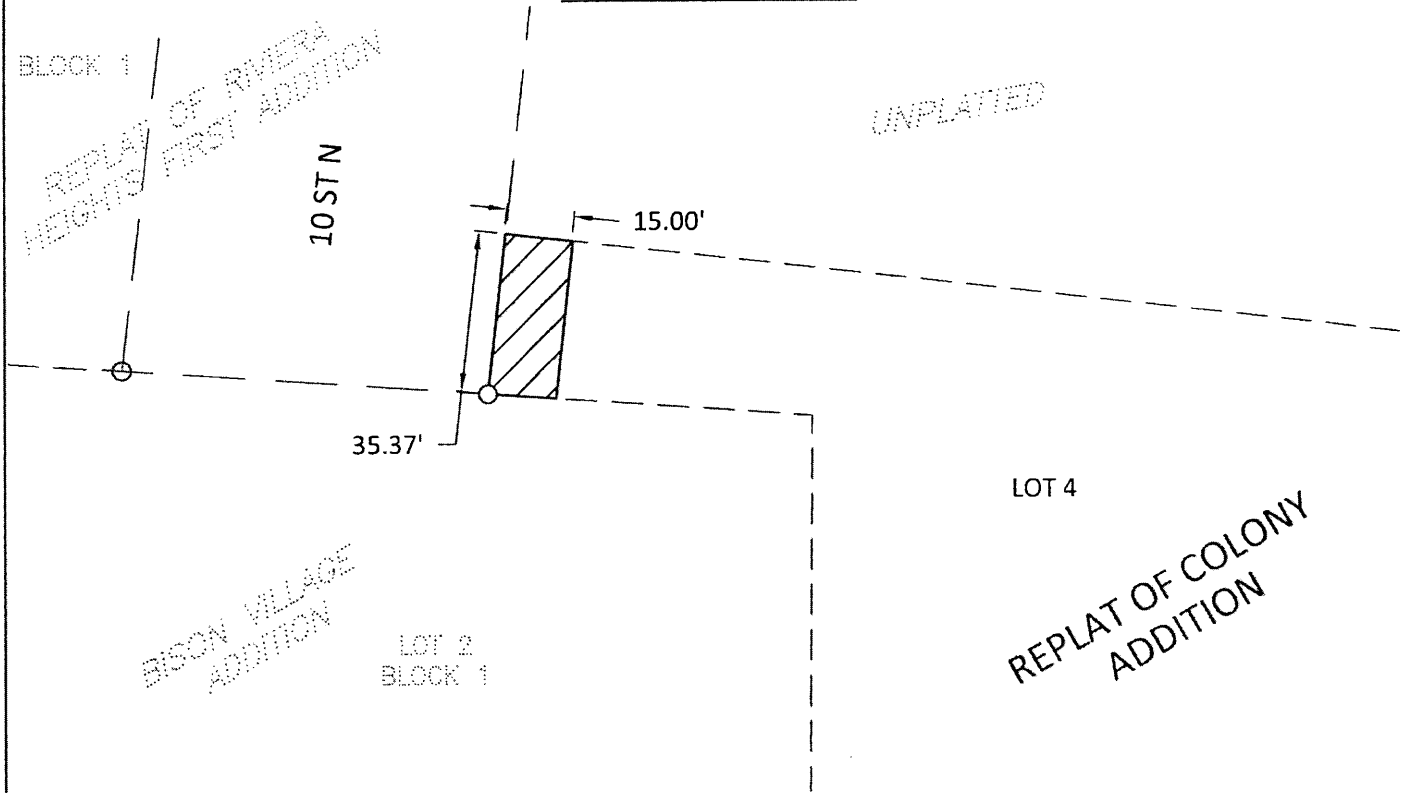
(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

The legal description was prepared by:  
Brent W. Wacha (LS-5068)  
Professional Land Surveyor  
City of Fargo – Engineering Dept.  
225 4th St N  
Fargo ND 58102  
(701) 476-6796

This document prepared by:  
Kasey D. McNary (ND# 06590)  
Assistant City Attorney  
SERKLAND LAW FIRM  
10 Roberts Street N | PO Box 6017  
Fargo, ND 58102  
(701) 232-8957

# EXHIBIT A

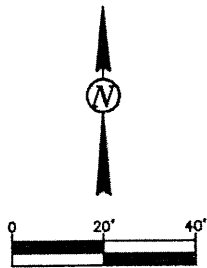


**Description:**

A tract of land in REPLAT OF COLONY ADDITION to the City of Fargo in the Southwest Quarter of Section 19, Township 140 North, Range 48 West of the Fifth Principal Meridian, Cass County, North Dakota described as follows:






The most westerly 15.00 feet of Lot 4 of said REPLAT OF COLONY ADDITION.

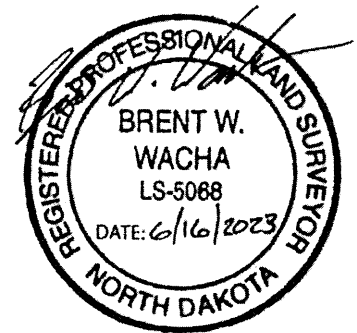
Said tract contains 526 square feet, more or less.



BEARINGS BASED ON  
CITY OF FARGO GROUND COORDINATE  
SYSTEM, DECEMBER 1992

**LEGEND**

-  TEMPORARY EASEMENT AREA
-  MONUMENT FOUND
-  MONUMENT SET
-  EXISTING LOT LINE
-  EXISTING RIGHT-OF-WAY



ENGINEERING DEPT.

## TEMPORARY EASEMENT

LOT 4, REPLAT OF COLONY ADDITION,  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: BWV

APPROVED BY: BWV

DATE: JUNE 16, 2023

SHEET 1 OF 1



COVER SHEET  
CITY OF FARGO PROJECTS

119

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:

Paving and Utility Rehab/Reconstruction

Improvement

District No. BR-24-C

Call For Bids	<u>September 18</u>	, <u>2023</u>
Advertise Dates	<u>September 27 &amp; October 4</u>	, <u>2023</u>
Bid Opening Date	<u>October 25</u>	, <u>2023</u>
Substantial Completion Date	<u>October 1</u>	, <u>2024</u>
Final Completion Date	<u>November 1</u>	, <u>2024</u>

- N/A PWPEC Report (Part of 2024 CIP)
- X Engineer's Report (Attach Copy)
- X Direct City Auditor to Advertise for Bids
- X Bid Quantities (Attach Copy for Auditor's Office Only)
- X Notice to Property Owners (Dan Eberhardt)
- X **SRF & WIFIA** Language Included

Project Engineer Robert Hasey

Phone No. (701) 241-1545

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
- X Approve Escrow Agreement (Attach Copy for Commission Office Only)
- X Assessment Map (Attach Copy for Auditor's Office Only)



**ENGINEER'S REPORT  
PAVING AND UTILITY REHAB/RECONSTRUCTION  
IMPROVEMENT DISTRICT NO. BR-24-C  
SOUTH WOODCREST DRIVE NORTH FROM LILAC LANE  
NORTH TO WILLOW ROAD NORTH & NORTH  
WOODCREST DRIVE NORTH FROM WILLOW ROAD  
NORTH TO LILAC LANE NORTH.**

**Nature & Scope**

This project is for the replacement of the water main, portions of the sanitary sewer, storm sewer, concrete curb & gutter, asphalt pavement, sidewalk and street lighting.

**Purpose**

The existing water main is a combination of cast iron pipe (CIP) & asbestos cement pipe (ACP) that is approximately 50 years old and is being replaced with polyvinyl chloride (PVC). The storm sewer is being routed to the new lift station installed with the Project No. FM-19-C1 with the older infrastructure being abandoned. The street reconstruction is necessary as the existing pavement has deteriorated significantly and will be replaced alongside the utilities. The project will be funded by a combination of City Funds (Wastewater Utility, Water Utility, Traffic/Street Light Utility, and Sales Tax) and Special Assessments to the benefiting properties.

**Special Assessment District**

All properties within the Special Assessment District will benefit from the infrastructure improvements and were determined through consideration of the longevity, consistency, and uniformity of benefiting properties within the City of Fargo. Special Assessments will be levied to each property in accordance with the City's Infrastructure Funding Policy and are subject to the approval of the Special Assessment Commission and the City Commission.

**Feasibility**

The estimated cost of construction is \$4,890,967.80. The cost breakdown is as follows:

<b>Sanitary Sewer</b>			
<b>Construction Cost</b>			<b>\$251,290.00</b>
<b>Fees</b>			
Admin	4%		\$10,051.60
Contingency	5%		\$12,564.50
Engineering	10%		\$25,129.00
Interest	4%		\$10,051.60
Legal	3%		\$7,538.70
<b>Total Estimated Cost</b>			<b>\$316,625.40</b>
<b>Funding</b>			
Utility Funds - Wastewater - 521	100.00%		\$316,625.40

<b>Water Main</b>			
<b>Construction Cost</b>			<b>\$937,182.00</b>
<b>Fees</b>			
Admin	4%		\$37,487.28
Contingency	5%		\$46,859.10
Engineering	10%		\$93,718.20
Interest	4%		\$37,487.28
Legal	3%		\$28,115.46
<b>Total Estimated Cost</b>			<b>\$1,180,849.32</b>
<b>Funding</b>			
Utility Funds - Water - 501	78.41%		\$925,859.47
Special Assessments	21.59%		\$254,989.85

<b>Paving</b>			
<b>Construction Cost</b>			<b>\$1,659,335.80</b>
<b>Fees</b>			
Admin	4%		\$66,373.43
Contingency	5%		\$82,966.79
Engineering	10%		\$165,933.58
Interest	4%		\$66,373.43
Legal	3%		\$49,780.07
<b>Total Estimated Cost</b>			<b>\$2,090,763.10</b>
<b>Funding</b>			
Special Assessments	26.43%		\$552,639.89
Sales Tax Funds - Infrastructure - 420	73.57%		\$1,538,123.21

<b>Miscellaneous</b>			
<b>Construction Cost</b>			<b>\$254,025.00</b>
<b>Fees</b>			
Admin	0%		\$0.00
Contingency	10%		\$25,402.50
Engineering	0%		\$0.00
Interest	0%		\$0.00
Legal	0%		\$0.00
<b>Total Estimated Cost</b>			<b>\$279,427.50</b>
<b>Funding</b>			
Sales Tax Funds - Infrastructure - 420	50.00%		\$139,713.75
Sales Tax Funds - Flood Control - 460	50.00%		\$139,713.75

<b>Flood Mitigation</b>			
<b>Construction Cost</b>			<b>\$1,640,450.00</b>
<b>Fees</b>			
Admin	0%		\$0.00
Contingency	10%		\$164,045.00
Engineering	0%		\$0.00
Interest	0%		\$0.00
Legal	0%		\$0.00
<b>Total Estimated Cost</b>			<b>\$1,804,495.00</b>
<b>Funding</b>			
Sales Tax Funds - Flood Control - 460	100.00%		\$1,804,495.00

<b>Street Lights</b>			
<b>Construction Cost</b>			<b>\$148,685.00</b>
<b>Fees</b>			
Admin	4%		\$5,947.40
Contingency	5%		\$7,434.25
Engineering	10%		\$14,868.50
Interest	4%		\$5,947.40
Legal	3%		\$4,460.55
<b>Total Estimated Cost</b>			<b>\$187,343.10</b>
<b>Funding</b>			
Utility Funds - Street Lights - 528	100.00%		\$187,343.10

<b>Miscellaneous Costs</b>			
Outside Engineering			\$80,000.00
<b>Total Miscellaneous Costs</b>			<b>\$80,000.00</b>
<b>Funding</b>			
Sales Tax Funds - Flood Control - 460	100.00%		\$80,000.00

**Project Funding Summary**

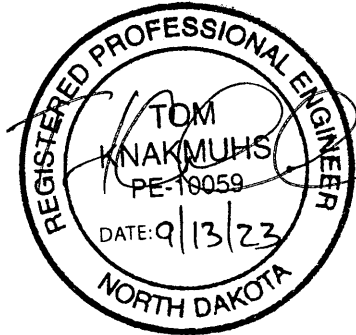
Utility Funds - Street Lights - 528	3.15%	\$187,343.10
Utility Funds - Wastewater - 521	5.33%	\$316,625.40
Utility Funds - Water - 501	15.59%	\$925,859.47
Special Assessments	13.60%	\$807,629.74
Sales Tax Funds - Infrastructure - 420	28.25%	\$1,677,836.96
Sales Tax Funds - Flood Control - 460	34.08%	\$2,024,208.75


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**Total Estimated Project Cost** **\$5,939,503.42**

**This project does not have any alternate or optional containers.**

We believe this project to be cost effective.



  
Thomas Knakmuhs, PE  
City Engineer



**LOCATION AND COMPRISING  
PAVING AND UTILITY REHAB/RECONSTRUCTION  
IMPROVEMENT DISTRICT NO. BR-24-C  
SOUTH WOODCREST DRIVE NORTH FROM LILAC LANE  
NORTH TO WILLOW ROAD NORTH & NORTH  
WOODCREST DRIVE NORTH FROM WILLOW ROAD  
NORTH TO LILAC LANE NORTH.**

**LOCATION:**

Along South Woodcrest Drive North from Lilac Lane North to Willow Road North & along North Woodcrest Drive North from Willow Road North to Lilac Lane North.

**COMPRISING:**

Lots 8 through 10, Inclusive, Block 7.

Lots 4 through 6, Inclusive, Block 12.

All in Woodcrest Second Addition.

Lots 11 through 23, Inclusive, Block 15.

Lots 1 through 24, Inclusive, Block 16.

Lots 4 through 6, Inclusive, Block 17.

All in Woodcrest Third Addition.

Lot 25, Block 16.

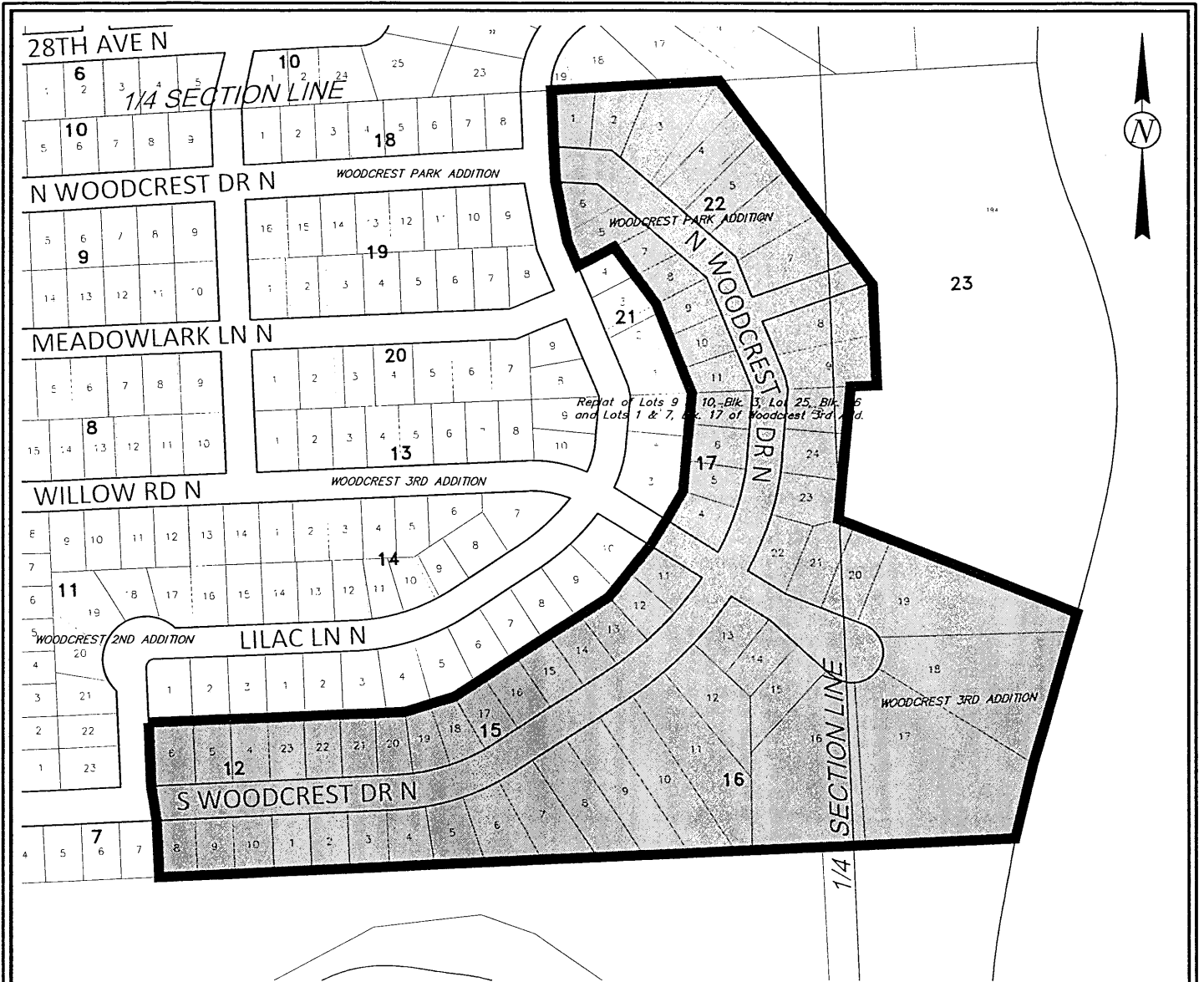
Lot 7, Block 17.

All located in A Replat of Lots 9&10 Block 13, Lot 25 Block 16, Lots 1&7 Block 17 Woodcrest Third Addition.

Lots 5 through 11, Inclusive, Block 21.

Lots 1 through 9, Inclusive, Block 22.

All located in Woodcrest Park Addition.



CITY OF FARGO ENGINEERING  
DEPARTMENT

LOCATION & ASSESSMENT AREA

PAVING & UTILITY REHAB/RECONSTRUCTION

IMPROVEMENT DISTRICT NO. BR-24-C



COVER SHEET  
CITY OF FARGO PROJECTS

20

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:

Paving and Utility Rehab/Reconstruction

Improvement District No.

BR-24-E

Call For Bids	<u>September 18</u>	, <u>2023</u>
Advertise Dates	<u>September 27 &amp; October 4</u>	, <u>2023</u>
Bid Opening Date	<u>October 25</u>	, <u>2023</u>
Substantial Completion Date	<u>September 13</u>	, <u>2024</u>
Final Completion Date	<u>October 13</u>	, <u>2024</u>

<u>N/A</u>	PWPEC Report (Part of 2024 CIP)
<u>X</u>	Engineer's Report (Attach Copy)
<u>X</u>	Direct City Auditor to Advertise for Bids
<u>X</u>	Bid Quantities (Attach Copy for Auditor's Office Only)
<u>X</u>	Notice to Property Owners (Dan Eberhardt)
<u>N/A</u>	Supplemental Funding Language Included
Project Engineer	<u>Brian Skanson</u>
Phone No.	<u>(701) 241-1545</u>

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:

<u>X</u>	Create District (Attach Copy of Legal Description)
<u>X</u>	Order Plans & Specifications
<u>X</u>	Approve Plans & Specifications
<u>N/A</u>	Adopt Resolution of Necessity
<u>N/A</u>	Approve Escrow Agreement (Attach Copy for Commission Office Only)
<u>X</u>	Assessment Map (Attach Copy for Auditor's Office Only)



**ENGINEER'S REPORT  
PAVING AND UTILITY REHAB/RECONSTRUCTION  
IMPROVEMENT DISTRICT NO. BR-24-E  
1ST ST. N. FROM 32ND AVE. TO 35TH AVE.**

**Nature & Scope**

This project is for the replacement of the water main and services, sanitary sewer services, storm sewer, street reconstruction, sidewalk, driveways, streetlights, and incidentals.

**Purpose**

The existing water main on 1st Street is ACP, which was installed over 50 years ago, is being replaced to minimize impacts and costs associated with breaks. As part of this, we will replace the water main services to the curb stop and the sanitary services from the main to behind the curb. The street reconstruction is necessary because the existing street section has deteriorated significantly and has exceeded its life expectancy. Reconstruction will include asphalt street paving, gravel base, curb and gutter, storm sewer inlets and leads, driveway approaches, sidewalk, and streetlights.

**Special Assessment District**

All properties within the Special Assessment District will benefit from the infrastructure improvements and were determined through consideration of the longevity, consistency, and uniformity of benefiting properties within the City of Fargo. Special Assessments will be levied to each property in accordance with the City's Infrastructure Funding Policy and are subject to the approval of the Special Assessment Commission and the City Commission.

**Feasibility**

The estimated cost of construction is \$1,344,638.60. The cost breakdown is as follows:

**Sanitary Sewer**

<b>Construction Cost</b>		<b>\$120,050.00</b>
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**Fees**

Admin	4%	\$4,802.00
Contingency	5%	\$6,002.50
Engineering	10%	\$12,005.00
Interest	4%	\$4,802.00
Legal	3%	\$3,601.50

---

<b>Total Estimated Cost</b>		<b>\$151,263.00</b>
-----------------------------	--	---------------------

**Funding**

State Funds - Other ND	50.00%	\$75,631.50
Utility Funds - Wastewater - 521	50.00%	\$75,631.50

**Water Main**

<b>Construction Cost</b>		<b>\$379,983.00</b>
--------------------------	--	---------------------

**Fees**

Admin	4%	\$15,199.32
Contingency	5%	\$18,999.15
Engineering	10%	\$37,998.30
Interest	4%	\$15,199.32
Legal	3%	\$11,399.49

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<b>Total Estimated Cost</b>		<b>\$478,778.58</b>
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**Funding**

Special Assessments	22.81%	\$109,191.42
State Funds - Other ND	38.60%	\$184,793.58
Utility Funds - Water - 501	38.60%	\$184,793.58

**Storm Sewer**

<b>Construction Cost</b>		\$32,735.00
<b>Fees</b>		

Admin	4%	\$1,309.40
Contingency	5%	\$1,636.75
Engineering	10%	\$3,273.50
Interest	4%	\$1,309.40
Legal	3%	\$982.05

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<b>Total Estimated Cost</b>		<b>\$41,246.10</b>
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**Funding**

Special Assessments	50.00%	\$20,623.05
State Funds - Other ND	50.00%	\$20,623.05

**Paving and Incidentals**

<b>Construction Cost</b>		\$756,760.00
<b>Fees</b>		

Admin	4%	\$30,270.40
Contingency	5%	\$37,838.00
Engineering	10%	\$75,676.00
Interest	4%	\$30,270.40
Legal	3%	\$22,702.80

---

<b>Total Estimated Cost</b>		<b>\$953,517.60</b>
-----------------------------	--	---------------------

**Funding**

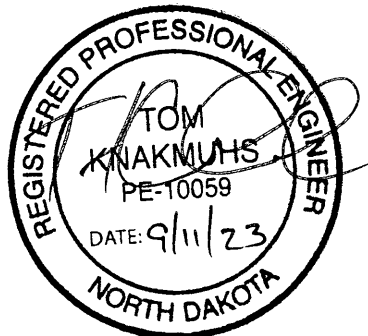
Special Assessments	24.31%	\$231,799.21
State Funds - Other ND	75.69%	\$721,718.39


<b>Street Light</b>		
<b>Construction Cost</b>		<b>\$55,110.60</b>
<b>Fees</b>		
Admin	4%	\$2,204.42
Contingency	5%	\$2,755.53
Engineering	10%	\$5,511.06
Interest	4%	\$2,204.42
Legal	3%	\$1,653.32
<b>Total Estimated Cost</b>		<b>\$69,439.35</b>
<b>Funding</b>		
State Funds - Other ND	100.00%	\$69,439.35

<b>Project Funding Summary</b>		
Special Assessments	21.34%	\$361,613.68
State Funds - Other ND	63.29%	\$1,072,205.87
Utility Funds - Water - 501	10.91%	\$184,793.58
Utility Funds - Wastewater - 521	4.46%	\$75,631.50
<b>Total Estimated Project Cost</b>		<b>\$1,694,244.63</b>

**This project does not have any alternate or optional containers.**

We believe this project to be cost effective.



  
 Thomas Knakmuhs, PE  
 City Engineer



**LOCATION AND COMPRISING  
PAVING AND UTILITY REHAB/RECONSTRUCTION  
IMPROVEMENT DISTRICT NO. BR-24-E  
1ST ST. N. FROM 32ND AVE. TO 35TH AVE.**

**LOCATION:**

On 1st Street North between 32nd Avenue North and 35th Avenue North.

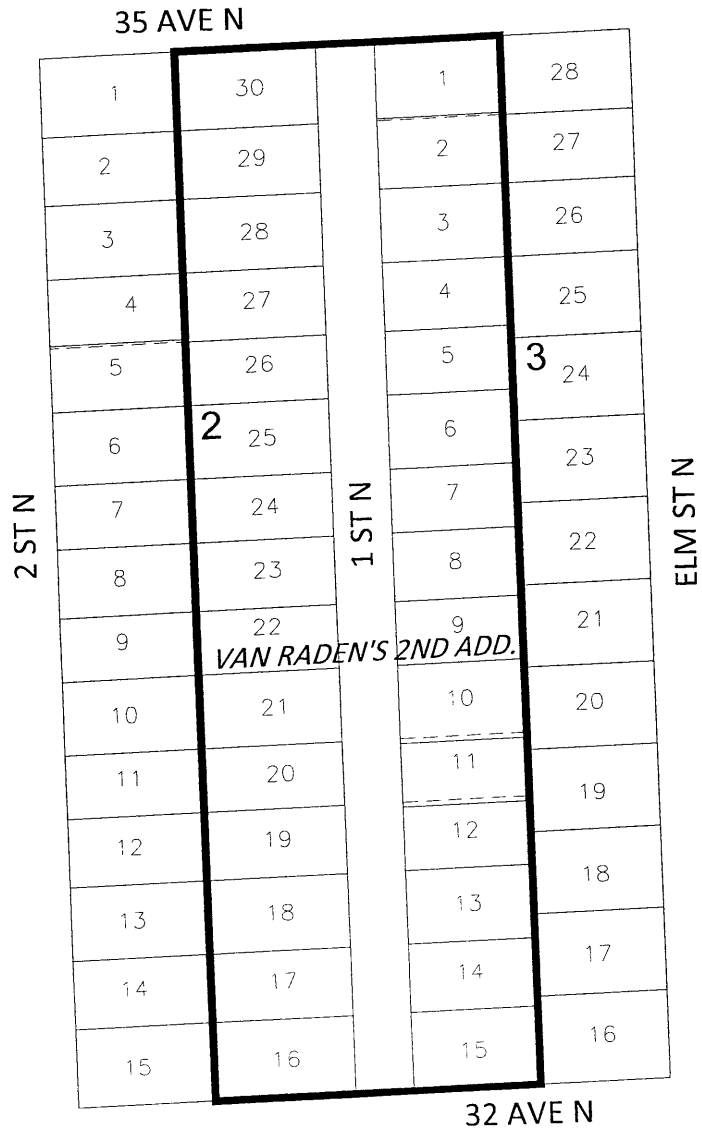
**COMPRISING:**

Lots 16 through 30, Block 2, Inclusive.

Lots 1 through 15, Block 3, Inclusive.

All in the Van Raden's 2nd Addition.

All of the foregoing is located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO ENGINEERING  
DEPARTMENT

LOCATION & ASSESSMENT AREA

PAVING AND UTILITY REHAB/RECONSTRUCTION

IMPROVEMENT DISTRICT NO. BR-24-E

(21)

# Memorandum

**To:** Board of City Commissioners  
**From:** Bekki Majerus, Director of Facilities Management  
**Date:** September 14, 2023  
**Re:** Newman Outdoor Field Stadium Lease Extension with Fargo Baseball, LLC.

---

In 2004, the original lease between the City of Fargo and Fargo Baseball, LLC was amended to include a “renewal period” which would extend for ten (10) years from the time the construction cost of the stadium was repaid to the General Fund from stadium revenue. That extension is set to expire October 1, 2023. Additionally, the amendment stipulated that Fargo Baseball, LLC had the option to exercise five (5) five-year extensions beyond that.

Attached is a letter from Fargo Baseball, LLC (RedHawks) stating their desire to exercise the first extension option.

**Recommended Action:**

Acknowledge the lease extension with Fargo Baseball, LLC for the time period of October 1, 2023 to October 1, 2028.





---

9.6.2023

To: Bekki Majerus  
Director of Facilities Management  
City of Fargo  
200 North 3<sup>rd</sup> Street  
Fargo, ND 58102

Cc: Mike Redlinger

Fr: Mr. N. Bruce Thom

Re: Stadium lease renewal

Dear Bekki,

In accordance with the Fargo Baseball stadium lease agreement (Renewal Period) – “Extension and Amendment to Fargo Baseball Stadium lease agreement”, pages 3-4, paragraph 3(b), we wish to “RENEW” our lease effective until October 1, 2028.

Sincerely,

A handwritten signature in blue ink that reads "N. Bruce Thom".

N. Bruce Thom  
Chairman/ managing partner

FM RedHawks  
1515 15<sup>th</sup> Ave. North  
Fargo, ND 58102

(Please note address change per lease)

22

# Memorandum

**To:** Board of City Commissioners  
**From:** Bekki Majerus, Director of Facilities Management  
**Date:** September 14, 2023  
**Re:** Change Order for Amy's Windows (RFP23090) – Fargo Public Library Sunshades Replacement

---

Dear Commissioners:

At the July 10, 2023 Commission meeting, the bid award for Amy's Windows to replace all of the sunshades at the Main Library was approved in the amount of \$122,550.

There are 2 areas where the shades sections exceed the desired width and are being divided into 2 separate shades. The purpose of this is for safety as well as aesthetics. Also, there is an area that needs a change in the shade fabric. The Tech Services area needs a darker shade than the rest of the building. The change order total for these items is \$3,804.00.

**Recommended Action:**

Move to approve the change order with Amy's Windows in the amount of \$3,804.00.



6008 Shane Drive  
Minneapolis, MN 55439

651-352-9607  
amyswindows.com

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**\*\*\*PROPOSAL REQUEST RESPONSES\*\*\***

**Proposal Request 1:** Adding two additional shades and reducing the width of two shades on the second floor where the width exceeds 122". The shade located on Second Floor Adult Library (open area) near the SE corner is to be divided into two shades as shown below. The east shade in the Computer Lab is to be divided into two shades with the narrow shade located at the east end. Include in proposal any changes to the project cost and/or schedule.

**RESPONSE TO PROPOSAL REQUEST #1**  
**COST CHANGE: ADD \$2390**  
**No change to schedule**

**Proposal Request 2:** Change the shade fabric opening factor to less than 1% at the Tech Services shades on the First Floor. It is desirable to have some light come through the shade, but not as much as the 1% openness factor used elsewhere in the library. Include in proposal any changes to the project cost and/or schedule.

**RESPONSE TO PROPOSAL REQUEST #2**  
**COST CHANGE: ADD \$1414**  
**No change to schedule**

Comments:

Approvals:

23

# Memorandum

**To:** Board of City Commissioners  
**From:** Bekki Majerus, Director of Facilities Management  
**Date:** September 18, 2023  
**Re:** Amendment to Contract for Services with KLJ (RFQ18325)

---

In April of 2019, KLJ was selected to perform project design build services for the GTC Underground Parking Facility. The original scope was completed in May of 2021. It has been identified that additional design build services related to this project are necessary following the discovery of a damaged beam earlier this year. The attached amendment is a no cost amendment as funding will come from a source other than the original project account. Funds are available in the GTC Underground Parking Repairs account. The amendment also identifies an extension of the end date of the contract. The new end date for rendering services will be December 31, 2023.

**Recommended Action:**

Move to approve the no cost amendment to contract for services with KLJ (RFQ18325).

**AMENDMENT TO ENGINEER-OWNER AGREEMENT**  
**Amendment No. 4**

Background Data

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

Nature of Amendment (check all that apply)

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

Description of Modifications

KLJ's scope of services have been modified as identified in the Exhibit A.4 attached.

Agreement Summary

a. Original agreement amount:	\$155,931.40
b. Net change for prior amendments:	\$11,860.42
c. This amendment amount:	\$0.00
d. Adjusted Agreement amount:	\$167,791.82

Engineer and Owner hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is September 18, 2023.

ENGINEER: KLJ Engineering, LLC

OWNER: City of Fargo



By: Luke LaLiberty, PE  
Title: Associate VP - Municipal  
Date Signed: 9/14/2023

By: Tim Mahoney, MD  
Title: Mayor  
Date Signed: \_\_\_\_\_



**Exhibit A.4  
Engineering Services  
GTC Underground Parking Facility  
Fargo, ND**

**Engineer’s Services**

The city of Fargo has requested KLJ provide engineering services to repair a damaged concrete beam in the underground parking garage at the Ground Transportation Center (GTC) as a continuation of the work KLJ completed in May of 2021 (City of Fargo Project BP0041). It is our understanding the beam is above an existing concrete opening separating the ramp from the parking garage. The concrete is cracked and spalled. The services anticipated to assist in this task are as follows.

**I. Engineering Services**

- A. One site visit to review existing conditions, specifically as it relates to the opening in question.
- B. Assist the contractor, Gast Construction, in preparing sketches associated with the repair work for permitting and construction. The repairs are anticipated to include removal of the damaged concrete and repair of the concrete beam.
- C. The contractor’s work will be completed under a construction contract previously issued by the city and administered by KLJ (City of Fargo project BP0041, KLJ Project 1904-00486). KLJ shall prepare a change order to amend the contractor’s previous contract.
- D. Review of submittals and shop drawings associated with the repairs.
- E. Review of pay requests.
- F. One site visit to review rebar placement.
- G. Final walkthrough.

**II. Anticipated Project Schedule**

Contract Execution/Notice to Proceed (NTP)..... September 22, 2023  
 Construction ..... October 1 – November 1, 2023

**III. Services Not Included**

These services can be provided upon request and will be negotiated at the time services are rendered and will be address in an amendment to the contract.

- A. Preparation of plans or specifications for the project outside of sketches noted above.
- B. Preparation of bidding documents or front-end specifications.
- C. Permitting fees.
- D. Bidding assistance.
- E. Preparation of as-built drawings.
- F. Additional services, tasks, site visits and meetings not described in tasks outlined above.

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**City of Fargo, North Dakota**  
**General Fund - Budget to Actual**  
**Unaudited Monthly Financial Statements - Through Aug 31, 2023**  
**Amounts shown in thousands**

	Budget		Actual		Variance
<b>REVENUES:</b>					
Taxes	\$ 38,576	\$	37,833	\$	(743)
Licenses & Permits	4,525		4,543		18
Intergovernmental Revenue	12,558		11,317		(1,241)
Charges for Services	8,105		10,073		1,968
Fines & Traffic Tickets	1,531		1,024		(507)
Interest	1,947		4,989		3,043
Miscellaneous Revenue	2,962		648		(2,314)
Transfers In	9,281		9,267		(15)
<b>Total Revenues</b>	<b>\$ 79,485</b>	<b>\$</b>	<b>79,694</b>	<b>\$</b>	<b>209</b>
<b>EXPENDITURES:</b>					
General Government	\$ 17,111	\$	17,291	\$	(180)
Public Safety	32,595		31,504		1,091
Public Works	10,000		9,977		23
Health & Welfare	9,806		9,392		414
Culture & Recreation	3,839		3,496		343
Economic Development	382		210		172
General Support	940		836		104
Capital Outlay	393		38		356
Operating Transfers	2,486		222		2,264
Contingency (Salary Savings)	(1,453)		56		(1,509)
<b>Total Expenditures</b>	<b>\$ 76,099</b>	<b>\$</b>	<b>73,022</b>	<b>\$</b>	<b>3,077</b>
<b>Revenue Over (Under) Expenditures</b>	<b>\$ 3,386</b>	<b>\$</b>	<b>6,672</b>	<b>\$</b>	<b>3,286</b>



CITY OF  
**Fargo Fire Department**

25

MEMORANDUM

**TO: FARGO CITY COMMISSION**  
**FROM: FIRE CHIEF STEVE DIRKSEN**  
**DATE: 09/12/2023**  
**SUBJECT: CHANGE ORDER FOR PROJECT BP0065 FIRE STATION #8**

This request is for three change orders for the construction of Fire Station # 8.

CO # 1. – Building permit cost of \$9,881.00.

CO # 2. – Provide asphalt and paving on 33<sup>rd</sup> St S. When the project was bid, there were plans by a developer to construct a building to the west of the property that would require the extension of 33<sup>rd</sup> St S. That project fell through and the road will not be extended as planned. As part of the project additional temporary road will need to be constructed to provide access to Station 8 until 33<sup>rd</sup> St is extended. The cost for this change order is \$28,928.34.

CO #3. – Is a reduction of concrete and pipe bollards. This change order is -\$12,511.00.

The original price of the contract for General Construction was \$3,504,720.00. The proposed changes will bring the total cost of the General Construction to \$3,531,018.34.

**RECOMMENDED MOTION:** Approve three change orders for BP0065 Fire Station #8 in the amount of \$26,298.34.

Ledgestone Inc.  
 22930 CO Hwy 6  
 Detroit Lakes MN 56501

www.ledgestoneinc.com  
 218-849-6140  
 218-847-5013



LEDGESTONE, INC.

# Change Order Request

**COR Number:** 01

**Date:** 6/22/2023

**Project Number:** 2301

**Contract Date:** 5/15/2023

<b>To:</b>	<b>Project:</b>
City of Fargo Fire Department 637 NP Avenue Fargo ND 58102	Fargo Fire Department Station #8 6617 33rd Street South Fargo ND 58104

**Description of Change:**

Breakdown for balance of the building permit fee in multiple prime contract project:

Project Original Contract Sum	3,504,720.00
Total of Previously Approved Change Orders	0.00
Contract Amount Prior to this Change Order	3,504,720.00
Proposed Contract Amount of this Change Order	9,881.00
Proposed Contract Amount Including this Change Order	3,514,601.00

**Accepted By:**

_____ Contractor (Company Name)	_____ Owner (Company Name)	_____ Other (Company Name)
_____ By (Signature)	_____ By (Signature)	_____ By (Signature)
_____ Printed Name	_____ Printed Name	_____ Printed Name
_____ Date	_____ Date	_____ Date
	_____ Owner's Change Order Number	

Ledgestone Inc.  
 22930 CO Hwy 6  
 Detroit Lakes MN 56501

www.ledgestoneinc.com  
 218-849-6140  
 218-847-5013



LEDGESTONE, INC.

# Change Order Request

**COR Number:** 01

**Date:** 6/22/2023

<b>To:</b> City of Fargo Fire Department	<b>Project:</b> Fargo Fire Department Station #8
------------------------------------------	--------------------------------------------------

Item	Description	Quantity	UOM	Unit Price	Extended Price
<b>01 - General Requiements</b>					
	Total cost of building permit	1.00	LS	24,476.38	24,476.38
	Ledgestone portion fee per bidding	1.00-	LS	14,595.38	14,595.38-
<b>General Requiements Total:</b>					<b>9,881.00</b>
<b>Change Order Total:</b>					<b>9,881.00</b>

Ledgestone Contract	\$3,504,720.00
\$4,576.50 1st \$1M	
\$4 per \$1,000 there after =	\$ 14,595.38



**INSPECTIONS**  
 200 3RD STREET NORTH  
 FARGO, NORTH DAKOTA 58102  
 PHONE: 701-241-1561  
 FAX: 701-476-6779

**BUILDING PERMIT AND PLAN REVIEW FEES**

Effective January 1, 2018

TOTAL VALUATION	FEE
Up to and including \$1,000.00	\$40.00
\$1,001.00 to \$25,000.00	\$40.00 for the first \$1,000.00 plus \$11.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$304.00 for the first \$25,000.00 plus \$7.50 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$491.50 for the first \$50,000.00 plus \$5.30 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$756.50 for the first \$100,000.00 plus \$4.30 for each additional \$1,000.00 or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$2476.50 for the first \$500,000.00 plus \$4.20 for each additional \$1,000.00 or fraction thereof to and including \$1,000,000.00
\$1,000,001.00 and up	\$4576.50 for the first \$1,000,000.00 plus \$4.00 for each additional \$1,000.00 or fraction thereof

<b>Demolition Permit:</b>	\$100.00 / \$40.00 for buildings under 400 SF and buildings without utility services.
<b>House Moving Permit:</b>	\$300.00 / \$40.00 for buildings under 400 SF and buildings without utility services. \$150.00 / \$40.00 for moves within extraterritorial area.
<b>Board of Appeals:</b>	\$150.00 filing fee
<b>Plan Review:</b> All projects when a plan review is required.	Twenty (20) percent of the attributable building permit fee. Minimum fee \$40.

<b>Other Inspections and Fees:</b>	
1. Inspections outside of normal business hours (minimum charge -- two hours)	\$70.00 per hour*
2. Reinspection fees assessed under provisions of Section 108 and 109 of the International Building Code	\$70.00 per hour*
3. Inspections for which no fee is specifically indicated (minimum charge -- one-half hour)	\$70.00 per hour*
4. Additional plan review required by changes, additions or revision to plans (minimum charge -- one-half hour)	\$70.00 per hour*
5. For use of outside consultants for plan checking and inspections, or both.	Actual Cost **

\* Or the total hourly cost to the jurisdiction, whichever is the greater. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

\*\* Actual costs include administrative and overhead cost.

**Should work begin prior the issuance of necessary permits, the following fees will apply:**

VALUATION OF WORK	FEE
\$0-\$50,000	Permit fee is doubled Second offence within 180 days - \$200 minimum \$100 for each additional violation subsequent
\$50,001-\$500,000	50% of permit fee (Minimum fee of \$980)
Over \$500,000	25% of the permit fee (Minimum fee of \$2,500)



City of Fargo  
 Inspections Department  
 225 4th Street N, Fargo, ND 58102  
 701.241.1561  
[www.FargoND.gov](http://www.FargoND.gov)

## New Building Permit

<b>Permit Type:</b>	New Building	<b>Permit Number:</b>	2302-0304-NEWC
<b>Address:</b>	6617 33 St S	<b>Establishment:</b>	Fargo Fire Department Station #8
<b>Parcel Number:</b>	01-8739-00501-000	<b>Date Issued:</b>	6/21/2023
<b>Construction Value:</b>	\$4,732,000.00	<b>Total Area (ft<sup>2</sup>):</b>	12,375.00
<b>Special Flood Hazard:</b>	Yes	<b>Flood Protection Elevation:</b>	
<b>Occupancy Group:</b>	S-2 Storage Low Hazard	<b>Type of Construction:</b>	IIB

### Description of Work:

New construction of a 10,832 square foot, three-bay satellite station #8 for the Fargo Fire Department. Fully sprinklered, type IIB, mixed occupancy, single-story building with mezzanine at apparatus bay. Construction to be architectural precast walls with flat precast roof, steel stud partition walls in living areas and CMU partitions at industrial areas

<b>Applicant:</b>	<b>EAPC Architects Engineers</b>
<b>Web Administrator:</b>	<b>EAPC Architects Engineers</b>
<b>Parcel Owner:</b>	<b>City of Fargo</b>
<b>Lead Staff Assigned:</b>	<b>Bill Yates</b>
<b>General Contractor:</b>	<b>Ledgestone Inc</b>

**Total Permit Fees: 20665.1600**

### Conditions:

1.

It is the responsibility of the permit holder to verify the existence of any covenants or easements on this property. Special Flood Hazard Permits shall be constructed in accordance to the Flood Proofing Code of the City of Fargo. Issuance of this permit shall not imply approval for any future work not identified on this permit or permit application. All work to comply with all applicable requirements of the City of Fargo including the 2018 Fargo Building Code.

**Approved By: Peter Valkov**

\*\*\*Note: This permit becomes void if construction is not begun, is suspended or abandoned within 180 days at any time after work is commenced.

**Building Permit Acknowledgments**

1. I understand and certify that issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction.
  
2. Through application for and acceptance of this building permit the permit applicant/holder/owner understands and agrees that the City will conduct periodic observations of construction, but that such observation or review of plans and/or construction does not constitute either explicit or implied certification that the plans and/or construction comply with City Codes or any other applicable requirements. The permit applicant/holder/owner at all times remains responsible for ensuring that the construction, plans, and specifications comply with all requirements of all City Codes and other applicable requirements. The City will not provide continuous on-site observation of construction, and disclaims any responsibility for defects in materials or workmanship.
  
3. The City encourages and recommends the permit applicant/holder/owner hire a private, on-site inspector or other professional as the applicant/holder/owner deems necessary in order to ensure that all aspects of the plans and/or construction comply with applicable codes and all other requirements.

AS PERMIT APPLICANT, I ACKNOWLEDGE THAT I HAVE BEEN MADE AWARE OF THE ABOVE STATEMENTS AND CONDITIONS

APPLICANT  
SIGNATURE:

\_\_\_\_\_

DATE:

\_\_\_\_\_

## Required Commercial Inspections

Request inspections via our on-line portal: [permits.fargond.gov](http://permits.fargond.gov)

<p><b><u>BUILDING INSPECTIONS:</u></b> 241-1561</p> <p>A separate plan review may be required.</p> <p><b>Footing inspection</b> - Call when footing forms and reinforcing are in place but prior to the placement of any concrete.</p> <p><b>Foundation wall inspection</b> - Call when wall forms are complete and all reinforcing is in place but prior to the placement of any concrete.</p> <p><b>Concrete slab inspection</b> - Call when forms and reinforcing are in place but prior to the placement of any concrete.</p> <p><b>Framing (intermediate) inspection</b> - Call when structural components are complete and prior to concealing with insulation or finishes. NOTE: This inspection may not be called for until required electrical, plumbing and mechanical inspections have been complete and work approved.</p> <p><b>Energy/Insulation inspection</b> - See table on the back of this form for requirements.</p> <p><b>Shear wall</b> - For wood frame, 3 story buildings - Call when shear walls are complete, including required sheathing.</p> <p><b>Lath and/or gypsum wallboard inspection</b> - Call when gypsum/wallboard is installed but prior to the application of joint and fastener treatments.</p> <p><b>Final inspection</b> - Call when project is complete but prior to occupying the structure if new construction.</p> <p><b><u>MECHANICAL INSPECTIONS:</u></b> 241-1564</p> <p>A separate mechanical permit is required.</p> <p><b>Gas line inspection</b> - When gas line air pressure test has been begun and is holding at test pressure.</p> <p><b>Final mechanical inspection</b> - When all mechanical equipment including all venting and ductwork has been installed and prior to concealing any venting or ductwork.</p>	<p><b><u>ELECTRICAL INSPECTIONS:</u></b> 241-1565</p> <p>A separate electrical permit is required.</p> <p><b>Temporary service</b> - Call when temporary service and support pole have been installed.</p> <p><b>Permanent service</b> - Call when electrical panel is installed.</p> <p><b>Rough-in inspection</b> - Call when electrical wiring is completed but prior to covering wiring with either insulation or finishes.</p> <p><b>Final Electrical inspection</b> – Call when the electrical portion of the project is complete.</p> <p><b><u>PLUMBING INSPECTIONS:</u></b> 241-1560</p> <p>A separate plumbing permit is required.</p> <p><b>Sewer inspection</b> - Call when new or replacement sewer is installed.</p> <p><b>Ground work inspection</b> - Call when below floor plumbing lines are installed and pressure test is on.</p> <p><b>Waste and vent inspection</b> - Call when all plumbing drains and vents have been installed and pressure test is on but prior to concealing any piping with insulation or sheetrock.</p> <p><b>Final Plumbing inspection</b> – Call when all fixtures are installed and the project is complete.</p> <p><b><u>ZONING INSPECTIONS:</u></b> 241-1561</p> <p>A separate Land Development Code review may be required.</p> <p><b>Site Inspection</b> – Call when all required landscaping has been completed.</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**NOTE:** While this list represents the "required" inspections, inspectors will make additional inspections at the request of the permit holder if questions arise which necessitate an on-site visit. Failure by the permit holder to make sure that all required inspections are complete may result in the withholding of the Certificate of Occupancy for the project. This could complicate financing, refinancing, or resale of your property.

**TABLE 402.1.3  
BUILDING ENVELOPE REQUIREMENTS – OPAQUE ASSEMBLIES  
Climate Zone 6A for Cass County, North Dakota**

	All Other	Group R
<b>Roofs</b>		
Insulation entirely above deck	R-35ci	R-30ci
Metal Buildings (with R-5 thermal blocks <sup>a, b</sup> )	R-30 + R-11 LS	R-30 + R-11 LS
Attic and other	R-49	R-49
<b>Walls, Above Grade</b>		
Mass	R-15.2ci	R-15.2ci
Metal Building <sup>b</sup>	R-13 + R-13ci	R-13 + R-14ci
Metal Framed	R-13 + R-7.5ci	R-13 + R-12.5ci
Wood framed and other	R13 + R7.5ci or R-20+R-3.8ci	R13 + R7.5ci or R-20 + R-3.8ci
<b>Walls, Below Grade</b>		
Below grade wall <sup>d</sup>	R-10ci	R-15ci
<b>Floors</b>		
Mass	R-15ci	R-16.7ci
Joist/Framing (steel/wood)	R30 f	R-38
<b>Slab-on-Grade Floors</b>		
Unheated slabs	R-15 for 24 in. below	R-20 for 24 in. below
Heated slabs	R-20 for 24 in. below	R-20 for 48 in. below

For SI: 1 inch=25.4 mm. ci = continuous insulation. NR = No Requirement, LS = Liner system

- a. Assembly descriptions can be found in ANSI/ASHRAE/IESNA Appendix A
- b. When using *R*-value compliance method, a thermal spacer block is required, otherwise use the *U*-factor compliance method. [see Tables 502.1.2 and 5402.2(2)]
- c. R-5.7 ci is allowed to be substituted with concrete block walls complying with ASTM C 90, ungrouted or partially grouted at 32 inches or less on center vertically and 48 inches or less on center horizontally, with ungrouted cores filled with material having a maximum thermal conductivity of 0.44 Btu-in./hr · ft<sup>2</sup> · °F
- d. When heated slabs are placed below grade, below-grade walls must meet the exterior insulation requirements for perimeter insulation according to the heated slab-on-grade construction
- e. "mass floors" shall include floors weighing not less than:
  1. 35 pounds per square foot of the floor surface area; or
  2. 25 pounds per square foot of floor surface area where the material weight is not more than 120 pounds per cubic foot.



## Required Residential Inspections

Request inspections via our on-line portal: [permits.fargond.gov](http://permits.fargond.gov)

### **BUILDING INSPECTIONS: 241-1561**

**Footing inspection** - Call when footing forms and reinforcing are in place but prior to the placement of any concrete.

**Foundation wall inspection** - Call when wall forms are complete and all reinforcing is in place but prior to the placement of any concrete.

**Waterproofing** – Must be called in prior to backfill

**Drain Tile** – Must be called in prior to backfill, may be done at the same time as the waterproofing inspection.

#### **Floodproofing Inspections –**

- **Basement Floor** - Call when forms, vapor barrier, and reinforcing are in place but prior to the placement of any concrete.
- **Floor bracing inspection** – Call when floor truss/joist bracing has been installed but before the wall sheathing around the rim is in place.
- **Concrete slab inspection** - Call when forms and reinforcing are in place but prior to the placement of any concrete.

**Framing (intermediate) inspection** - Call when framing components are complete and prior to concealing with insulation or finishes.

**NOTE:** *This inspection may not be called for until required electrical, plumbing and mechanical inspections have been complete and work approved.*

**Portal/wall bracing inspection** – When any required blocking and fasteners are installed but *before* house wrap is in place.

**Insulation inspection** - See table on the back of this form for requirements (Climate Zone 7 and 8).

**Final inspection** - Call when project is complete but prior to occupying the structure if new construction.

### **MECHANICAL INSPECTIONS: 476-6702**

A separate mechanical permit is required.

**Gas line inspection** - When gas line air pressure test has been begun and is holding at test pressure.

**Final mechanical inspection** - When all mechanical equipment including all venting and ductwork has been installed and prior to concealing any venting or ductwork.

### **ELECTRICAL INSPECTIONS: 476-6626**

A separate electrical permit is required.

**Temporary service** - Call when temporary service and support pole have been installed.

**Permanent service** - Call when electrical panel is installed.

**Rough-in inspection** - Call when electrical wiring is completed but prior to covering wiring with either insulation or finishes.

**Final Electrical inspection** – Call when the electrical portion of the project is complete.

### **PLUMBING INSPECTIONS: 241-1560**

A separate plumbing permit is required.

**Sewer inspection** - Call when new or replacement sewer is installed.

**Ground work inspection** - Call when below floor plumbing lines are installed and pressure test is on.

**Waste and vent inspection** - Call when all plumbing drains and vents have been installed and pressure test is on but prior to concealing any piping with insulation or sheetrock.

**Final Plumbing inspection** - Call when all fixtures are installed and the project is complete

**NOTE:** While this list represents the “required” inspections, inspectors will make additional inspections at the request of the permit holder if questions arise which necessitate an on-site visit. Failure by the permit holder to make sure that all required inspections are complete may result in the withholding of the Certificate of Occupancy for the project. This could complicate financing, refinancing, or resale of your property.

**TABLE N1102.1**  
**INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT<sup>a</sup>**

CLIMATE ZONE	FENESTRATION <i>U</i> -FACTOR	SKYLIGHT <sup>b</sup> <i>U</i> -FACTOR	GLAZED FENESTRATION SHGC	CEILING <i>R</i> -VALUE	WOOD FRAME WALL <i>R</i> -VALUE	MASS WALL <i>R</i> -VALUE <sup>k</sup>	FLOOR <i>R</i> -VALUE	BASEMENT <sup>c</sup> WALL <i>R</i> -VALUE	SLAB <sup>d</sup> <i>R</i> -VALUE AND DEPTH	CRAWL SPACE <sup>e</sup> WALL <i>R</i> -VALUE
1	1.2	0.75	0.35 <sup>j</sup>	30	13	3/4	13	0	0	0
2	0.65 <sup>i</sup>	0.75	0.35 <sup>j</sup>	30	13	4/6	13	0	0	0
3	0.50 <sup>i</sup>	0.65	0.35 <sup>e,j</sup>	30	13	5/8	19	5/13 <sup>f</sup>	0	5ci or 13
4 except Marine	0.35	0.60	NR	38	13	5/10	19	10/13	10ci, 2 ft.	10ci or 13
5 and Marine 4	0.35	0.60	NR	38	20 or 13 + 5 <sup>h</sup>	13/17	30 <sup>f</sup>	10/13	10ci, 2 ft.	15ci or 19
6	0.32	0.60	NR	49	21 or 13 + 5ci <sup>h</sup>	15/19	30 <sup>g</sup>	10ci or 15	10ci, 4 ft.	10ci or 13
7 and 8	0.30	0.55	NR	60	20+5 c.i.	19/21	38	15ci or 19	10ci, 4 ft.	15ci or 19

a. *R*-values are minimums. *U*-factors and solar heat gain coefficient (SHGC) are maximums. R-19 batts compressed in to nominal 2"x6" framing cavity such that the *R*-value is reduced by R-1 or more shall be marked with the compressed batt *R*-value in addition to the full thickness *R*-value.

b. The fenestration *U*-factor column excludes skylights. The SHGC column applies to all glazed fenestration.

c. The first *R*-value applies to continuous insulation, the second to framing cavity insulation; either insulation meets the requirement.

d. R-5 shall be added to the required slab edge *R*-values for heated slabs. Insulation depth shall be the depth of the footing or 2 feet, whichever is less, in zones 1 through 3 for heated slabs.

e. There are no SHGC requirements in the Marine Zone.

f. Basement wall insulation is not required in warm-humid locations as defined by Figure N1101.2 and Table N1101.2.

g. Or insulation sufficient to fill the framing cavity, R-19 minimum.

h. "13+5" means R-13 cavity insulation plus R-5 insulated sheathing. If structural sheathing covers 25% or less of the exterior, R-5 sheathing is not required where structural sheathing is used. If structural sheathing covers more than 25% of exterior, structural sheathing shall be supplemented with insulated sheathing of at least R-2.

i. For impact-rated fenestration complying with Section R301.2.1.2, the maximum *U*-factor shall be 0.75 in zone 2 and 0.65 in zone 3.

j. For impact-resistant fenestration complying with Section R301.2.1.2 of the *International Residential Code*, the maximum SHGC shall be 0.40.

k. The second *R*-value applies when more than half the insulation is on the interior.



**INSPECTIONS DIVISION  
INSPECTION SIGN-OFF CARD**

ADDRESS 6617 33 St S PERMIT 2302-0304-NEWC

**\*\*NO WORK ON ANY FLOOR MAY BE COVERED UNTIL ALL SIGNATURES FOR THAT FLOOR APPEAR ON THIS CARD.  
\*\*THIS CARD MUST BE POSTED IN THE ELECTRIC PANEL ROOM OF THE LOWEST FLOOR OF EACH BUILDING.**

	Lower Level	1 <sup>st</sup> Floor	2 <sup>nd</sup> Floor	3 <sup>rd</sup> Floor	Final
Plumbing	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	_____ Completed
Electrical	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	_____ Completed
Mechanical (HVAC)	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	_____ Completed

**ABOVE MUST BE SIGNED PRIOR TO FRAMING INSPECTION FOR EACH FLOOR**

Framing	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	_____ Completed
Energy	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	_____ Completed



City of Fargo  
Inspections Department  
225 4th Street N, Fargo, ND 58102  
701.241.1561  
[www.FargoND.gov](http://www.FargoND.gov)

**Parking Lot Permit**

<b>Permit Type:</b>	Parking Lot	<b>Permit Number:</b>	2303-0049-PRKG
<b>Address:</b>	6617 33 St S	<b>Establishment:</b>	Fire Station 8 Parking Lot
<b>Parcel Number:</b>	01-8739-00501-000	<b>Date Issued:</b>	6/21/2023
<b>Construction Value:</b>	\$768,000.00	<b>Total Area (ft²):</b>	0.00
<b>Special Flood Hazard:</b>	Yes	<b>Flood Protection Elevation:</b>	
<b>Occupancy Group:</b>		<b>Type of Construction:</b>	

**Description of Work:**

Parking lot and site work for new fire station

<b>Applicant:</b>	EAPC Architects Engineers
<b>Parcel Owner:</b>	City of Fargo
<b>Lead Staff Assigned:</b>	Bill Yates
<b>General Contractor:</b>	Ledgestone Inc

**Total Permit Fees: 3811.2200**

**Conditions:**

- 1.

It is the responsibility of the permit holder to verify the existence of any covenants or easements on this property. Special Flood Hazard Permits shall be constructed in accordance to the Flood Proofing Code of the City of Fargo. Issuance of this permit shall not imply approval for any future work not identified on this permit or permit application. All work to comply with all applicable requirements of the City of Fargo including the 2018 Fargo Building Code.

**Approved By: Peter Valkov**

\*\*\*Note: This permit becomes void if construction is not begun, is suspended or abandoned within 180 days at any time after work is commenced.

**Building Permit Acknowledgments**

1. I understand and certify that issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction.
  
2. Through application for and acceptance of this building permit the permit applicant/holder/owner understands and agrees that the City will conduct periodic observations of construction, but that such observation or review of plans and/or construction does not constitute either explicit or implied certification that the plans and/or construction comply with City Codes or any other applicable requirements. The permit applicant/holder/owner at all times remains responsible for ensuring that the construction, plans, and specifications comply with all requirements of all City Codes and other applicable requirements. The City will not provide continuous on-site observation of construction, and disclaims any responsibility for defects in materials or workmanship.
  
3. The City encourages and recommends the permit applicant/holder/owner hire a private, on-site inspector or other professional as the applicant/holder/owner deems necessary in order to ensure that all aspects of the plans and/or construction comply with applicable codes and all other requirements.

AS PERMIT APPLICANT, I ACKNOWLEDGE THAT I HAVE BEEN MADE AWARE OF THE ABOVE STATEMENTS AND CONDITIONS

APPLICANT  
SIGNATURE:

\_\_\_\_\_

DATE:

\_\_\_\_\_

## Required Commercial Inspections

Request inspections via our on-line portal: [permits.fargond.gov](http://permits.fargond.gov)

### **BUILDING INSPECTIONS: 241-1561**

A separate plan review may be required.

**Footing inspection** - Call when footing forms and reinforcing are in place but prior to the placement of any concrete.

**Foundation wall inspection** - Call when wall forms are complete and all reinforcing is in place but prior to the placement of any concrete.

**Concrete slab inspection** - Call when forms and reinforcing are in place but prior to the placement of any concrete.

**Framing (intermediate) inspection** - Call when structural components are complete and prior to concealing with insulation or finishes. NOTE: This inspection may not be called for until required electrical, plumbing and mechanical inspections have been complete and work approved.

**Energy/Insulation inspection** - See table on the back of this form for requirements.

**Shear wall** - For wood frame, 3 story buildings - Call when shear walls are complete, including required sheathing.

**Lath and/or gypsum wallboard inspection** - Call when gypsum/wallboard is installed but prior to the application of joint and fastener treatments.

**Final inspection** - Call when project is complete but prior to occupying the structure if new construction.

### **MECHANICAL INSPECTIONS: 241-1564**

A separate mechanical permit is required.

**Gas line inspection** - When gas line air pressure test has been begun and is holding at test pressure.

**Final mechanical inspection** - When all mechanical equipment including all venting and ductwork has been installed and prior to concealing any venting or ductwork.

### **ELECTRICAL INSPECTIONS: 241-1565**

A separate electrical permit is required.

**Temporary service** - Call when temporary service and support pole have been installed.

**Permanent service** - Call when electrical panel is installed.

**Rough-in inspection** - Call when electrical wiring is completed but prior to covering wiring with either insulation or finishes.

**Final Electrical inspection** - Call when the electrical portion of the project is complete.

### **PLUMBING INSPECTIONS: 241-1560**

A separate plumbing permit is required.

**Sewer inspection** - Call when new or replacement sewer is installed.

**Ground work inspection** - Call when below floor plumbing lines are installed and pressure test is on.

**Waste and vent inspection** - Call when all plumbing drains and vents have been installed and pressure test is on but prior to concealing any piping with insulation or sheetrock.

**Final Plumbing inspection** - Call when all fixtures are installed and the project is complete.

### **ZONING INSPECTIONS: 241-1561**

A separate Land Development Code review may be required.

**Site Inspection** - Call when all required landscaping has been completed.

**NOTE:** While this list represents the "required" inspections, inspectors will make additional inspections at the request of the permit holder if questions arise which necessitate an on-site visit. Failure by the permit holder to make sure that all required inspections are complete may result in the withholding of the Certificate of Occupancy for the project. This could complicate financing, refinancing, or resale of your property.

**TABLE 402.1.3  
BUILDING ENVELOPE REQUIREMENTS – OPAQUE ASSEMBLIES  
Climate Zone 6A for Cass County, North Dakota**

	All Other	Group R
<b>Roofs</b>		
Insulation entirely above deck	R-35ci	R-30ci
Metal Buildings (with R-5 thermal blocks <sup>a, b</sup> )	R-30 + R-11 LS	R-30 + R-11 LS
Attic and other	R-49	R-49
<b>Walls, Above Grade</b>		
Mass	R-15.2ci	R-15.2ci
Metal Building <sup>b</sup>	R-13 + R-13ci	R-13 + R-14ci
Metal Framed	R-13 + R-7.5ci	R-13 + R-12.5ci
Wood framed and other	R13 + R7.5ci or R-20+R-3.8ci	R13 + R7.5ci or R-20 + R-3.8ci
<b>Walls, Below Grade</b>		
Below grade wall <sup>d</sup>	R-10ci	R-15ci
<b>Floors</b>		
Mass	R-15ci	R-16.7ci
Joist/Framing (steel/wood)	R30 f	R-38
<b>Slab-on-Grade Floors</b>		
Unheated slabs	R-15 for 24 in. below	R-20 for 24 in. below
Heated slabs	R-20 for 24 in. below	R-20 for 48 in. below

For SI: 1 inch=25.4 mm. ci = continuous insulation. NR = No Requirement, LS = Liner system

- a. Assembly descriptions can be found in ANSI/ASHRAE/IESNA Appendix A
- b. When using *R*-value compliance method, a thermal spacer block is required, otherwise use the *U*-factor compliance method. [see Tables 502.1.2 and 5402.2(2)]
- c. R-5.7 ci is allowed to be substituted with concrete block walls complying with ASTM C 90, ungrouted or partially grouted at 32 inches or less on center vertically and 48 inches or less on center horizontally, with ungrouted cores filled with material having a maximum thermal conductivity of 0.44 Btu-in./hr · ft<sup>2</sup> · °F
- d. When heated slabs are placed below grade, below-grade walls must meet the exterior insulation requirements for perimeter insulation according to the heated slab-on-grade construction
- e. "mass floors" shall include floors weighing not less than:
1. 35 pounds per square foot of the floor surface area; or
  2. 25 pounds per square foot of floor surface area where the material weight is not more than 120 pounds per cubic foot.

## Required Residential Inspections

Request inspections via our on-line portal: [permits.fargond.gov](http://permits.fargond.gov)

<p><b><u>BUILDING INSPECTIONS:</u> 241-1561</b></p> <p><b>Footing inspection</b> - Call when footing forms and reinforcing are in place but prior to the placement of any concrete.</p> <p><b>Foundation wall inspection</b> - Call when wall forms are complete and all reinforcing is in place but prior to the placement of any concrete.</p> <p><b>Waterproofing</b> – Must be called in prior to backfill</p> <p><b>Drain Tile</b> – Must be called in prior to backfill, may be done at the same time as the waterproofing inspection.</p> <p><b>Floodproofing Inspections –</b></p> <ul style="list-style-type: none"> <li>• <b>Basement Floor</b> - Call when forms, vapor barrier, and reinforcing are in place but prior to the placement of any concrete.</li> <li>• <b>Floor bracing inspection</b> – Call when floor truss/joist bracing has been installed but before the wall sheathing around the rim is in place.</li> <li>• <b>Concrete slab inspection</b> - Call when forms and reinforcing are in place but prior to the placement of any concrete.</li> </ul> <p><b>Framing (intermediate) inspection</b> - Call when framing components are complete and prior to concealing with insulation or finishes.</p> <p><b><i>NOTE:</i></b> <i>This inspection may not be called for until required electrical, plumbing and mechanical inspections have been complete and work approved.</i></p> <p><b>Portal/wall bracing inspection</b> – When any required blocking and fasteners are installed but <i>before</i> house wrap is in place.</p> <p><b>Insulation inspection</b> - See table on the back of this form for requirements (Climate Zone 7 and 8).</p> <p><b>Final inspection</b> - Call when project is complete but prior to occupying the structure if new construction.</p>	<p><b><u>MECHANICAL INSPECTIONS:</u> 476-6702</b></p> <p>A separate mechanical permit is required.</p> <p><b>Gas line inspection</b> - When gas line air pressure test has been begun and is holding at test pressure.</p> <p><b>Final mechanical inspection</b> - When all mechanical equipment including all venting and ductwork has been installed and prior to concealing any venting or ductwork.</p> <p><b><u>ELECTRICAL INSPECTIONS:</u> 476-6626</b></p> <p>A separate electrical permit is required.</p> <p><b>Temporary service</b> - Call when temporary service and support pole have been installed.</p> <p><b>Permanent service</b> - Call when electrical panel is installed.</p> <p><b>Rough-in inspection</b> - Call when electrical wiring is completed but prior to covering wiring with either insulation or finishes.</p> <p><b>Final Electrical inspection</b> – Call when the electrical portion of the project is complete.</p> <p><b><u>PLUMBING INSPECTIONS:</u> 241-1560</b></p> <p>A separate plumbing permit is required.</p> <p><b>Sewer inspection</b> - Call when new or replacement sewer is installed.</p> <p><b>Ground work inspection</b> - Call when below floor plumbing lines are installed and pressure test is on.</p> <p><b>Waste and vent inspection</b> - Call when all plumbing drains and vents have been installed and pressure test is on but prior to concealing any piping with insulation or sheetrock.</p> <p><b>Final Plumbing inspection</b> - Call when all fixtures are installed and the project is complete</p>
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**NOTE:** While this list represents the “required” inspections, inspectors will make additional inspections at the request of the permit holder if questions arise which necessitate an on-site visit. Failure by the permit holder to make sure that all required inspections are complete may result in the withholding of the Certificate of Occupancy for the project. This could complicate financing, refinancing, or resale of your property.



TABLE N1102.1

INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT<sup>a</sup>

CLIMATE ZONE	FENESTRATION U-FACTOR	SKYLIGHT <sup>b</sup> U-FACTOR	GLAZED FENESTRATION SHGC	CEILING R-VALUE	WOOD FRAME WALL R-VALUE	MASS WALL R-VALUE <sup>k</sup>	FLOOR R-VALUE	BASEMENT <sup>c</sup> WALL R-VALUE	SLAB <sup>d</sup> R-VALUE AND DEPTH	CRAWL SPACE <sup>e</sup> WALL R-VALUE
1	1.2	0.75	0.35 <sup>j</sup>	30	13	3/4	13	0	0	0
2	0.65 <sup>i</sup>	0.75	0.35 <sup>j</sup>	30	13	4/6	13	0	0	0
3	0.50 <sup>i</sup>	0.65	0.35 <sup>e,i</sup>	30	13	5/8	19	5/13 <sup>f</sup>	0	5ci or 13
4 except Marine	0.35	0.60	NR	38	13	5/10	19	10/13	10ci, 2 ft.	10ci or 13
5 and Marine 4	0.35	0.60	NR	38	20 or 13 + 5 <sup>h</sup>	13/17	30 <sup>f</sup>	10/13	10ci, 2 ft.	15ci or 19
6	0.32	0.60	NR	49	21 or 13 + 5ci <sup>h</sup>	15/19	30 <sup>g</sup>	10ci or 15	10ci, 4 ft.	10ci or 13
7 and 8	0.30	0.55	NR	60	20+5 c.i.	19/21	38	15ci or 19	10ci, 4 ft.	15ci or 19

a. *R*-values are minimums. *U*-factors and solar heat gain coefficient (SHGC) are maximums. R-19 batts compressed in to nominal 2"x6" framing cavity such that the *R*-value is reduced by R-1 or more shall be marked with the compressed batt *R*-value in addition to the full thickness *R*-value.

b. The fenestration *U*-factor column excludes skylights. The SHGC column applies to all glazed fenestration.

c. The first *R*-value applies to continuous insulation, the second to framing cavity insulation; either insulation meets the requirement.

d. R-5 shall be added to the required slab edge *R*-values for heated slabs. Insulation depth shall be the depth of the footing or 2 feet, whichever is less, in zones 1 through 3 for heated slabs.

e. There are no SHGC requirements in the Marine Zone.

f. Basement wall insulation is not required in warm-humid locations as defined by Figure N1101.2 and Table N1101.2.

g. Or insulation sufficient to fill the framing cavity, R-19 minimum.

h. "13+5" means R-13 cavity insulation plus R-5 insulated sheathing. If structural sheathing covers 25% or less of the exterior, R-5 sheathing is not required where structural sheathing is used. If structural sheathing covers more than 25% of exterior, structural sheathing shall be supplemented with insulated sheathing of at least R-2.

i. For impact-rated fenestration complying with Section R301.2.1.2, the maximum *U*-factor shall be 0.75 in zone 2 and 0.65 in zone 3.

j. For impact-resistant fenestration complying with Section R301.2.1.2 of the *International Residential Code*, the maximum SHGC shall be 0.40.

k. The second *R*-value applies when more than half the insulation is on the interior.



**INSPECTIONS DIVISION  
INSPECTION SIGN-OFF CARD**

ADDRESS 6617 33 St S PERMIT 2303-0049-PRKG

**\*\*NO WORK ON ANY FLOOR MAY BE COVERED UNTIL ALL SIGNATURES FOR THAT FLOOR APPEAR ON THIS CARD.  
\*\*THIS CARD MUST BE POSTED IN THE ELECTRIC PANEL ROOM OF THE LOWEST FLOOR OF EACH BUILDING.**

	Lower Level	1 <sup>st</sup> Floor	2 <sup>nd</sup> Floor	3 <sup>rd</sup> Floor	Final
Plumbing	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	_____ Completed
Electrical	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	_____ Completed
Mechanical (HVAC)	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	_____ Completed

**ABOVE MUST BE SIGNED PRIOR TO FRAMING INSPECTION FOR EACH FLOOR**

Framing	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	_____ Completed
Energy	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	Comments: _____ Completed	_____ Completed

Ledgestone Inc.  
 22930 CO Hwy 6  
 Detroit Lakes MN 56501

www.ledgestoneinc.com  
 218-849-6140  
 218-847-5013



LEDGESTONE, INC.

# Change Order Request

**COR Number:** 02

**Date:** 8/17/2023

**Project Number:** 2301

**Contract Date:** 5/15/2023

<b>To:</b>	<b>Project:</b>
City of Fargo Fire Department 637 NP Avenue Fargo ND 58102	Fargo Fire Department Station #8 6617 33rd Street South Fargo ND 58104

**Description of Change:**

All work associated with PR-1 Roadway Extension

Project Original Contract Sum	3,504,720.00
Total of Previously Approved Change Orders	0.00
Contract Amount Prior to this Change Order	3,504,720.00
Proposed Contract Amount of this Change Order	38,336.34
Proposed Contract Amount Including this Change Order	3,543,056.34

**Accepted By:**

_____ Contractor (Company Name)	_____ Owner (Company Name)	_____ Other (Company Name)
_____ By (Signature)	_____ By (Signature)	_____ By (Signature)
_____ Printed Name	_____ Printed Name	_____ Printed Name
_____ Date	_____ Date	_____ Date
	_____ Owner's Change Order Number	

Ledgestone Inc.  
 22930 CO Hwy 6  
 Detroit Lakes MN 56501

www.ledgestoneinc.com  
 218-849-6140  
 218-847-5013



LEDGESTONE, INC.

# Change Order Request

**COR Number:** 02

**Date:** 8/17/2023

<b>To:</b> City of Fargo Fire Department	<b>Project:</b> Fargo Fire Department Station #8
------------------------------------------	--------------------------------------------------

Item	Description	Quantity	UOM	Unit Price	Extended Price
<b>03 - Concrete</b>					
	Additional Concrete	1.00	LS	9,100.00	9,100.00
				<b>Concrete Total:</b>	<b>9,100.00</b>
<b>31 - Earthwork</b>					
	Additional Excavation	1.00	LS	8,848.95	8,848.95
				<b>Earthwork Total:</b>	<b>8,848.95</b>
<b>32 - Exterior Improvements</b>					
	Asphalt Paving	1.00	LS	16,280.39	16,280.39
	Profit & Overhead	0.00		0.00	4,107.00
				<b>Exterior Improvements Total:</b>	<b>20,387.39</b>
				<b>Change Order Total:</b>	<b>38,336.34</b>

**PROPOSAL**

Summit Siteworks, LLC.

1551 8th Ave NW West Fargo, ND 58078 Phone (701) 478-4101



Contractor LedgeStone

Project: Firehall

Date 7/28/2023

---

We hereby submit specification and estimate for:

---

Deduct Approach and Sidewalk

833 SF      7" City Approach  
 395 SF      City Sidewalk  
              Rebar  
              Rebar Labor  
              Pumping

**DEDUCT**                      \$                      (7,200.00)

ADD Sidewalk to 64th Ave

1600 SF      City Sidewalk  
              Rebar  
              Rebar Labor  
              Pump

**ADD**                                      \$                      8,400.00

ADD Widen Sidewalk to 8' wide

1505 SF      Widen Sidewalk  
              Rebar  
              Rebar Labor  
              Pump

**ADD**                                      \$7,900.00

**EXCLUSIONS**

- Due to rapidly rising material costs, bid only good if accepted within 7 days of submittal
- Projects accepted on a first come first serve basis
- No Payment/Performance bond figured in bid
- No Prevailing Wages requirements figured in bid
- No winter charges figured in bid

All offsets and setbacks provided by others  
Anchor bolts, bollards, embeds, galv. Steel decking, angle iron provided by others, installed by Summit  
All Testing By others  
Subgrade by others, grade to be within .1' of bottom of slab  
All Subgrade Material by others  
Acceptance of bid is contingent upon mutually agreed upon schedule  
Acceptance of bid is contingent upon reasonable contract language

---

PLEASE SIGN AND RETURN ONE COPY TO GET PUT ON THE SCHEDULE.

---

CONCRETE: 3000 psi footings and foundations, 3500 psi basement slabs, 4000 psi all exterior flatwork/garage

CURING COAT KURE ON ALL SLABS

NOT INCLUDED IN EXCAVATION OR BACKFILL DIMENSIONAL ERRORS: any errors in blueprints are not the liability of Summit Siteworks, LLC.

COLD WEATHER CHARGES i.e. extra cement, chloride, hot aggregates or water, covering, shelters, blankets, or heat

ALL PRICES BASED ON ACCESS AROUND JOB SITE

SEALING OF SLABS IS REQUIRED FOR WARRANTY TO TAKE PLACE.: Sealing of slabs should be done after 30 days of curing and before the first freezing temperatures

---

We propose hereby to furnish and labor - complete in accordance with above specifications, for the sum of:

**BASE BID**

**NA**

**PAYMENT:**

Payment is due on that portion of work completed by the end of the month, by the following 10th of the month.

Finance charges of 1.25% per month on accounts 30 days or more past due. No Retainage.

AUTHORIZED SIGNATURE : \_\_\_\_\_

NOTE: This proposal may be withdrawn by us if not accepted within 30 days. All materials are guaranteed to be as specified and for a period of one year after placement.

All work to be completed in a workman - like manner according to standard practices. Any alterations or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

Owner is to carry fire, tornado, and any other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance. Any concrete cracking due to soil or compaction of soil is not the responsibility of Summit Siteworks LLC.. Any concrete that cracks or spawls after temperatures drop below 30% Fahrenheit is Contractor's responsibility.

Acceptance of Proposal: The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

SIGNATURE : \_\_\_\_\_ DATE OF ACCEPTANCE : \_\_\_\_\_

Please Sign and Return one copy to be put on Schedule.



August 16, 2023

Ledgestone Construction  
Attn: Josh Lessman  
22930 Co Hwy 6  
Detroit Lakes, MN 56501

Project: Fargo Fire Station #8

Re: PR1

Dear Mr. Josh Lessman:

Here are the changes as requested in the PR 1 for omitting Concrete Apron and Sidewalk, Replacing Apron on 33<sup>rd</sup> Street with Asphalt, widening sidewalk along 33<sup>rd</sup> Street to 8 ft and extend the sidewalk along 33<sup>rd</sup> Street to 64<sup>th</sup> Ave. The following is a breakdown of this cost for your review.

- Additional Excavation	257 CY	\$ 4.00/CY	\$ 1,028.00
- Subgrade Preparation	627 SY	\$ 1.20/SY	\$ 752.40
- Class 5 Base Material	150 TN	\$ 26.45/TN	\$ 3,967.50
- 2" Sand Cushion for Sidewalks	50 TN	\$ 20.00/TN	\$ 1,000.00
- Haul Excess Clay Off Site	203 CY	\$ 10.35/CY	\$ 2,101.05
- Contractor Markup on Materials – 10%			

**Total Amount \$ 8,848.95**

If you have any questions please feel free to contact me.

Sincerely,  
Dirt Dynamics LLC

A handwritten signature in black ink, appearing to read "John Hinrichs", is written over the typed name.

John Hinrichs  
Estimator/Project Manager

Dirt Dynamics LLC  
4206 3<sup>rd</sup> Ave North  
Fargo, ND 58102  
Phone – 701-793-3055  
Fax – 701-356-9177

[www.dirtdynamicsllc.com](http://www.dirtdynamicsllc.com)



# Quote

Date: 8/7/2023

4101 32nd St. N  
 Fargo, ND 58108-2586  
 Phone: 701-237-4860 Fax: 701-237-0233  
 www.borderstatespaving.com

**Quotation For:**

Ledgestone Inc. Attn: Josh Lessman

Prepared By: Camden Larson

Office: 701-551-7239 Cell: 701-566-2616

Fargo Fire Station #8 - Temp Asphalt Paving

Email: clarson@borderstatespaving.com

Discription	Unit	Quantity	Unit Price	Item Price
<b>Option 1 (28' roadway)</b>				
F&I FAA 43 RAP-SUPERPAVE w/PG58S-28 (6" @ 324SY)	TON	119	\$136.81	\$16,280.39
<b>Option 2 (32' Roadway)</b>				
F&I FAA 43 RAP-SUPERPAVE w/PG58S-28 (6" @ 359SY)	TON	132	\$135.16	\$17,841.12

**Project Notes:**

- One mobilization included; additional mobilizations \$2,000/Ea.
- Base to be on grade and meet compaction requirements by others. If fine grade is needed it will be billed as time & materials.
- No traffic control, testing, QC/QA, Survey, staking, topsoiling, seeding, or other scope items not specifically stated in quote included.
- Project to accept most recent DOT/City mix design on file. If project specific mix design is needed add \$3,000.
- If bonding is required please add 1%.
- No casting adjustments included.
- Price quoted for spring of 2024.
- Quote valid for 15 days.
- Final measurements determine final payment. Measurements to be made based on scale tickets from BSP yard.

Total:

Payments to be made with in 30 days of invoice.

Respectfully Submitted,

Camden Larson

Estimator/Project Manager





Ledgestone Inc.  
 22930 CO Hwy 6  
 Detroit Lakes MN 56501

www.ledgestoneinc.com  
 218-849-6140  
 218-847-5013



LEDGESTONE, INC.

# Change Order Request

**COR Number:** 03

**Date:** 8/17/2023

**Project Number:** 2301

**Contract Date:** 5/15/2023

<b>To:</b>	<b>Project:</b>
City of Fargo Fire Department 637 NP Avenue Fargo ND 58102	Fargo Fire Department Station #8 6617 33rd Street South Fargo ND 58104

**Description of Change:**

Modify concrete slabs per instructions in PR-2

Project Original Contract Sum	3,504,720.00
Total of Previously Approved Change Orders	0.00
Contract Amount Prior to this Change Order	3,504,720.00
Proposed Contract Amount of this Change Order	(12,511.00)
Proposed Contract Amount Including this Change Order	3,492,209.00

**Accepted By:**

_____ Contractor (Company Name)	_____ Owner (Company Name)	_____ Other (Company Name)
_____ By (Signature)	_____ By (Signature)	_____ By (Signature)
_____ Printed Name	_____ Printed Name	_____ Printed Name
_____ Date	_____ Date	_____ Date
	_____ Owner's Change Order Number	

This proposal shall become a part of the subcontract agreement. NET 30, No Retainage allowed, 18% annual rate on unpaid balance, plus collection fees.

Respectfully Yours,

*Curtis L Pederson*

Curtis Pederson

Estimator

Signing of this proposal constitutes acceptance of Fargo Steel Fabrication Exclusions, Qualifications, and Terms.

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

Signature and Date: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

# AMERICAN SECURITY & GATE COMPANY

AmeriFence Corporation - Kansas City • AmeriFence Corporation - Madison • American Security & Gate Company - Fargo  
 American Fence Company: Omaha • Lincoln • Grand Island • Sioux City • Des Moines • Cedar Rapids • Sioux Falls • Rochester

## FENCING & GATE PROPOSAL

Date: 4.18.2023	
Attn: ESTIMATING DEPARTMENT	
<b>Project: Fargo Fire Department #8</b>	
Scope: Materials & Install for a 6'H 10x12' Trex Fencing – Woodland Brown with Pyramid Post caps Trash Enclosure, 1 – 4' swing leaf gate and 2 – 5' swing leaf gates. All posts are anchor plated with a post stiffener, no concrete work in our scope.	
Addenda: 1, 2, 3, 4 & 5	
Plan Sheets: A002	Details: 1,2,3,4,5,6 – A002
Spec Sheets: Section 32 3100 – Fences & Gates	

Project Specific Notes:
<b>1. Davis Bacon Wage Rates not included.</b>
<b>2. Only the scope and qtys listed above are covered under this quote; anything outside of this will need to be quoted before accepted.</b>
<b>3. No removals of stumps, brush, rocks, trees or other obstructions that may interfere with our scope is included. Install locations must be clear of all debris before work commences. This includes any hole filling from this debris.</b>
<b>4. If special-order material applies, it cannot be paid on a per unit basis.</b>
<b>5. No permits, bonds, dues, completed operations, professional liability insurance or primary noncontributory is included unless noted in the scope above.</b>
<b>Start Date: Allow two – four weeks for submittals. Once approved, material will be ordered within ten business days. Lead times can vary; request lead time of materials at time of submittal request.</b>
<b>Crew Size: 3-6 depending on available work.</b>
<i>Notes are specific to the scope and directly impact project pricing. If not agreeable, advise prior to acceptance.</i>

<b>Project Pricing: \$11,155.00</b>
<i>Unless otherwise stated, pricing does not include excise tax, subject to change after 30 days of date of proposal. This proposal is not binding unless signature is affixed to page two. Do not sign and return this sheet without signed second page. A purchase order initiates your project engineering process and holds your material pricing for 30 days. If American Gate &amp; Security Company does not receive approval to proceed with purchasing within this 30-day period, project pricing is subject to review.</i>

Contact Information: Joe Rivard O: 701.515.1045 C: 781.812.7039 j.rivard@americafence.com
-------------------------------------------------------------------------------------------------

<b>Standard Notes &amp; Exclusions: Unless otherwise noted:</b>
1. One mobilization is included for the installation of the fence.
2. Block-out(s) in concrete / masonry for fence by others. No core drilling included. Sleeves required but not provided by AFC.

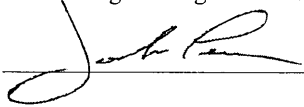
3. No surveying and/or staking included. Fence line to be staked by others.
4. Private utilities to be located by others in accordance with State's One Call System standards. In the event these utilities are damaged as a result of improper locating, AFC will not be responsible for damages and associated costs.
5. Fence line to be staked clear of utilities. No excavation included for digging within 18" of utilities but at additional expense. Hand excavation due to interference with utilities at \$35.00 per post hole.
6. No permits, bonds, dues, completed operations, or primary-none contributory included.
7. No project specific employee background, drug screen or DMV history included. Add \$65.00 per employee if required.
8. No removals, grading, grubbing, and/or demolition are included.
9. No electrical wire, wiring, grounding, conduit, connections, and/or initial electrical/controls set-up. Only after electrician has confirmed connections and operations, AFC will review installation.
10. AFC will not be subject to liquidated damages or back charges as a result of delays.
11. Material fabricated per plans. No field verification, engineering, delegated design included.
12. Accounts not paid within thirty days will be charged eighteen percent (18%) per annum. No retention to be withheld.
13. No prevailing, union or Davis – Bacon wages included.
14. No participation in billing processing programs, Textura. Participation fee to be added to contract if required.

REV 03-06-19

**Terms and Conditions**

By signing this proposal, the customer has completely reviewed and agreed with the prices, specifications and conditions as stated herein. Furthermore, the customer is authorizing American Gate & Security Company / AmeriFence / American Fence Corporation to complete the work. Unless stated, the fence does not include a warranty. Customer is financially responsible for cancellation fees and costs of special-order materials if the customer elects to cancel the contract. TERMS: 60% Down. Balance due on date of completion. No retention to be withheld. If withheld without approval, the contract amount will be 5% more than what is shown on the proposal. Service and handling charge of 1.5% per month-18% per annum applies to delinquent accounts not paid within 5 days of completion. Customer assumes full responsibility for location of property pins, staking of fence, and inaccurately placed pins and stakes. Customer understands that American Gate & Security Co. may stake the fence based on the proposal and/or in consideration of existing utilities that do not reflect the actual location of customer's property. Customer agrees to defend, hold harmless and indemnify American Gate & Security Co. against claims, liabilities and expenses for trespass and damage arising out of location of said fence. Customer assumes full responsibility for damage to marked and unmarked underground utility, telephone, T.V., cable or sprinkler systems. Customer requests, agrees or allows American Security & Gate Co. to locate the fence within 18 inches of any buried utilities; customer agrees to defend, hold harmless and indemnify American Security & Gate Co. against all claims, liabilities and expenses as a result of damage to these utilities and property. If the contract price is not paid when due, customer agrees to allow American Security & Gate Co. to trespass on to their property and remove fence at the company's discretion. Furthermore, customer agrees to indemnify and hold harmless American Security & Gate Co for any damage done to the property as a result of removal of the fence. All modifications shall be in writing and shall be affixed to the original bid. This agreement and subsequent modifications shall be contingent upon strikes, accidents, shortages or delays beyond the control of American Security & Gate Co. Time stated for installation is purely estimated. Customer agrees and accepts that AFC will not extend discounts or credits for any delays or be held responsible for interest charges on any payments made by customer. Changes to the fence due to varying ground conditions are not the responsibility of American Security & Gate Co. Customer to carry fire, tornado and other necessary insurance. This proposal cannot be withdrawn by customer after acceptance of proposal. American Security & Gate Co. has the right to reject any bid. Legal and related fees accrued in an effort to collect on this account for whatever reason will be the responsibility of the customer. By signing this proposal, customer has completely reviewed and agreed with the prices, specifications and conditions as stated herein. Furthermore, customer is authorizing American Security & Gate Co. to complete the work. The customer is financially responsible for cancellation fees and costs of special-order materials in the event the customer elects to cancel the contract. TERMS: 60% Down. Balance due on substantial completion. Service and handling charge of 5% per month-60% per annum will apply to delinquent accounts past 10 days. Customer acknowledges that this is page two of two and has received page one.

By signing below, I acknowledge and agree with all stated herein inclusive of both pages one and two of this proposal.

Customer signature:  Date: 5/12/2023

Customer printed name: Josh Lessman Date: \_\_\_\_\_

Customer invoicing email address: lynn.galbrecht@ledgestoneinc.com

# CITY OF Fargo Fire Department

26

## MEMORANDUM

**TO: FARGO CITY COMMISSION**

**FROM: FIRE CHIEF STEVE DIRKSEN**

**DATE: 09/12/2023**

**SUBJECT: CHANGE ORDERS FOR PROJECT BP0066 FIRE STATION #2**

This request is for three change orders for the construction of Fire Station # 8.

CO # 1. – Credit of \$821.00 for drain tile that was not needed

CO # 2. – Over dig of the project and fill with sand due to poor soil conditions. The cost for this change order is \$7,817.36.

CO #3. – Addition of RFP wall coating to entire apparatus bay area, 8 feet up from the floor. This change order is \$3,392.55.

CO #4. – An additional pump was needed for the furnace condensate line to move the condensate to an appropriate drain across the apparatus floor. This change order is \$1,209.44.

CO #5. – Drywall extension was required on the North wall from the top sill plate to the underside of the roof due to the building proximity to the lot line. This change order is \$1,948.80.

CO #6. – The second evacuator pump needed to be relocated to a higher location to not conflict with the fire apparatus. This change cost \$1,017.35.

CO # 7. – Credit for change of materials. This change order is -\$203.00

The original price of the contract for Construction was \$329,200.00. The proposed changes are amount to \$14,361.50, or 4.18% of the project. The total cost of the construction with these changes is \$343,764.50.

**RECOMMENDED MOTION:** Approve seven change orders for BP0066 Fire Station #2 in the amount of \$14,361.50.



# CHANGE ORDER

Meridian Commercial Construction, LLC  
23003- Fargo Fire Department Addition

CHANGE ORDER DATE: 4/26/2023

CHANGE ORDER #: 1

TO (CONTRACTOR): Meridian Commercial Construction, LLC  
6218 53rd Avenue South  
Fargo, ND 58104

DISTRIBUTION:  Fargo Fire Department Addition  
  
 OFFICE  
 FIELD  
 OTHER

## CHANGE ORDER INFORMATION

You are directed to make the following changes to this Contract:

PROJECT	ACO	DESCRIPTION	PCO TYPE	PCO	CONTRACT CHANGE
23003-	1	Drain Tile Credit	PCO	1	-821.00

TOTAL: - 821.00

Not valid until signed by both the Owner and Architect. Signature of the Contractor indicates the Contractor's agreement herewith, including any adjustment in the Contract Sum or Contract Time.

The original Contract Sum was .....	329,200.00
The net change by previously authorized Change Orders was .....	0.00
The Contract Sum prior to this Change Order was .....	329,200.00
The Contract Sum will be decreased/increased by this Change Order .....	- 821.00
The new Contract Sum will be .....	328,379.00
The Contract Time will be unchanged	

**AUTHORIZED BY OWNER:**

City of Fargo  
225 4th St N  
Fargo, ND 58102

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

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

**ACCEPTED BY CONTRACTOR**

Meridian Commercial Construction, LLC  
6218 53rd Avenue South  
Fargo, ND 58104

By: 

Date: 4/26/23

**ARCHITECT/ENGINEER**

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

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



Commercial Construction, LLC

Change Order

Meridian Commercial Construction, LLC  
 6218 53rd Avenue South  
 Fargo, ND 58104

- Distribution  Dirt Dynamics LLC  
 Office  
 Field  
 Other

Project: 23003- Fargo Fire Department Addition Subcontract #: 23003 - Dirt Dynamics  
 3020 25th St S Subcontract Change Order #: 1  
 Fargo, ND, 58103 Drain Tile Credit  
 Change Order Date: #: 04/26/2023  
 To (Subcontractor) Dirt Dynamics LLC Reference:  
 4206 3rd Ave NW  
 Fargo, ND 58102 Change Order Page: 1

You are directed to make the following changes in this Subcontract

Subct Item	Contract Item	Phase	Description	Units	U/M	Unit Price	Amount
1	033000	033000-	Drain Tile Credit				-821.00

Total -821.00

Not valid until signed by both the Subcontractor and Contractor. Signature of the Subcontractor indicates the Subcontractor's agreement herewith, including any adjustment in the Subcontract Sum or Time.

The original Subcontract Sum was .....	33,000.00
The net change by previously authorized Change Orders was .....	0.00
The Subcontract Sum prior to this Change Order .....	33,000.00
The Subcontract Sum will be Decrease by this Change Order .....	- 821.00
The new Subcontract Sum will be .....	32,179.00

Authorized By: Contractor  
 Meridian Commercial Construction, LLC  
 6218 53rd Avenue South  
 Fargo, ND 58104

Accepted By Subcontractor  
 Dirt Dynamics LLC  
 4206 3rd Ave NW  
 Fargo, ND 58102

By:   
 Date: 4/26/23

By:   
 Date: 4/28/23



Change Order Request

4/26/2023

Project: Fargo Fire Station #2 Addition

Pricing Request Delete Drain tile

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

Contractor: Meridian Commercial Construction, Inc.


Project # \_\_\_\_\_

Contractor and Owner agree to make these changes in the contract:

Delete drain tile at addition	(\$821.00)

Additional charge for above described work is: (\$821.00)  
with payments made as follows: As Per Contract

Additional work to be performed under same conditions as specified in original contract unless otherwise stipulated. We propose hereby to furnish material and labor—complete in accordance with these specifications at above stated price. Respectfully submitted

Signature:   
Jesse Jacobson - Dirt Dynamics, LLC

Effective date and signatures

We, the undersigned, have read and understand and agree to each of the provisions of this change order and hereby acknowledge receipt of a copy of this change order.

Owner \_\_\_\_\_ Date \_\_\_\_\_

Contractor \_\_\_\_\_ Date \_\_\_\_\_

Architect \_\_\_\_\_ Date \_\_\_\_\_





Meridian Commercial Construction LLC  
6218 53rd Ave S  
Fargo ND 58104  
701-356-0397

# Change Order

Order#: 2  
Order Date: 05/02/2023

To: City Of Fargo  
225 4th St N  
Fargo ND 58102

Project: 23003  
Fargo Fire Department Addition  
3020 25th St S  
Fargo ND 58103

The contractor agrees to perform and the owner agrees to pay for the following changes to this contract

Plans Attached

Ordered By:

Customer Order:

Specifications Attached


Description of Work	Amount
Over-Excavate Fill Material to Native Soils	7,871.36

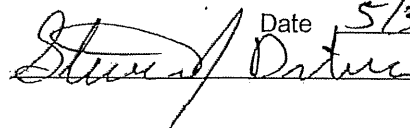
Negative changes will lower the overall contract price requiring no additional payment by owner.

Approved Amount of Change

7,871.36

The original Contract Sum was .....	328,379.00
Net change by previous Change Orders .....	0.00
The Contract Sum prior to this Change Order .....	328,379.00
The Contract Sum will be changed by this Change Order .....	7,871.36
The new Contract Sum including this Change Order will be .....	336,250.36
The Contract Time will be changed by .....	0 Days

Approved  Date 5-2-23  
Contractor \_\_\_\_\_

Date 5/3/2023  
Owner  \_\_\_\_\_



Meridian Commercial Construction LLC  
6218 53rd Ave S  
Fargo ND 58104  
701-356-0397

# Subcontract Change Order

Subcontract #: 132

Change#: *12*

Order Date: 05/04/2023

To: Spain Excavating  
207 2nd St  
Alice ND 58031

Project: 23003  
Fargo Fire Department Addition  
3020 25th St S  
Fargo ND 58103

You are hereby directed to make the following changes to the subcontract(s) listed below.

Plans Attached

Specifications Attached

Description of work	Amount
Over-Excavate Fill Material to Native Soils	7,028.00

Amount of Change

**7,028.00**

The original Subcontract Sum was .....	17,800.00
Net change by previous Change Orders .....	0.00
The Subcontract Sum prior to this Change Order .....	17,800.00
The Subcontract Sum will be changed by this Change Order .....	7,028.00
The new Subcontract Sum including this Change Order will be .....	24,828.00

Owner: *[Signature]*

Date: 5/14/23

Contractor: \_\_\_\_\_

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



**Commercial Construction, LLC**

6218 53rd Ave S  
 Fargo ND 58104  
 701-356-0397

# Change Order

Order#: 3

Order Date: 06/07/2023

**To:** City Of Fargo  
 225 4th St N  
 Fargo ND 58102

**Project:** 23003  
 Fargo Fire Department Addition  
 3020 25th St S  
 Fargo ND 58103

The contractor agrees to perform and the owner agrees to pay for the following changes to this contract.

Plans Attached

**Ordered By:**

**Customer Order:**

Specifications Attached

Description of Work	Amount
Plastic Paneling on Apparatus Bay	1,568.00
Plastic Paneling on Apparatus Bay - Material	1,824.55

Negative changes will lower the overall contract price requiring no additional payment by owner.

**Requested Amount of Change**

<b>3,392.55</b>
-----------------

The original Contract Sum was .....	328,379.00
Net change by previous Change Orders .....	7,871.36
The Contract Sum prior to this Change Order .....	336,250.36
The Contract Sum will be changed by this Change Order .....	3,392.55
The new Contract Sum including this Change Order will be .....	339,642.91
The Contract Time will be changed by .....	0 Days

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

Contractor: Mark J...

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

Date: 6-7-2023


**AIA<sup>®</sup> Document G709™ – 2018**
***Proposal Request***

**PROJECT:** *(name and address)*  
 Fargo Fire Station #2 Addition  
 3020 25th St S  
 Fargo, ND 58103

**CONTRACT INFORMATION:**  
 Contract For: General Construction  
 Date:

Architect's Project Number: 20222800  
 Proposal Request Number: 02  
 Proposal Request Date: May 25, 2023

**OWNER:** *(name and address)*  
 City of Fargo Fire Department  
  
 637 NP Avenue  
 Fargo, ND 58102

**ARCHITECT:** *(name and address)*  
 Engineers-Architects, P.C. (herein known  
 as EAPC Architects Engineers)  
 112 Roberts St N Suite 300  
 Fargo, ND 58102

**CONTRACTOR:** *(name and address)*  
 Meridian Commercial Construction  
  
 6218 53rd Ave S  
 Fargo, ND 58104

The Owner requests an itemized proposal for changes to the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. The Contractor shall submit this proposal within Zero (0) days or notify the Architect in writing of the anticipated date of submission.

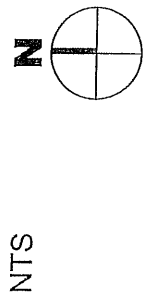
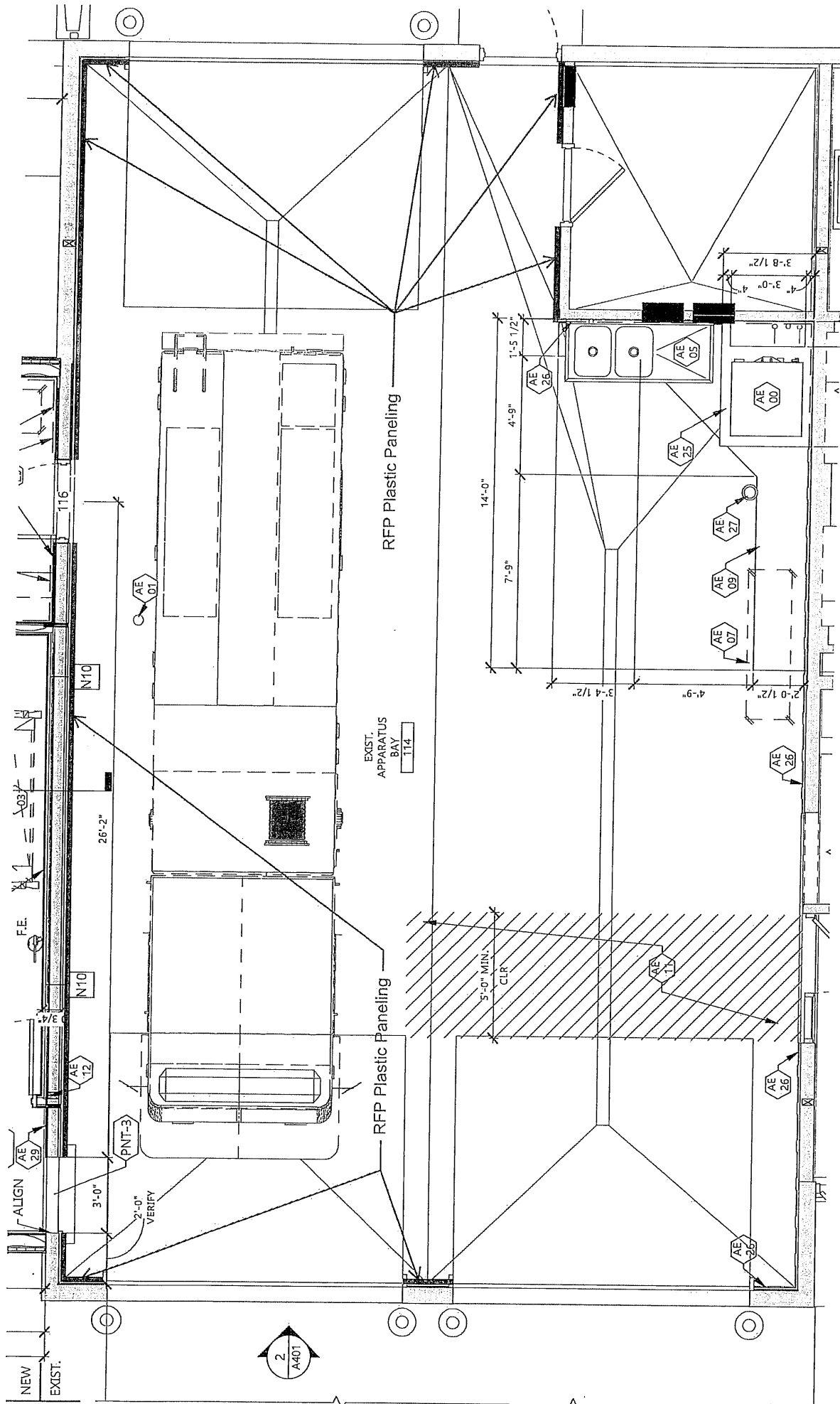
*(Insert a detailed description of the proposed modifications to the Contract Documents and, if applicable, attach or reference specific exhibits.)*

Provide price to add FRP Plastic Paneling division 06 6400 to remaining areas of apparatus bay walls below wood trim rail. See attached diagram for extents of installation.

**THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE, OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.**

**REQUESTED BY THE ARCHITECT:**

Nicholas Naujokas, AIA, Architect  
 PRINTED NAME AND TITLE





# QUOTE

Meridian Commercial Construction LLC

**Date**  
Jun 1, 2023

Progressive Construction  
Services LLC

**Quote Number**  
Firehouse Addition FRP  
ADD

1632 51ST STREET APT  
309  
FARGO ND 58103  
701-964-8659

## Firehouse Station

This quote is an addition of FRP along the rest of the walls in the existing shop. There are an estimated of about 17 sheets to install. (Only Labor Installation)

Description	Quantity	Unit Price	Amount USD
FRP Add on	1.00	1,400.00	1,400.00
		Subtotal	1,400.00
		<b>TOTAL USD</b>	<b>1,400.00</b>



Quote

**GOLDEN VALLEY SUPPLY**

3453 7th Ave. N., STE C | Fargo, ND 58102  
 www.goldenvalleysupply.com  
 (701) 293-6015

Order Number: N028406  
 Order Date: 5/31/2023

Salesperson: Nicole Boucher  
 Customer Number: 30-0004760

**Sold To:**  
 MERIDIAN COMMERCIAL CONSTRUCTION LLC  
 6218 53rd Ave South  
 Fargo, ND 58104

**Ship To:**  
 Fargo Fire Department #2  
 Fargo, ND

<b>Customer P.O.</b> Fargo Fire Department	<b>Ship VIA</b> OT	<b>F.O.B.</b>	<b>Terms</b> 1% 10, net 30
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Item Number	Description	Unit	Ordered	Price	Amount
GG 4X8-BW	4x8 /Textd /ClassC /White <i>Manufacturer of FRP: Glasteel (Section: 06 6400 Plastic Paneling).</i>	EA	17	48.450	823.65
FRP MOLD 8	8' Standard FRP Moldings White <i>Estimated Qty: (28) JCap, (2) Inside Corner, and (9) Divider.</i>	PC	39	3.250	126.75
A F 4319	Adv Polymer Panel Adh 3.5 gal <i>Advanced Polymer Adhesive (192.5 sf / bucket), which is to be used over porous and most non-porous substrates, such as Fiberglass faced and mold resistant drywall, fire rated and pressure treated plywood, drywall, steel, foam board, vinyl, PVC, FRP, ceramic tile, laminate, sealed and unsealed concrete.</i> <i>*** Please call if you have any questions regarding the Adhesive Application Recommendations. ***</i>	EA	3	180.000	540.00

<b>/DELIVERY</b>	<b>Delivery Charge</b>	<b>EACH</b>	<b>1</b>	<b>25.000</b>	<b>25.00</b>
------------------	------------------------	-------------	----------	---------------	--------------

*Note: Pricing is for material only-labor provided by others. This proposal is our estimate for materials required onsite. Final quantity of materials required is responsibility of purchaser. Final specification verification is the responsibility of the purchaser. All Code Compliance is the responsibility of the purchaser. Any on-site measurements/ field verifications are responsibility of purchaser. Additional hardware (if required) provided by purchaser. Please contact GVS for additional hardware pricing & options. Sales tax is not included, please add appropriate sales tax for the project location. Dispersal within the jobsite is the requirement of the purchasing / installing contractor. Note- All qties above are estimates only. Final qty required is responsibility of the purchasing/ installing contractor.*

**This is a special order product and non-refundable, non-returnable.  
 Please verify product and quantity by signing and returning.  
 Your order will be processed once we receive the signed acknowledgement.  
 Thank you for your order!**

Net Order:	1,515.40
Freight:	0.00
Sales Tax:	113.66
<b>Order Total:</b>	<b>1,629.06</b>

Signature  
 Fax #: (701) 232-3569

Date





**Commercial Construction, LLC**

6218 53rd Ave S  
 Fargo ND 58104  
 701-356-0397

# Change Order

Order#: 4

Order Date: 06/20/2023

**To:** City Of Fargo  
 225 4th St N  
 Fargo ND 58102

**Project:** 23003  
 Fargo Fire Department Addition  
 3020 25th St S  
 Fargo ND 58103

The contractor agrees to perform and the owner agrees to pay for the following changes to this contract.

Plans Attached

Ordered By:

Customer Order:

Specifications Attached

Description of Work	Amount
Condensate Pump - Electrical	772.64
Condensate Pump - Mechanical	436.80

Negative changes will lower the overall contract price requiring no additional payment by owner.

Requested Amount of Change

1,209.44
----------

The original Contract Sum was .....	328,379.00
Net change by previous Change Orders .....	11,263.91
The Contract Sum prior to this Change Order .....	339,642.91
The Contract Sum will be changed by this Change Order .....	1,209.44
The new Contract Sum including this Change Order will be .....	340,852.35
The Contract Time will be changed by .....	0 Days

Owner: \_\_\_\_\_

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

Contractor:     *CM*    

Date:     06/20/23




**AIA® Document G709™ – 2018**
**Proposal Request**

**PROJECT:** *(name and address)*  
 Fargo Fire Station #2 Addition  
 3020 25th St S  
 Fargo, ND 58103

**CONTRACT INFORMATION:**  
 Contract For: General Construction  
 Date:

Architect's Project Number: 20222800  
 Proposal Request Number: 03  
 Proposal Request Date: June 12, 2023

**OWNER:** *(name and address)*  
 City of Fargo Fire Department  
  
 637 NP Avenue  
 Fargo, ND 58102

**ARCHITECT:** *(name and address)*  
 Engineers-Architects, P.C. (herein known  
 as EAPC Architects Engineers)  
 112 Roberts St N Suite 300  
 Fargo, ND 58102

**CONTRACTOR:** *(name and address)*  
 Meridian Commercial Construction  
  
 6218 53rd Ave S  
 Fargo, ND 58104

The Owner requests an itemized proposal for changes to the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. The Contractor shall submit this proposal within Zero (0) days or notify the Architect in writing of the anticipated date of submission.

*(Insert a detailed description of the proposed modifications to the Contract Documents and, if applicable, attach or reference specific exhibits.)*


Provide price to add little giant condensate pump (Model VCMA-15ULS or similar) to new condensate pipe in existing apparatus bay. Route piping after condensate pump to ceiling of existing apparatus bay and slope per code to existing mechanical room as shown on original plans, see sheet M201 for original routing and pipe sizes.

Provide price to provide 120V connection to pump from nearest 120V receptacle. Provide toggle switch at pump.

**THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE, OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.**

**REQUESTED BY THE ARCHITECT:**

Nicholas Naujokas, AIA, Architect  
 PRINTED NAME AND TITLE

	<b>FIELD CHANGE NOTICE ( FCN )</b>	<b>FCN #</b>	<b>99-23012-FCN-002</b>			
Project No.: 22036	Date:		June 19, 2023			
Project Name/Description	Fire Station #2					
Date Originated	6/19/2023	Contract Number				
Originator (print)	Jared Toso	Client Job Number	23012			
<b>REASON FOR CHANGE:</b>						
<input type="checkbox"/> Request for Contract Action	<input type="checkbox"/> Differing Site Conditions	<input type="checkbox"/> Coordination/Schedule				
<input type="checkbox"/> Design Change	<input type="checkbox"/> Scope Additions	<input type="checkbox"/> Work Transfer				
<input checked="" type="checkbox"/> Adding Work Scope						
DESCRIPTION OF CHANGE: <u>Install a new circuit for the added condensate pump.</u>						
REFERENCE DOCUMENTS (e.g. Revised drawings, etc.)						
<b>DETAILED ESTIMATE</b>						
	Labor Cost (\$)	Equipment (\$)	Material (\$)	Taxes (\$)	Subtotals (\$)	Mhs
Engineering/Mgmt	\$ -	\$ -	\$ -	\$ -	\$ -	0
Electrical Labor	\$ 321.86	\$ -	\$ -	\$ -	\$ 321.86	4
Indirect	\$ -	\$ -	\$ -	\$ -	\$ -	0
Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	0
Subcontractor	\$ -	\$ -	\$ -	\$ -	\$ -	0
Material Purchase & Management	\$ -	\$ -	\$ 320.00	\$ -	\$ 320.00	0
Contractor markup	\$ -	\$ -	\$ 48.00	\$ -	\$ 48.00	0
QA/QC & Testing	\$ -	\$ -	\$ -	\$ -	\$ -	0
Other	\$ -	\$ -	\$ -	\$ -	\$ -	0
Subtotal	\$ 321.86	\$ -	\$ 368.00	\$ -	\$ -	0
Estimate Total (\$)	\$689.86				4	
SCHEDULE IMPACT - Description and +/- weeks						
COMMENTS:						
	Initials	Comments:				
Project Manager						
Construction Manager						
Engineering						
Elect Superintendent						
Contracts						
<b>AUTHORIZATION:</b>						
	Approved	Rejected	Revised	Print	Sign	Date
Client Rep.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	_____
Royal Rep.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Jared Toso	_____	6/19/2023

# Proposal By



Box 2562 - Fargo, North Dakota 58108  
 Phone: 701-237-0543 Fax: 701-237-9767  
[www.lanaysinc.com](http://www.lanaysinc.com)



<b>Proposed to:</b> MERIDIAN CONSTRUCTION	<b>Home Phone</b>	<b>Cell Phone</b>	<b>E-Mail Address</b>
<b>Street Address</b>	<b>Work Phone</b>	<b>Fax #</b>	<b>Contact Name</b>
<b>City, State, Zip Code</b>	<b>Job Location</b> FARGO, N.D	<b>Job Name</b> FARGO FIRE STATION #2	<b>Proposal Date</b> 06/14/23

**We propose the following:**

RFP #2  
 ADD CONDENSATE PUMP IN EXISTING GARAGE AS REQUESTED

MATERIAL AND SHELF \$210.00  
 LABOR \$180.00

THANK YOU FOR YOUR CONSIDERATION!

<p><b>Proposed By:</b></p> <table border="1" style="width: 100%;"> <tr> <td style="width: 80%;">DAVE THENE</td> <td style="width: 20%;">06/14/23</td> </tr> <tr> <td>Laney's Commercial Manager</td> <td>Date</td> </tr> </table> <p><small>Note: This proposal may be withdrawn by Laney's if not accepted within 30 days.</small></p> <p><b>Acceptance of Proposal</b></p> <table border="1" style="width: 100%;"> <tr> <td style="width: 80%; height: 30px;"></td> <td style="width: 20%; height: 30px;"></td> </tr> <tr> <td>Purchaser</td> <td>Date</td> </tr> </table> <p>The above prices, specifications and conditions are satisfactory and are hereby accepted. Laney's Inc. is authorized to do the work as specified and payment for such work will be made as outlined in this document.</p> <p>I understand that I am responsible for payment for any approved work that is performed outside the scope of this estimate.</p>	DAVE THENE	06/14/23	Laney's Commercial Manager	Date			Purchaser	Date	<p><b>Billing Terms:</b></p> <p><input type="checkbox"/> Bill Total Upon Completion      <input type="checkbox"/> Progress Billing</p> <p><b>Payment Terms/Conditions:</b></p> <p>DOWNPAYMENT REQUIRED: <input type="checkbox"/></p> <p>Work can be scheduled with a DOWNPAYMENT of: \$ <input style="width: 100px;" type="text"/></p> <p><b>PAYMENT DUE UPON COMPLETION</b></p> <p>All payments not made when due will bear interest at eighteen (18%) percent per annum. If payments are not made when due, you will also be responsible for all costs of collection, including reasonable attorney's fees. Any person or company supplying labor or materials for this improvement to your property may file a lien against your property in order to protect their interests. The Purchaser under this agreement acknowledges and understands that Laney's may pull a credit report from a credit reporting agency in order to determine if credit will be extended.</p>
DAVE THENE	06/14/23								
Laney's Commercial Manager	Date								
Purchaser	Date								



Commercial Construction, LLC

6218 53rd Ave S  
 Fargo ND 58104  
 701-356-0397

# Change Order

Order#: 5

Order Date: 07/13/2023

To: City Of Fargo  
 225 4th St N  
 Fargo ND 58102

Project: 23003  
 Fargo Fire Department Addition  
 3020 25th St S  
 Fargo ND 58103

The contractor agrees to perform and the owner agrees to pay for the following changes to this contract.

Plans Attached

Ordered By:

Customer Order:

Specifications Attached

Description of Work	Amount
Extend Drywall to Deck, Fire Tape, & Caulk Framing	1,747.20
	201.60

Negative changes will lower the overall contract price requiring no additional payment by owner.

Requested Amount of Change

1,948.80

The original Contract Sum was .....	328,379.00
Net change by previous Change Orders .....	12,473.35
The Contract Sum prior to this Change Order .....	340,852.35
The Contract Sum will be changed by this Change Order .....	1,948.80
The new Contract Sum including this Change Order will be .....	342,801.15
The Contract Time will be changed by .....	0 Days

Owner:

Date: 7/13/23

Contractor:

Date: 7/13/23

7/13/23, 8:55 AM

Meridian Commercial Construction Mail - Fwd: Fire station change order proposal



Nathan Volk <nathan.volk@meridiancommercialconstruction.com>

---

**Fwd: Fire station change order proposal**

1 message

---

Mark Janes <Mark@meridiancommercialconstruction.com>  
To: Nathan Volk <nathan.volk@mccfargo.com>

Thu, Jul 13, 2023 at 6:40 AM

Here's the email from Pete for the FFD change

Mark Janes | Meridian Commercial Construction, LLC

6218 53<sup>rd</sup> Avenue South | Fargo, ND 58104

p. 701-356-0397 | f. 701-356-0399 | c. 701-630-5748

----- Forwarded message -----

From: Pete Stevenson <pete@csibuilder.com>

Date: Mon, Jul 10, 2023 at 12:52 PM

Subject: Fire station change order proposal

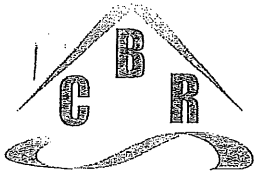
To: Mark Janes <Mark@meridiancommercialconstruction.com>

Cc: Eric Pikarski <eric@meridiancommercialconstruction.com>, Construction Services Inc. <admin@csibuilder.com>

North wall - extend drywall to bottom of roof deck, firetape and fire caulk as needed:

\$1,560.00

Get Outlook for iOS



# Change Order

From  
**Custom Building & Remodeling  
L.L.C.**

35 Years Experience

Licensed and Insured.

11244 Dakota Beach Road

Detroit Lakes M.N. 56501

Ph.701-261-7062

---

Invoice submitted to: Meridian Commercial Construction

Date: 7/10/2023

Address: 6218 53rd Ave. South, Fargo N.D. 58104

Ph. 701-356-0397

---

We hereby submit a change order pertaining to the framing contract for the building Fargo Fire Station Addition, 3020 25th street south, Fargo N.D. Total amount of the change order is \$180.00. The issue is extending framing up into the roof structure for firewall installation. This amount is not included in the final invoice for this project.

Total for this change order is \$180.00. One Hundred Eighty Dollars and no cents.

Thank you for your business. Richard Holmes, Custom Building LLC

---

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra cost will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado and other necessary insurance.

---



Commercial Construction, LLC

6218 53rd Ave S  
 Fargo ND 58104  
 701-356-0397

# Change Order

Order#: 6

Order Date: 08/01/2023

**To:** City Of Fargo  
 225 4th St N  
 Fargo ND 58102

**Project:** 23003  
 Fargo Fire Department Addition  
 3020 25th St S  
 Fargo ND 58103

The contractor agrees to perform and the owner agrees to pay for the following changes to this contract.

Plans Attached

Ordered By:

Customer Order:

Specifications Attached

Description of Work	Amount
Relocate Evacuator Pump	1,017.35

Negative changes will lower the overall contract price requiring no additional payment by owner.

Requested Amount of Change

1,017.35

The original Contract Sum was .....	328,379.00
Net change by previous Change Orders .....	14,422.15
The Contract Sum prior to this Change Order .....	342,801.15
The Contract Sum will be changed by this Change Order .....	1,017.35
The new Contract Sum including this Change Order will be .....	343,818.50
The Contract Time will be changed by .....	0 Days

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

Contractor: Chl Date: 8/1/23



**FIELD CHANGE NOTICE  
( FCN )**

FCN #

99-23012-FCN-001

Project No.: 23012

Date:

May 11, 2023

Project Name/Description Fire Station #2

Date Originated 5/11/2023

Contract Number \_\_\_\_\_

Originator (print) Jared Toso

Client Job Number 23012

**REASON FOR CHANGE:**

- |                                                       |                                                    |                                                |
|-------------------------------------------------------|----------------------------------------------------|------------------------------------------------|
| <input type="checkbox"/> Request for Contract Action  | <input type="checkbox"/> Differing Site Conditions | <input type="checkbox"/> Coordination/Schedule |
| <input type="checkbox"/> Design Change                | <input type="checkbox"/> Scope Additions           | <input type="checkbox"/> Work Transfer         |
| <input checked="" type="checkbox"/> Adding Work Scope | <input type="checkbox"/>                           |                                                |

DESCRIPTION OF CHANGE: Relocate the existing evacuator pump to the new location beside the new sink in the garage area. Demo the feed to the old location.

REFERENCE DOCUMENTS (e.g. Revised drawings, etc.) \_\_\_\_\_

**DETAILED ESTIMATE**

	Labor Cost (\$)	Equipment (\$)	Material (\$)	Taxes (\$)	Subtotals (\$)	Mhs
Engineering/Mgmt	\$ -	\$ -	\$ -	\$ -	\$ -	0
Electrical Labor	\$ 793.35	\$ -	\$ -	\$ -	\$ 793.35	9
Indirect	\$ -	\$ -	\$ -	\$ -	\$ -	0
Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	0
Subcontractor	\$ -	\$ -	\$ -	\$ -	\$ -	0
Material Purchase & Management	\$ -	\$ -	\$ 100.00	\$ -	\$ 100.00	0
Contractor markup	\$ -	\$ -	\$ 15.00	\$ -	\$ 15.00	0
QA/QC & Testing	\$ -	\$ -	\$ -	\$ -	\$ -	0
Other	\$ -	\$ -	\$ -	\$ -	\$ -	0
Subtotal	\$ 793.35	\$ -	\$ 115.00	\$ -		
Estimate Total (\$)	\$908.35					9

SCHEDULE IMPACT - Description and +/- weeks

COMMENTS: \_\_\_\_\_

	Initials	Comments:
Project Manager	_____	_____
Construction Manager	_____	_____
Engineering	_____	_____
Elect Superintendent	_____	_____
Contracts	_____	_____

AUTHORIZATION:	Approved	Rejected	Revised	Print	Sign	Date
Client Rep.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	_____
Royal Rep.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Jared Toso	_____	5/11/2023





**Commercial Construction, LLC**

6218 53rd Ave S  
 Fargo ND 58104  
 701-356-0397

**To:** City Of Fargo  
 225 4th St N  
 Fargo ND 58102

**Project:** 23003  
 Fargo Fire Department Addition  
 3020 25th St S  
 Fargo ND 58103

## Change Order

Order#: 7 - Elec Mat. Deduct

Order Date: 08/30/2023

The contractor agrees to perform and the owner agrees to pay for the following changes to this contract.

Plans Attached

Ordered By:

Customer Order:

Specifications Attached

Description of Work	Amount
Electrical Material Deduct	-203.00

Negative changes will lower the overall contract price requiring no additional payment by owner.

Requested Amount of Change

-203.00

The original Contract Sum was .....	328,379.00
Net change by previous Change Orders .....	15,439.50
The Contract Sum prior to this Change Order .....	343,818.50
The Contract Sum will be changed by this Change Order .....	-203.00
The new Contract Sum including this Change Order will be .....	343,615.50
The Contract Time will be changed by .....	0 Days

Owner: \_\_\_\_\_  
 Contractor: *[Signature]*

Date: \_\_\_\_\_  
 Date: 9/8/23



Estimate #	Spec Change
------------	-------------

August 29th, 2023

Attn: Mark Janes  
Meridian Construction  
6218 53<sup>rd</sup> Ave S  
Fargo, ND 58104

RE: Spec Change Material Deduct

Mark,

We are pleased to offer our Lump Sum Deduct for the above referenced project.

- Material cost of #12 wire \$240.00
- Material cost of 1/2" EMT \$195.00
- Material cost of 12/2 NM cable \$232.00
- Material Credit **-\$203.00**

We are hopeful this proposal meets with your approval. If you have any questions or require any additional information, feel free to contact me anytime.

Regards,

*Jared Toso*



27

## MEMORANDUM

**Date:** September 14, 2023

**To:** Board of City Commissioners

**From:** Brady Scribner, City of Fargo Emergency Manager

**Re:** NDDDES Hazard Mitigation Grant – Resident Storm Shelter

---

### Background:

The Emergency Management office was contacted by a future Fargo resident that is in the process of building a home and interested in establishing a standalone storm shelter in their garage. The resident informed the office of their interest in a mitigation grant provided by the North Dakota Department of Emergency Services for reimbursement of the purchase of the shelter. This grant has a 15% local cost share, which the resident has agreed to pay, and requires the City of Fargo to act as a pass-through entity to facilitate the grant application and reimbursement funds. As a pass-through entity, the City of Fargo applies for the grant on behalf of the resident, requests reimbursement for the resident, and receives the reimbursement funds to be passed on to the resident.

The impacts to the City of Fargo for this project are administrative time to complete the grant application, request reimbursement, and close the grant project. There are no financial risks from this grant project as the resident will purchase the shelter and receive reimbursement if the finalized project meets NDDDES approval.

### Recommended Motion:

Approve completing the NDDDES mitigation grant application as a sub applicant and subsequently acting as the pass-through entity to receive and pass on reimbursement funds to the resident.

Attachments: *NDDDES Email*

*NDDDES Hazard Mitigation Assistance Program Overview*

## Brady Scribner

---

**From:** Joersz, Todd W. <tjoersz@nd.gov>  
**Sent:** Thursday, August 10, 2023 1:58 PM  
**To:** Brady Scribner  
**Cc:** Meyer, Carl; cpwvf@hotmail.com  
**Subject:** Paul's Residential Storm Shelter  
**Attachments:** NDDDES Hazard Mitigation Assistance Program Overview.pdf

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Brady,

HMGP funds are available for eligible Applicants following a Presidential major disaster declaration according to the HMA guidance (2015). The President declared a disaster on July 13, 2022 (DR 4660). This opened the DR 4660 HMGP fund. FEMA matches 20% (being ND has an Enhanced Mitigation Plan) of the disaster costs for the State to do mitigation projects. The application period is for one year, however we have asked for an extension, so the deadline date for the State to send in applications is Jan 9<sup>th</sup>, 2024.

NDDDES acts as the applicant for all HMA Programs, and works directly with FEMA to submit project applications, receive project approval, manage projects at the state level, and close projects upon completion. The legal entity that is actually applying for an HMA project is referred to as a subapplicant, and can be State Agencies, Federally Recognized Tribes, Local Governments, and Private Non-Profit Organizations (HMGP Only). Therefore, the City of Fargo needs to be the subapplicant on the behalf of Paul to help fund a storm shelter in his garage. The City of Fargo will only be a pass-thru entity. The cost share for this DR 4660 HMPG grant is 75% Fed Share, 10% State Share, and 15% Local share, which Paul has agreed to pay. There will be no additional cost to the City of Fargo other than to reimburse Paul when the City gets reimbursed by the Grant. NDDDES and Paul will fill out all required paperwork.

I have attached a NDDDES HMA Program overview document that explains the 3 grant programs that are available.

Let me know if you need more information,

*Stay Safe and Healthy!*

Todd Joersz  
State Hazard Mitigation Officer

701.328.8261 • 701.490.1402(m) • [tjoersz@nd.gov](mailto:tjoersz@nd.gov) • [des.nd.gov](http://des.nd.gov)

**NORTH**  
**Dakota** | Emergency Services  
Be Legendary.™



## **NDDDES Hazard Mitigation Assistance (HMA) Program Overview**

Hazard mitigation is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects. In other words, mitigation is getting people and property out of harm's way. As an example, hazard mitigation is not the purchasing of fire trucks; it is the identification of what caused the fire, why it spread so quickly, and how it can be prevented from happening again in the future.

Hazard mitigation is the only phase of emergency management specifically dedicated to breaking the continuous cycle of damages caused by natural hazards. As such, all local jurisdictions and Indian Tribal governments are encouraged to take advantage of funding available through Hazard Mitigation Assistance (HMA) programs, whether it's before or after a disaster occurs. HMA programs provide significant opportunities to reduce or eliminate potential losses to State, Tribal, and local assets through hazard mitigation planning and project funding. On average, every one dollar spent on mitigation will save six dollars in response and recovery costs.

HMA consists of three (3) separate mitigation programs, with each differing slightly in scope and intent. The Hazard Mitigation Grant Program (HMGP) is available after a state receives a major Presidential disaster declaration. The funds are available statewide, and can be used to fund projects that will prevent damages from any type of natural hazard applicable to the area.

Comparatively, the Building Resilient Infrastructure and Communities (BRIC) and Flood Mitigation Assistance (FMA) programs provide funds annually at the national level, meaning they are available to all eligible applicants within the United States. The BRIC program is similar to HMGP because it is funded directly by FEMA and can fund projects that prevent damages from any type of natural hazard. However, the FMA program is funded by the National Flood Insurance Program (NFIP) and can only be used to prevent damages caused by the flooding of NFIP insured properties. Although each program has some noticeable differences, they all share a common goal of reducing the risk of loss of life and property due to natural hazards.

NDDDES acts as the applicant for all HMA Programs, and works directly with FEMA to submit project applications, receive project approval, manage projects at the state level, and close projects upon completion. The legal entity that is actually applying for an HMA project is referred to as a subapplicant, and can be State Agencies, Federally Recognized Tribes, Local Governments, and Private Non-Profit Organizations (HMGP Only).

### **Eligible Activities by Program**

HMA programs are available to fund a wide variety of mitigation activities, including the acquisition of flood prone properties, purchase and installation of generators for critical facilities, and the construction of floodwalls, dams, and levees. The following list provides an overview of eligible activities as outlined by FEMA, but there is always additional project types that can be applied for as long as they can prevent damages from natural hazards:

<b>Eligible Activities</b>	<b>HMGP</b>	<b>BRIC</b>	<b>FMA</b>
<b>Mitigation Projects</b>	✓	✓	✓
Property Acquisition and Structure Demolition	✓	✓	✓
Property Acquisition and Structure Relocation	✓	✓	✓
Structure Elevation	✓	✓	✓
Mitigation Reconstruction	✓	✓	✓

Dry Floodproofing of Historic Residential Structures	✓	✓	✓
Dry Floodproofing of Non-residential Structures	✓	✓	✓
Generators	✓	✓	
Localized Flood Risk Reduction Projects	✓	✓	✓
Non-localized Flood Risk Reduction Projects	✓	✓	
Structural Retrofitting of Existing Buildings	✓	✓	✓
Non-structural Retrofitting of Existing Buildings and Facilities	✓	✓	✓
Safe Room Construction	✓	✓	
Wind Retrofit for One- and Two-Family Residences	✓	✓	
Infrastructure Retrofit	✓	✓	✓
Soil Stabilization	✓	✓	✓
Wildfire Mitigation	✓	✓	
Post-Disaster Code Enforcement	✓		
Advance Assistance	✓		
5 Percent Initiative Projects	✓		
Miscellaneous/Other <sup>(1)</sup>	✓	✓	✓
<b>Hazard Mitigation Planning</b>	✓	✓	✓
Planning Related Activities	✓		

## Cost Sharing

As part of these Mitigation Programs, all costs are broken down between federal and non-federal cost shares. In general, FEMA will fund up to 75% of any eligible and approved activity, unless otherwise indicated below, and the remaining 25% share is the responsibility of the subapplicant that applied for and received the awarded project. Under the HMGP, the State of North Dakota will also contribute a 10% share to assist with the completion of an awarded mitigation project, but the state does not provide any costs for projects approved under the BRIC and FMA programs.

The following table provides an overview of cost shares available per HMA program:

<b>Programs</b>	<b>Mitigation Activity</b> (Percent of Federal/Non-Federal Share)	<b>Recipient Management Costs</b> (Percent of Federal/Non-Federal Share)	<b>Subrecipient Management Costs</b> (Percent of Federal/Non-Federal Share)
<b>HMGP</b>	75/25	100/0	— <sup>(1)</sup>
<b>BRIC</b>	75/25	75/25	75/25
<b>FMA – insured properties and planning grants</b>	75/25	75/25	75/25
<b>FMA – repetitive loss property</b>	90/10	90/10	90/10
<b>FMA – severe repetitive loss property</b>	100/0	100/0	100/0


If you are interested in discussing the HMA programs in more detail or have some project ideas that you are interested in applying for, please contact Todd Joersz, State Hazard Mitigation Officer, at 701-328-8261 or [tjoersz@nd.gov](mailto:tjoersz@nd.gov).



28

**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: SEPTEMBER 14, 2023**

**RE: AGREEMENT FOR SERVICES WITH FOLKWAYS**  
**FUNDS: \$10,000**  
**EXPIRES: 09/30/2023**

The attached agreement for services with Folkways is to expand on the original contract with FM Wellness Coalition/Fargo Cass Public Health by adding a two full day event where surveys are conducted and three small group interview sessions.

If you have any questions, please contact me at 241.1380.

**Suggested Motion:**

Move to approve the agreement for services with Folkways.

DF/ls  
Attachment



**THIS AGREEMENT**, effective the 1st day of September 2023, by and between FM Wellness Coalition/Fargo Cass Public Health ("FCPH"); and Folkways.

**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 September 1, 2023, through September 30, 2023, following the expiration of their original contract.
- B. Services to be provided by independent contractor in original contract:** Event assistance and community research. Services will be targeted in a neighborhood identified by the FM Wellness Coalition. Objectives include:
  - Consultation for event planning, including identifying event objectives and requirements.
  - Aiding with event set-up and delivery of items, as needed for specific events (e.g., bistro tables).
  - On-site research to gather information to drive the future work of the Coalition. Additional funding will support the expansion of the initial scope, allowing for more interviews to be conducted and the message approach to be refined.
  - Conduct two full day event intercept surveys.
  - Organize three small group interview sessions in collaboration with neighborhood service providers.
  - Develop identities based on findings from all the research endeavors.
- C. Reimbursement:** The independent contractor shall be reimbursed \$10,000.00 for services and submit an invoice.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The contracting consultant 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 to be an employee of the FM Wellness Coalition/Fargo Cass Public Health for any other purpose.
- B.** This service agreement shall be governed by the laws of the State of North Dakota. 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 Independent Contractor and FM Wellness Coalition/ Fargo Cass Public Health on the date-executed below.

**FARGO CASS PUBLIC HEALTH**

By Desi Fleming  
Desi Fleming, Director of Public Health

Date 09/08/2023

**CONTRACTOR**

By Joe Burgum  
Joseph Burgum, Folkways

Date 9/14/2023

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

Date \_\_\_\_\_





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**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: SEPTEMBER 12, 2023**

**RE: GRANT AGREEMENT WITH NORTH DAKOTA DEPARTMENT  
OF HEALTH AND HUMAN SERVICES, OFFICE OF REFUGEE  
SUPPORT SERVICES TO PROVIDE CARE COORDINATION  
SERVICES FOR TUBERCULOSIS.  
NO: 355-13476  
FUNDS: \$12,650  
EXPIRES: 09/30/2024**

The grant agreement with ND Department of Health and Human Services, Office of Refugee Support Services is for FCPH to provide care coordination services, including TB education and referrals.

If you have any questions, please contact me at 241.1380.

**Suggested Motion:**

Move to approve the grant agreement with ND Department of Health and Human Services.

DF/lls  
Attachment

## GRANT AGREEMENT

The state of North Dakota, acting through its North Dakota Department of Health and Human Services, Office of Refugee Support Services (Grantor), has determined the services identified in the Scope of Service paragraph below form an appropriate basis for the expenditure of funds allocated to Grantor.

City of Fargo (Grantee), 1240 25<sup>th</sup> St S, Fargo, ND 58103, proposes to provide those services.

Grantor and Grantee therefore enter into the following:

1. TERM OF GRANT

This Grant runs from October 1, 2023, through September 30, 2024. This Grant will not automatically renew.

2. SCOPE OF SERVICE

Grantee shall provide Care Coordination services, which include follow-up for Tuberculosis (TB) treatment, education, referral to community resources, coordination with other health care providers, and outreach to the Office of Refugee Resettlement (ORR)-eligible populations who are within their first five years of their eligibility. In addition to TB care coordination, Grantee shall provide target health outreach services, which include developing and translation health promotion materials into the languages of the ORR populations. Eligible population includes: Refugees, Asylees, Cuban/Haitians, Unaccompanied Refugee Minors, and Unaccompanied Alien Children, Amerasians, Victims of severe form of trafficking, Special Immigrant Visa holder, Afghan Humanitarian Parolees, and Ukrainian Humanitarian Paroles in its jurisdiction. Grantee shall communicate with the client and their primary health care provider to assure compliance, completion of necessary lab follow-up, and the eventual successful completion of TB treatment. Grantee also shall collect data for reporting to ORR, as requested, by Grantor for the purpose of year-end outcome measures. Care Coordination services are to be provided in a linguistically and culturally-appropriate manner. Refugee Health Promotion (RHP) funds are not to be supplanted if covered under other funding sources.

Grantee shall participate with other grantees as a member of the Refugee Services Advisory Committee (RSAC), which meets at least quarterly, and will report to the committee on goals, outcomes, new initiatives, and barriers in providing health services to refugees and ORR-eligible populations.

Grantee shall advance equity consistent with the Executive Order on Advancing Racial Equity and Support for Underserved Communities (E.O. 13985) in all of its programming.

Grantee shall:

- a. Use an equity lens when developing new programming to ensure that all ORR-eligible populations, regardless of race, religion, gender identity, sexual orientation, disability, or other characteristic(s), receive fair treatment, access, and opportunity;
- b. Review existing programming with an equity lens; and
- c. Identify and eliminate barriers that may prevent the full participation of some groups.

Grantee shall comply with the following Grantor requirements:

- a. Maintain appropriate patient files to document services provided. Patient files shall include, but not be limited to, documentation of status-verification and eligibility determination, documentation of interpretation and translation services, and notes related to Care Coordination services provided.
- b. Attend Quarterly Consultation meetings and meetings organized by Grantor, and provide goals, outcomes, new initiatives, and barriers in providing health services to refugees and ORR-eligible populations.
- c. The services are to be provided in a linguistically and culturally appropriate manner.
- d. Grantee shall develop a plan of care for each individual served.

Grantee shall comply with the following reporting requirements:

- a. Compile and submit semi-annual reports as requested by Grantor. Semi-annual reports are due by April 30 for the October 1- March 31 reporting period and September 30 for the April 1- September 30 reporting period.
- b. Compile and submit program activities in a narrative format semi-annually. This may include, but not be limited to, accomplishment, new initiatives, dissemination, and outreach events and challenges.
- c. State and federal reporting requirements will be managed by the Data Management System (DMS), which will track services provided and the outcomes of clients. Grantee must comply with a temporary reporting process until the DMS goes live. The anticipated start date for the DMS is spring 2024; the DMS vendor will provide extensive training to all Refugee Support Services grantees.
- d. Submit Reimbursement Requests monthly to Grantor using SFN1763.
- e. Any additional reports as deemed necessary by Grantor shall be submitted upon request.

3. COMPENSATION

Grantor, upon receipt and approval of SFN 1763 Request for Reimbursement or other form required by Grantor, shall reimburse Grantee for allowable expenses incurred. "Allowable expenses" are defined by the Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards cited under Section 11 of this Grant. The total amount paid under this Grant may not exceed \$12,650. No funds will be paid for services until they have been provided. Grantee shall submit its request for reimbursement to Grantor monthly. Grantee shall submit its final reimbursement request to Grantor no later than 30 days after the expiration or termination of this Grant. Grantor may not pay Grantee until Grantee signs and returns to Grantor the Certification of the 2 CFR Part 200 Informational Guide, which is made a part of this Grant by its reference here.

Payment for services under this Grant may include federal monies. Anticipated funding at the time this Grant is executed is listed below. The funding source of actual payments and the federal program can be verified by contacting DHHS' Finance Division.

Anticipated Funding:

Federal	\$12,650	State	\$
Other	\$	Unknown	\$

Assistance Listing Number 93.566, Refugee and Entrant Assistance State/Replacement Designee Administered Programs.

Federal Award Identification Number: 2102NDRSSS

Federal Award Date: September 13, 2021

Unique Entity ID Number: N/A

This award is not for Research and Development.

4. TERMINATION

a. Termination by Mutual Agreement or Notice

This Grant may be terminated at any time by mutual consent of both parties executed in writing, or upon 30-days' written notice by either party, with or without cause.

b. Termination for Lack of Funding or Authority

Grantor may terminate the whole or any part of this Grant, effective upon delivery of written notice to Grantee or on any later date stated in the notice, under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or for the indicated term. The Grant may be modified by mutual consent of the parties in writing to accommodate a reduction in funds.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Grant or are no longer eligible for the funding proposed for payments authorized by this Grant.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Grant, is for any reason denied, revoked, suspended, or not renewed.

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

c. Termination for Cause

Grantor may terminate this Grant effective upon delivery of written notice to Grantee, or any later date stated in the notice:

- 1) If Grantee fails to provide services required by this Grant within the time specified or within any extension agreed to by Grantor; or
- 2) If Grantee fails to perform any of the other provisions of this Grant, or so fails to pursue the work in a way that endangers performance of this Grant in accordance with its terms.

The rights and remedies of Grantor provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this Grant.

5. NONPERFORMANCE

Failure by Grantee to perform the terms of this Grant constitutes a breach of contract and will result in the termination of the Grant. If a breach by Grantee renders the Grant impossible of performance by Grantee and is caused by circumstances beyond the control of Grantee, and through no fault of Grantee, the Grant will be terminated and Grantor may set off, against any liability or obligations owed to Grantee under this Grant or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach.

6. FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, flood, riot, terrorism, pandemics, acts of God, or war if the event is beyond the party's reasonable control, and the affected party gives notice to the other party immediately upon occurrence of the event that caused, or is reasonably expected to cause, the delay or default.

7. GRANTEE'S UNDERSTANDING OF TERM OF FUNDING

Grantee understands that this Grant is a one-time grant, and acknowledges that it has received no assurances that this Grant may be extended beyond its expiration date.

8. GRANTEE ASSURANCES

Grantee agrees to comply with the applicable assurances set forth in the Grantee Assurances found in Attachment A, which is part of this Grant.

9. AUTHORITY TO CONTRACT

Grantee may subcontract with qualified providers of services, provided that any subcontract acknowledges the binding nature of this Grant, and incorporates this Grant, together with its attachments as appropriate. Grantee is solely responsible for the performance of any subcontractor. Grantee may not contract for or on behalf of or incur obligations on behalf of Grantor. Grantee may not assign or otherwise transfer or delegate any right or duty without Grantor's express written consent.

10. INDEPENDENT ENTITY

Grantee is an independent entity under this Grant. Grantee, its employees, agents, or representatives are not employees of Grantor for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this Grant may be construed to represent the creation of an employer/employee relationship between Grantor and Grantee. Grantee retains sole and absolute discretion in the manner and means of carrying out Grantee's activities and responsibilities under this Grant, except to the extent specified in this Grant.

11. AUDIT RESPONSIBILITY AND EXPENSE ALLOWABILITY

Grantee agrees to keep financial records necessary to fully disclose the complete financial status of the Grant. Grantee must submit documentation supporting requests for reimbursement for review by Grantor or its agents, upon request. If Grantee has expended federal funds (when considering all sources) during Grantee's fiscal year at the amount specified in 2 CFR Part 200 Uniform Grant Guidance, which is made a part of this grant by reference here, that CFR must be followed pursuant to the Single Audit Act of 1984, Public Law 98-502; and the Single Audit Act Amendments of 1996, Public Law 104-156.

Additionally, Grantee agrees to spend all federal assistance received from Grantor in accordance with applicable laws and regulations from the 2 CFR Part 200 Informational Guide.

12. RETENTION OF RECORDS

Grantee agrees to retain records for at least three years following completion of this Grant or, if subject to audit, from the date the audit is completed and closed, whichever occurs later. Program records must be maintained for a period of six years or until an audit is completed and closed, whichever occurs later. All records, regardless of physical form, and the accounting practices and procedures of Grantee relevant to this Grant are subject to examination by the North Dakota State Auditor, the Auditor's designee, or federal auditors and Grantee must be able to provide them at any reasonable time. State, State Auditor, or Auditor's designee shall provide reasonable notice.

13. CONTINGENT LIABILITY

During the term of this Grant, and for three years after this Grant expires or is terminated, Grantee agrees to reimburse Grantor for any claims submitted by Grantor for federal financial participation in the cost of this Grant to the extent those claims are disallowed by any federal agency for failure on the part of Grantee to comply with this Grant or any federal or state statutory or regulatory provisions which govern the source of funding. Grantor agrees to give Grantee prompt written notice of any disallowed claims subject to reimbursement by Grantee. Any amount disallowed as described is a debt owing to Grantor. Action may be brought by Grantor as allowed by law.

14. INDEMNITY

Grantor and Grantee each agree to assume their own liability for any and all claims of any nature, including all costs, expenses, and attorneys' fees which may in any manner result from or arise out of this Grant.

15. INSURANCE

- a. Grantee shall secure and keep in force during the term of this Grant, 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, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
  - 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
  - 3) Workers' compensation coverage meeting all statutory requirements.
- b. The insurance coverages listed above must meet the following additional requirements:

- 1) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by Grantor. The policies shall be in form and terms approved by Grantor.
- 2) Grantee shall furnish a certificate of insurance to the undersigned Grantor representative prior to commencement of this Grant.
- 3) Failure to provide insurance as required in this Grant is a material breach of contract entitling Grantor to terminate this Grant immediately.
- 4) Grantee shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

16. NOTICE

Any notice or other communication required under this Grant must be given by registered or certified mail and is complete on the date mailed when addressed to the parties at the following addresses:

City of Fargo  
1240 25<sup>th</sup> St S  
Fargo, ND 58103

OR

ND Department of Health and  
Human Services  
Office of Refugee Support Services  
600 East Boulevard Ave, Dept. 325  
Bismarck, ND 58505-0250

Notice provided under this provision does not meet the notice requirements for monetary claims against Grantor found at North Dakota Century Code § 32-12.2-04.

17. INTEGRATION, MODIFICATION, AND CONFLICT IN DOCUMENTS

This Grant constitutes the entire Grant between Grantee and Grantor. There are no understandings, agreements, or representations, oral or written, not specified within this Grant. No alteration, amendment, or modification of this Grant is effective unless it is reduced to writing, signed by the parties, and attached to the Grant.

All terms and conditions contained in any end user agreements (e.g., automated click-throughs, shrink wrap, or browse wrap) are specifically excluded and null and void, and shall not alter the terms of this Grant. Clicking shall not represent acknowledgement or agreement to any terms or conditions contained in those agreements.

If any inconsistency exists between this Grant and other provisions of collateral contractual grants which are made a part of this Grant by reference or otherwise, the provisions of this Grant control.



18. SEVERABILITY

If any term of this Grant is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Grant does not contain the illegal or unenforceable term.

19. APPLICABLE LAW AND VENUE

This Grant is governed by and construed according to the laws of the state of North Dakota. Any action to enforce this Grant must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

20. ASSIGNMENT

Grantee may not assign this Grant without Grantor's express written consent, provided, however, that Grantee may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Grant, whether by merger, reorganization, operation of law, or otherwise. Should the assignee be a business or entity with whom Grantor is prohibited from conducting business, Grantor shall have the right to terminate without cause. This Grant is equally binding on the respective parties and their successors and assigns.

21. SPOILIATION – PRESERVATION OF EVIDENCE

Grantee shall promptly notify Grantor of all potential claims that arise or result from this Grant. Grantee shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Grantor the opportunity to review and inspect the evidence, including the scene of an accident.

22. WORKS FOR HIRE

Grantee acknowledges that all work(s) under this Grant is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to Grantor all rights and interests Grantee may have in the work(s) it prepares under this Grant, including any right to derivative use of the work(s). All software and related materials developed by Grantee in performance of this agreement for Grantor shall be the sole property of Grantor, and Grantee hereby assigns and transfers all its right, title, and interest therein to Grantor. Grantee shall execute all necessary documents to enable Grantor to protect Grantor's intellectual property rights under this section.

23. WORK PRODUCT, EQUIPMENT, AND MATERIALS

All work product, equipment, and materials created or purchased under this Grant belong to Grantor and must be delivered to Grantor at Grantor's request upon expiration or termination of this Grant.

24. CONFIDENTIAL INFORMATION

Grantee shall not use or disclose any information it receives from Grantor under this Grant that Grantor has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Grant or as authorized in advance by Grantor. Grantor shall not disclose any information it receives from Grantee that Grantee has previously identified as confidential and that Grantor determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law found in N.D.C.C. § 44-04-18. The duty of Grantor and Grantee to maintain confidentiality of information under this section continues beyond the term of this Grant, including any extensions or renewals.

25. COMPLIANCE WITH PUBLIC RECORDS LAWS

Grantee understands that, except for disclosures prohibited in this Grant, Grantor must disclose to the public upon request any records it receives from Grantee. Grantee further understands that any records obtained or generated by Grantee under this Grant, except for records that are confidential under this Grant, may be open to the public upon request under certain circumstances under the North Dakota open records law. Grantee agrees to contact Grantor immediately upon receiving a request for information under the open records law and to comply with Grantor's instructions on how to respond to the request.

26. ATTORNEY FEES

If a lawsuit is filed by Grantor to obtain performance due under this Grant, and Grantor is the prevailing party, Grantee shall pay Grantor's reasonable attorney fees and costs in connection with the lawsuit except when prohibited by North Dakota Century Code § 28-26-04.

27. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

Grantor does not agree to binding arbitration, mediation, or any other form of mandatory alternative dispute resolution. The parties may enforce their rights and remedies in judicial proceedings. Grantor does not waive any right to a jury trial.

28. NONDISCRIMINATION – COMPLIANCE WITH LAWS

Grantee shall comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

Grantee shall timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums. Grantee also shall have and keep current at all times during the term of this Grant all licenses and permits required by law.

Grantee is prohibited from boycotting Israel for the duration of this Grant. (See N.D.C.C § 54-44.4-15.) Grantee represents that it does not and will not engage in a boycotting Israel during the term of this Grant. If State receives evidence that Grantee boycotts Israel, State shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if Grantee has fewer than ten full-time employees.

Grantee's failure to comply with this section may be deemed a material breach by Grantee entitling State to terminate in accordance with the Termination for Cause section of this Grant.

29. DIRECT AND INDIRECT RATES

The terms of this Grant do not provide for an indirect rate. Grantee may claim direct costs provided they are consistent with the 2 CFR Part 200 Informational Guide.

CITY OF FARGO

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

By Desi Fleming \_\_\_\_\_ 09/12/2023  
Desi Fleming DATE  
Its Director of Public Health \_\_\_\_\_

Date \_\_\_\_\_

45-6002069  
Grantee's Federal Taxpayer Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES

By \_\_\_\_\_  
HOLLY TRISKA-DALLY, DIRECTOR DATE  
OFFICE OF REFUGEE SUPPORT SERVICES

By \_\_\_\_\_  
KYLE J. NELSON DATE  
CONTRACT OFFICER  
Approved for form and content

GRANTEE ASSURANCES


- A. In connection with furnishing supplies or performing work under this Grant, persons who contract with or receive funds to provide services to Grantor are obligated and agree to comply with all local, state, and federal laws, regulations, and executive orders related to the performance of this Grant, including the following: Fair Labor Standards Act, the North Dakota Human Rights Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, the Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1970, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Drug-free Workplace Act of 1988, the Americans with Disabilities Act of 1990, Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act of 1992, the Pro-Children Act of 1994, Title IX of the Education Amendments of 1972, and Section 1557 of the Affordable Care Act.
- B. Unless otherwise authorized by federal law, the charges to be made by Grantee do not include costs financed by federal monies other than those generated by this Grant.
- C. By signing this Grant, Grantee certifies that neither Grantee, Subcontractor, nor their principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with state or federal government by any department or agency of the state or federal government.
- D. Grantee must be an approved vendor with the Office of Management and Budget within the state of North Dakota as required by N.D.C.C. § 54-44.4-09.
- E. Grantee assures that:
  - 1) No Federal funds from this Grant will be paid by or on behalf of Grantee, to any person for influencing or attempting to influence 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 the awarding of any Federal contract; the making of any Federal grant, the making of any Federal loan, the entering of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - 2) If any grant funds other than Federal funds have been paid or will be paid to any person for influencing or attempting to influence 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, Grantee agrees to complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - 3) Grantee shall require that the language of the Grantee Assurances in this Attachment 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 comply with these Grantee Assurances.



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**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: SEPTEMBER 12, 2023**

**RE: AGREEMENT OF AFFILIATION BETWEEN NORTH DAKOTA  
STATE UNIVERSITY, DEPARTMENT OF PUBLIC HEALTH, AND  
FARGO CASS PUBLIC HEALTH.  
FUNDS: \$151,930 20 HOURS PER WEEK  
EXPIRES: 12/31/2024**

The attached agreement of affiliation contract between NDSU, Department of Public Health and Fargo Cass Public Health is for the co-funding of the Health Officer position at Fargo Cass Public Health. This will terminate the previous contract with Dr. Tracie Newman.

If you have any questions, please contact me at 241.1380.

**Suggested Motion:**

Move to approve the agreement of affiliation between NDSU and FCPH.

DF/lls  
Attachment

**AGREEMENT OF AFFILIATION**  
**between**  
**North Dakota State University, Department of Public Health,**  
**and**  
**Fargo Cass Public Health**

***THIS AGREEMENT OF AFFILIATION*** (“Agreement”) is made and entered into as of August 16, 2023, by and between North Dakota State University, Department of Public Health (“NDSU”) and Fargo Cass Public Health (“FCPH”). Both NDSU and FCPH are hereinafter referred to individually as “party” and collectively as “parties.”

**RECITALS**

WHEREAS, the parties desire to cooperate in the funding of one or more NDSU employee positions for educational purposes and mutual benefit in research and public health research training;

WHEREAS, successful candidates for this position (“Faculty”) shall be given formal full-time non-tenure track faculty appointments within the Department of Public Health (DPH) at NDSU with all the privileges and responsibilities inherent of full-time faculty of NDSU, including, but not be limited to, teaching responsibilities, research/scholarship, and service to the DPH, the College, and NDSU;

WHEREAS, Faculty shall also devote up to 20 hours per week upon a mutually agreed upon schedule split over a 12 month period to performing services for FCPH as further defined in this Agreement and in Exhibit A, which is attached to this Agreement and is hereby incorporated into and made a part of this Agreement by this reference. This position description is updated annually and a copy of the current position description will be kept at NDSU and available to all parties upon request.

NOW, THEREFORE, in consideration of these Recitals, hereby incorporated into this Agreement, the following mutual promises, and all other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

**AGREEMENT**

**I. DESCRIPTION OF AFFILIATION**

- A. With this Agreement, NDSU and FCPH establish a co-funded position that includes responsibilities for education, including training, service and research, and FCPH -

related research activities. NDSU will be responsible for the oversight of the Faculty as detailed in this Agreement.

- B. NDSU's title for the Faculty will be Faculty. FCPH will determine its own title to apply when the Faculty performs services for FCPH. For purposes of this Agreement, Faculty will be used when referring to the position.
- C. Faculty. Under the terms of this agreement, Faculty shall be an employee of NDSU. Faculty will be subject to all the rules, regulations, and policies of the North Dakota State Board of Higher Education and NDSU. Payroll checks for this position shall be issued by the Payroll Department at NDSU. Benefits for this position shall be equal to those provided for full-time faculty by NDSU. Employee leave time (e.g. vacations, sick leave, and professional leave) shall be handled according to NDSU policies, procedures, and practices. Annual performance reviews of Faculty will be conducted by NDSU according to NDSU policies with input from FCPH. In the event that it becomes necessary to terminate the employment of Faculty, the termination shall be made in accordance with NDSU policies and procedures on termination of faculty and made by the Dean at NDSU after consultation with FCPH, if appropriate.

## II. RESPONSIBILITIES OF THE PARTIES

### A. Joint Responsibilities of NDSU and FCPH

1. **Liaisons.** NDSU and FCPH will each identify a person to be responsible for liaison during the course of this Agreement. NDSU's liaison will be the Chair of the Department of Public Health. FCPH's liaison will be the Director of Public Health.
2. **Qualifications for Faculty.** Both NDSU and FCPH shall agree on the person(s) to be appointed as Faculty. At a minimum, any person appointed shall:
  - a. be qualified by education, experience and training to provide all NDSU-related activities and FCPH-related activities specified below in Sections B. and C. of this Article II.;
  - b. pass a criminal background check pursuant to North Dakota Code Chapter 43-15; and

- c. pass an OIG background check showing no exclusion from participation in any federally and/or state funded health care programs, including Medicare and Medicaid.
3. **Position Description.** The current position description for the Faculty will be attached to this Agreement, as Exhibit A.
4. **Supervision.** Supervision of the Faculty will be shared between NDSU's Department of Public Health for all NDSU-related activities, including all student-related activities and FCPH's Director of Public Health regarding FCPH-related activities.
5. **Coverage.** NDSU and FCPH will collaborate and work cooperatively to provide coverage for Faculty during the times Faculty is on vacation, sick leave, etc. When Faculty is on leave for any reason, NDSU will be responsible for covering their portion of the position requirements and FCPH will be responsible for covering their portion of the position requirements.
6. **Annual Performance Review.** Annual performance reviews of Faculty will be conducted by NDSU according to NDSU policies with input from FCPH. FCPH shall provide NDSU with its performance review of the faculty by January 15<sup>th</sup> of each calendar year. Annual Faculty salary adjustments will be based on NDSU policies, procedures, and guidelines. The review is to be completed by March 15<sup>th</sup> of each year during the term of this Agreement. Any adjustments in salary and/or benefits will be communicated to FCPH in May with any adjustments being implemented on July 1<sup>st</sup> of the corresponding calendar year.
7. **Office Space/Equipment.** FCPH is responsible for office space, office furnishings and a desktop computer at FCPH site for the Faculty and for any experiential students from NDSU; NDSU is responsible for office space, office furnishings and computer at NDSU site, if needed.
8. **Research.** The parties agree to cooperate in the performance of research consistent with the policies of the parties and applicable laws and regulations. Research performed by Faculty at FCPH location, or if FCPH's data is utilized, must be approved by FCPH prior to NDSU IRB review. Research grants and other extramural funding to support the scholarship activities performed by the Faculty shall be processed through NDSU Research Administration according to NDSU policies and procedures for faculty research funding. Professional publications resulting from the work of the Faculty position shall provide acknowledgement of both parties and will be reviewed and approved by both



parties prior to publication. The parties agree to enter into any necessary agreements and/or related tasks to give effect to any research arrangements outlined above.

B. Responsibilities of FCPH

1. **FCPH Orientation.** FCPH will ensure that Faculty participates in FCPH's orientation program and receives complete orientation on substantially all applicable FCPH policies including, but not limited to, FCPH policies on confidentiality of data and Life Safety and Infection Control. FCPH will maintain documentation that the Faculty has completed FCPH's orientation and has been educated on said FCPH policies.
2. FCPH will ensure that Faculty has access to all FCPH employee amenities that are applicable to this position.

C. Responsibilities of NDSU

1. **Personnel Classification.** This Faculty position will be an annually renewable non-tenure track faculty appointment consistent with NDSU appointment policies and procedures.
2. **Faculty Duties for NDSU.** The Faculty duties for NDSU's program will be outlined in their job description, which is attached hereto as Exhibit A.
3. **FCPH-Related Standards.** NDSU shall, with collaborative input from FCPH, ensure its employee Faculty meets the following FCPH standards:
  - b. observes FCPH policies and practices including, but not limited to, policies regarding appropriate behavior in the workplace, quality of care, confidentiality of data and Utilization Management;
  - c. provides services in a timely manner and consistent with the standards of care in the community, state and federal laws, FCPH policies and procedures, The Joint Commission standards, and/or the standards of any other FCPH accrediting or regulating entity; and
  - d. participates in any/all applicable quality or process improvement activities established by FCPH in accordance with FCPH policies, The Joint Commission standards, and/or the standards of any other FCPH accrediting or regulating entity.

e. In the event that it becomes necessary to terminate the employment of Faculty, the termination shall be made in accordance with NDSU policies and procedures on termination of faculty and made by the Dean at NDSU after consultation with FCPH. Notwithstanding the notice provisions of this Article, FCPH reserves the right to take immediate action against the Faculty in any situation where Faculty breaches any of the foregoing requirements, or the Faculty behavior and/or performance adversely affects the interests of FCPH. Immediate action may include, but is not limited to, removal of Faculty from FCPH's premises. FCPH shall use its best efforts to notify NDSU prior to taking any such immediate action. In any event, NDSU shall be notified as soon as possible regarding any immediate action taken by FCPH and FCPH shall arrange an expedited meeting with NDSU (in any case, no later than thirty (30) days from the date the action was taken by FCPH under this subsection.) In the event of termination of Faculty by NDSU, FCPH will be responsible for payment to NDSU through the last date Faculty performed duties on behalf of FCPH.

4. **Faculty Duties for FCPH.** A description of Faculty duties as the duties relates to FCPH will be included in their NDSU position description, which can be modified annually. A copy of the current job description is attached to this Agreement as Exhibit A. In addition, Faculty will provide the following duties to FCPH on a schedule mutually agreed upon between the parties:

- Provide recommendations on appointment for the Director of Public Health and be involved in the interview process as requested.
- May be requested to participate in strategic or organizational planning, providing guidance as needed.
- Provide guidance as needed on goals and objectives that are developed by FCPH staff. Ensure that the programs planned support the FCPH mission and philosophy.
- Assist in identifying and prioritizing programs with regard to community needs.
- Review and make recommendations for FCPH policies and procedures. Support necessary standing orders for FCPH.
- Serve as Medical Director for the Family Planning Clinic, support and sign standing orders.
- Attend all Board of Health meetings as scheduled and division meetings as requested. Ask questions, discuss community issues, and provide suggestions and expertise to staff.
- Be available approximately 20 hours/week for assigned duties. May be a combination of virtual and in-person. Must be reasonably available for

emergency consult when issues arise. Also check correspondence consistently and respond in a timely matter.

- Be a community advocate for public health. Assist and advise the department on maintaining a positive public image.
- Make recommendations to Fargo City Commission and Cass County Commission regarding enforcement issues necessary to maintain the health of the public.
- Carry out any needed isolation and quarantine orders to protect the public's health.
- Assist FCPH in Emergency Response duties and planning as requested. Attend NIMS training as requested.
- Oversee and provide expertise for various CLIA waived testing.

### III. FINANCIAL ARRANGEMENTS

- A. As set forth in Article I., Section C., Faculty will be a full-time employee of NDSU. The total salary and fringe benefits package for the position will be a mutually agreed-upon amount consistent with appropriate compensation levels for the local market with FCPH contributing \$32,330 for the time period of August 16, 2023 through December 31, 2023. FCPH will be contributing \$119,600 for January 1, 2024 through December 31, 2024. Annually, during the term of this Agreement, the parties will mutually agree, in writing, upon the contracted amount for each subsequent year which includes current salary period January 1 through Dec 31, If the parties are unable to agree upon salary and fringe benefit amounts, the new salary amount and fringe benefit package proposed for the new pay period will begin on July 1<sup>st</sup> of that corresponding year, however, either party will have the option to terminate the agreement upon four months' notice in accordance with Section VI. B of this Agreement.
- B. NDSU will invoice FCPH at the end of each quarter during the term of this Agreement. FCPH shall submit payments to NDSU no less than forty-five (45) days before the end of NDSU's fiscal quarters (October, January, April, July), no later than August 15, November 15, February 15 and May 15 of each year.
- C. NDSU will be responsible for paying the wages to the Faculty, including the withholding of all applicable payroll taxes. NDSU will also be responsible for providing workers' compensation insurance for the Faculty in amounts required by law and payment of all applicable payroll taxes, including State and Federal unemployment insurance taxes. FCPH will be responsible for any mileage/commuting expenses that Faculty may incur when travel is required for meetings that are related to FCPH or any other duties required under this Agreement in accordance with FCPH's travel policy. Travel funds/support for Faculty may be

available from FCPH based on their current travel policy and is application based. If these funds will be available and approved by FCPH, NDSU will invoice FCPH for these expenses after the completion of Faculty travel.

All invoices to FCPH under this Agreement shall be sent to FCPH at:

Fargo Cass Public Health  
Attn: Desi Fleming  
1240 25<sup>th</sup> St S  
Fargo, ND 58102

- D. All remittance, statements, reports to NDSU under this Agreement shall be sent to NDSU at:

NDSU  
Grant and Contract Accounting  
NDSU Dept 3130  
PO Box 6050  
Fargo, ND 58108-6050

#### IV. PROFESSIONAL LIABILITY

- A. NDSU's tort liability is governed by the North Dakota Tort Claims Act, N.D.C.C. ch. 32-12.2. Nothing herein shall preclude NDSU from asserting against any party any defenses to liability it may have under North Dakota law nor is anything herein intended to extend NDSU's liability beyond that provided by state statute.
- B. Nothing herein shall preclude FCPH from asserting against any party any defense to liability it may have under North Dakota law nor is anything herein intended to extend FCPH's liability beyond that provided by state law.

#### V. MEDICAL RECORDS AND ACCESS TO CONTRACT INFORMATION

- A. **Medical Records.** All medical records, files, charts, health information and other data regarding patients of FCPH shall be and shall remain the property of FCPH. The Faculty shall have access to such materials and information only to the extent reasonably necessary for the performance of FCPH -related activities or services. NDSU shall not have access to any such materials or information. NDSU shall have reasonable access to medical data for research purposes consistent with applicable laws and regulations and policies of the parties. WHEREAS, it is expressly agreed that NDSU will not create, receive, maintain, or transmit "protected health information", as defined in the Health Insurance Portability Accountability Act

- H. **Choice of Laws.** This Agreement shall be interpreted, construed, and enforced in all respect in accordance with the laws in force under the State of North Dakota and the parties consent to the Courts of North Dakota as the Exclusive and Sole Courts with jurisdiction and authority to resolve any disputes over the Agreement, its implementation or enforcement. North Dakota courts shall be the exclusive forum for the adjudication of all disputes arising out of this Agreement.
- I. **Severability.** The provisions of this Agreement are severable. Should any provision of this Agreement be held unlawful or invalid by any competent authority, the remainder of the Agreement shall remain in full force and effect and binding upon the parties to the Agreement.
- J. **Independent Contractors.** It is expressly understood that NDSU and FCPH are independent contractors. Nothing in this Agreement is intended or should be construed as creating the relationship of copartners, employer/employee, joint ventures, or an association between the parties, or FCPH and the Faculty.
- K. **Use of Name or Logo.** The parties agree not to use the name, logo or any other marks (including, but not limited to, colors and music) owned by, or associated with, the other party or the name of any representative of the other party in any sales promotion work or advertising, or any form of publicity, without the prior written permission of the other party, in each instance.
- L. **Addenda.** Subject to the written authorization by appropriate representatives of NDSU and FCPH, Addenda to this Agreement may be developed to facilitate day-to-day and year-to-year execution of the goals of the agreement. Each addendum shall be in writing and executed by the authorized representative(s) of each of the parties. To the extent an addendum is not properly executed by persons authorized to do so and to the extent it conflicts or contradicts the terms herein, it shall be considered null and void.
- M. **Amendments.** No amendment to this Agreement or any exhibit shall be effective unless in writing and signed by both parties. The parties agree to amend this Agreement as necessary to comply with any changes in applicable laws and regulations.
- N. **Entire Agreement.** The entire agreement of the parties with respect to this matter is contained in this agreement, which supersedes all oral agreements, writings, and negotiations between the parties. It may be executed in any number of counterparts, each of which will be deemed to be the original.

**IN WITNESS WHEREOF**, each individual signing below hereby represents and warrants that she/he is duly authorized to execute and deliver this Agreement on behalf of his/her respective party.

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

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

Ronald Werner-Wilson, PhD

Interim Dean and Professor

North Dakota State University

By: Desi Fleming

Date: 09/13/2023

Name: Desi Fleming

Title: Director of Public Health

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

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

Name: Timothy J. Mahoney

Title: Mayor, City of Fargo

**NORTH DAKOTA STATE UNIVERSITY  
DEPARTMENT OF PUBLIC HEALTH  
POSITION DESCRIPTION**

**FACULTY APPOINTMENT:**

**Name:** Tracie Newman, MD, MPH, FAAP

**Rank:** Associate Professor of Practice, 12-month, non-tenure track

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**Background:** NDSU Policy Manual, Section 352, Promotion, Tenure, and Evaluation

*Section 1.2:* From the University's mission flows the expectation that each faculty member will make contributions of high quality to the areas of teaching, research, and service. "Teaching" includes all forms of instruction both on- and off-campus. "Research" includes basic and applied research and other creative activities. "Service" includes public service, service to the University, college, and department, and service to the profession.

*Section 4.1:* Periodic reviews may result in changes in responsibilities, modified expectations, and/or altered goals for performance.

*Section 4.7:* Annual reviews of tenured faculty shall include an evaluation of the faculty member's performance relative to the current position description.

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**TEACHING, SCHOLARSHIP, SERVICE RATIO:**

Teaching: 30%

Scholarship: 10%

Service: 60%

**RESPONSIBILITIES**

All faculty are expected to contribute to a collegial and collaborative campus climate, and to actively encourage, support, and advance a diverse, equitable, and inclusive community.

The primary responsibilities of this appointment are determined by the Chair of the Department of Public Health and are subject to change based on the needs of the program.

**NDSU Department of Public Health**

**TEACHING (30%)**

- Serve as primary instructional faculty in the MPH Epidemiology program.
  - Courses will include: PH735 Infectious Diseases I and PH736 Infectious Diseases II
  - Other courses will be assigned as needed. Courses may also include development of new course(s) in an area of interest or an area of need
- Serve as academic advisor for MPH epidemiology students, which minimally includes, but is not limited to, checking in each semester with each advisee, directing independent

research credits, and providing mentorship in public health research and in the public health profession.

**SCHOLARSHIP (10%)**

- Establish an active, independent, externally funded research program.
- Obtain extramural funding to support scholarly activities including activities of the Center for Immunization Research and Education (CIRE).
- Publish research findings in peer-reviewed journals.
- Present scholarly activity/research at professional local, regional, & national conferences.

**SERVICE (60%)**

- Attend DPH and College faculty meetings; fully participate in discussions and votes.
- Serve on two (2) DPH Departmental committees as assigned by the DPH Chair.
- Serve on at least one (1) College or University Committee as assigned by the DPH and/or College.
- Provide service to the discipline/profession through active participation in professional associations or societies, peer review of manuscripts or editorial boards, and other service specific to your discipline or area of expertise.
- Provide service to the community or the state as opportunities arise.
- Provide service to Fargo Cass Public Health.

**Fargo Cass Public Health**

- Contribute to the management of public health for Fargo Cass Public Health.
- Serve as County Health Officer.
- Attend scheduled City/County Public Health meetings.
- Other duties as detailed in the Agreement of Affiliation

**GENERAL**

- Read and abide by all rules and regulations for faculty of North Dakota State University as outlined in the faculty handbook.
- Maintain high standards of professional and ethical behavior.
- Respect and abide by the Mission, Vision, and Core Values of the College established by the faculty where honesty, integrity, and collegiality guide all interactions with students, faculty, staff, administration, and the public.
- Dress appropriately, practice good personal hygiene, and conduct one's activities and actions in a professional manner so as to maintain an image that reflects positively on the Department of Public Health and the College of Health & Human Sciences.



- Participate in any special projects or activities as assigned by the Chair of the Department of Public Health or Dean of the College of Health & Human Sciences.

\_\_\_\_\_  
Faculty Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chair Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dean Signature

\_\_\_\_\_  
Date

(“HIPAA”), 45 C.F.R. 160.103, on behalf of FCPH for a function or activity regulated by 45 C.F.R. 160 or 164. Accordingly, NDSU is not a "business associate" of FCPH, as defined in HIPAA, 45 C.F.R. §160.103, as a result of or in connection with this Agreement.

- B. **Proprietary Information.** As part of this Agreement, NDSU may have access to FCPH’s proprietary information. NDSU agrees not to disclose this information without the express written consent of FCPH, except as may be required by law. The term proprietary information includes, but is not limited to, items and materials relating to FCPH personnel, business plans, methods and techniques, financial condition, customer lists, accounts, pricing, debts, assets, facilities, and marketing. Proprietary information does not include information that is (1) generally known in the industry in which both parties do business or (2) readily ascertainable by proper means by competitors, through sources independent to either party.
- C. **FERPA.** The parties agree to maintain the confidentiality of any educational records pertaining to students pursuant to the Family Educational Rights and Privacy Act.

## VI. OTHER TERMS

- A. **Mission, Value and Vision.** The parties agree to cooperate and support each other in the fulfillment of their respective missions, values and visions as they relate to the terms of this Agreement and to comply with the requirements of the law and with all applicable ordinances, statutes and regulations.
- B. **Term; Notice of Termination of Agreement.** This Agreement shall become effective on August 16, 2023 and renew annually, unless terminated earlier under the provisions of this section. This Agreement may be terminated by either party upon at least four (4) months written notice to the other party, provided that in the case of a material breach by either party of the terms of this Agreement, the other party may immediately terminate this Agreement, if the material breach cannot be cured within a reasonably defined timeframe. In the event Faculty is terminated or chooses to terminate their employment at NDSU, all obligation for NDSU to provide Faculty to FCPH will cease.
- C. **Post-termination Obligations.** The termination of this Agreement for any reason shall not relieve either party of any obligation pursuant to this Agreement which arose on or before the date of termination, and the provisions in this Agreement which, by their terms, extend beyond termination or expiration of this Agreement, shall survive and continue in full force and effect after the expiration or termination of this Agreement.

- D. **Notices.** All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, provided such delivery is confirmed, or by a recognized overnight courier service or by United States mail, first class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this Section. In addition, notice may be delivered through email with return receipt required.

If to NDSU, to:

North Dakota State University  
College of Health & Human Sciences  
Attn: Ronald Werner-Wilson  
Interim Dean and Professor  
Dept 2650, PO Box 6050  
Fargo, ND 58108-6050

If to FCPH, to:

Attn: Desi Fleming  
Fargo Cass Public Health  
1240 25<sup>th</sup> St S  
Fargo, ND 58102

with a copy to (which shall not constitute notice):

Pamela Jo Johnson, MPH, PhD, FACE  
Mary J. Berg Distinguished Professor of Women's Health  
Professor and Chair  
Department of Public Health  
North Dakota State University  
Dept 2662, PO Box 6050  
Fargo, ND 58108-6050

- E. **Anti-discrimination.** Neither NDSU nor FCPH shall discriminate on the basis of race, religion, creed, color, sex, national origin, physical or mental disability, age, marital status, public assistance status, veteran status, gender expression/identity, genetic information, pregnancy or sexual orientation in the performance of this Agreement. In addition, the parties agree to have in place policies that protect employees and volunteers from sexual harassment.
- F. **Assignment.** This Agreement, and the rights and obligations of either party hereunder, shall not be assigned by either party without the prior written consent of the other party; provided, however, FCPH may assign this Agreement to a corporate affiliate upon advance written notice.
- G. **Waiver.** The failure of either party to insist in any one or more instances upon the performance of the terms, covenants or conditions of this Agreement and to exercise any rights hereunder shall not be construed as a waiver or a relinquishment of future performance of any such term, covenant, condition or the future exercise of such right. The obligations of the other party with respect to such future performance shall continue in full force and effect.



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

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: AUGUST 29, 2023**

**RE: PURCHASE OF SERVICE AGREEMENT WITH MEGAN NIES**  
**FUNDS: \$9,900**  
**EXPIRES: 12/31/2023**

The attached purchase of service agreement with Megan Nies is for the independent contractor to work with the City of Fargo Emergency Manager to update the Continuity of Operations Plan (COOP) for Fargo Cass Public Health, ensuring it follows the City of Fargo's COOP formatting and requirements.

If you have any questions, please contact me at 241.1380.

**Suggested Motion:**

Move to approve the purchase of service agreement with Megan Nies.

DF/lls  
Attachment



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

**PURCHASE OF SERVICE AGREEMENT WITH  
MEGAN NIES**

EMERGENCY PREPAREDNESS RESPONSE  
TERM: 08/01/2023 TO 12/31/2023 - Page 1 of 1

**THIS AGREEMENT**, effective the 1<sup>st</sup> day of August, by and between Fargo Cass Public Health ("FCPH"); and Independent Contractor, Megan Nies.

**NOW, THEREFORE**, it is hereby agreed by and between the parties here to as follows:

- A. Term of Agreement:** The parties entered into a written agreement for the period of August 1, 2023, through December 31, 2023.
- B. Services to be provided by independent contractor:** Independent contractor will work with City of Fargo Emergency Manager to update FCPH's Continuity of Operations Plan, ensuring it follows the City of Fargo's COOP formatting and requirements. The contractor will work with Emergency Preparedness staff on purging, updating and posting current plans and files to the FCPH's electronic server and NDHHS Document Library. Internal response plans will interconnect with NDHHS plans, as well as meet Public Health Accreditation Board standards.
- C. Reimbursement:** Megan Nies shall be reimbursed at a rate of \$100 per hour for the above services rendered not to exceed \$9,900 for total project detailed.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** 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 that shall not be deemed an employee of FCPH for any other purpose.
- B.** The laws of the State of North Dakota shall govern this 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 FCPH 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 Contractor and FCPH on the date executed below.

**FARGO CASS PUBLIC HEALTH**

By Desi Fleming  
Desi Fleming, Director of Public Health

Date 08/29/2023

**SOUTHEAST HUMAN SERVICE CENTER**

By Megan Nies  
Name: Megan Nies  
Title: Independent Contractor

Date 8/30/2023

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

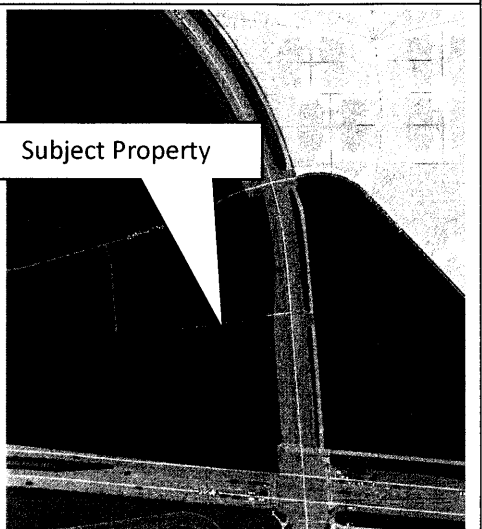
Date \_\_\_\_\_

(32)

<b>City of Fargo Staff Report</b>			
<b>Title:</b>	Timber Parkway Tenth Addition	<b>Date:</b>	7/27/23
		<b>Update:</b>	9/14/23
<b>Location:</b>	5161 Charles Way South	<b>Staff Contact:</b>	Luke Morman, Planner
<b>Legal Description:</b>	Lot 2, Block 1, Timber Parkway Fifth Addition		
<b>Owner(s)/Applicant:</b>	First International Bank & Trust / Christianson Companies	<b>Engineer:</b>	Bolton & Menk
<b>Entitlements Requested:</b>	<b>Minor Subdivision</b> (Replat of Lot 2, Block 1, Timber Parkway Fifth Addition)		
<b>Status:</b>	City Commission Consent Agenda: August 18, 2023		

<b>Existing</b>	<b>Proposed</b>
<b>Land Use:</b> Undeveloped	<b>Land Use:</b> Commercial
<b>Zoning:</b> GC, General Commercial, with a C-O, Conditional Overlay	<b>Zoning:</b> Unchanged
<b>Uses Allowed:</b> Allows colleges, community service, daycare centers of unlimited size, <del>detention facilities</del> , health care facilities, parks and open areas, religious institutions, safety services, basic utilities, <del>adult establishments</del> offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, <del>self-service storage, vehicle repair</del> , limited vehicle service, and certain telecommunication facilities. <b>Conditional Overlay No. 4908 prohibits certain uses.</b>	<b>Uses Allowed:</b> Unchanged
<b>Maximum Lot Coverage Allowed:</b> Maximum 85% building coverage	<b>Maximum Lot Coverage Allowed:</b> Unchanged

<b>Proposal:</b>
<p>The applicant is seeking approval of a minor subdivision located at 5161 Charles Way South. The request is to split an existing lot into a two lot minor subdivision entitled <b>Timber Parkway Tenth Addition</b>.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p><b>Surrounding Land Uses and Zoning Districts:</b></p> <ul style="list-style-type: none"> <li>• North: GC, General Commercial with a C-O, Conditional Overlay, undeveloped and restaurant.</li> <li>• East: Across Timber Pkwy S, GC, General Commercial with a C-O, Conditional Overlay, with retail sales and service.</li> <li>• South: Across 52<sup>nd</sup> Avenue South, City of Frontier.</li> <li>• West: GC, General Commercial with a C-O, Conditional Overlay; restaurant.</li> </ul>

<p><b>Area Plans:</b></p> <p>According to the 2001 Growth Plan, the subject property is designated as "Commercial."</p> <div style="display: flex; justify-content: space-between; align-items: center;"> <div data-bbox="690 483 909 745" style="width: 30%;"> <p><b>2001 Growth Plan Legend</b></p> <ul style="list-style-type: none"> <li> Low Med Res or Med High Res</li> <li> Low Med Res or Parkland</li> <li> Commercial or Office</li> <li> Commercial</li> <li> Low Med Res</li> <li> Med High Res or Office</li> <li> Med High Res</li> <li> Office</li> <li> Parkland</li> <li> Public and Institutional</li> </ul> </div> <div data-bbox="974 283 1485 808" style="width: 65%;">  </div> </div>
<p><b>Context:</b></p> <p><b>Schools:</b> The subject property is located within the Fargo School District, specifically within the Centennial Elementary, Discovery Middle, and Davies High schools.</p> <p><b>Neighborhood:</b> The subject property is located within Centennial neighborhood.</p> <p><b>Parks:</b> Timber Creek Park is within a quarter mile to the north of the subject property. This park provides a basketball court, grills, picnic tables, playgrounds for ages 2-5 and 5-12, recreational trails, and a shelter.</p> <p><b>Pedestrian / Bicycle:</b> There are ten foot wide trails along 52<sup>nd</sup> Avenue South and along the east sides of Timber Parkway South and 31<sup>st</sup> Street South. There are eight foot wide tails along 32<sup>nd</sup> Street South and shared-use paths within Timber Creek Park.</p> <p><b>Bus Route:</b> There are no bus routes within a quarter mile of the subject property.</p>
<p><b>Staff Analysis:</b></p> <p><b>Minor Subdivision</b></p> <p>The LDC stipulates that the following criteria is met before a minor plat can be approved:</p> <ol style="list-style-type: none"> <li>1. <b>Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.</b></li> </ol> <p>This subdivision is intended to split an existing lot into a two lot minor subdivision entitled Timber Parkway Tenth Addition. The property within this plat is currently zoned GC, General Commercial, with a Conditional Overlay, and no change is proposed. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received no inquiries about the application. Staff has reviewed this request and finds that this application complies with standards of Article 20-06 and all applicable requirements of the Land Development Code.</p> <p><b>(Criteria Satisfied)</b></p>

2. **Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

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

**Staff Recommendation:**

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed subdivision plat, **Timber Parkway Tenth Addition** as outlined within the staff report, as the proposal complies with the 2001 Growth Plan, standards of Section 20-0907.B & C, standards of Article 20-06, and all other applicable requirements of the Land Development Code."

**Planning Commission Recommendation: August 1, 2023**

At the August 1<sup>st</sup>, 2023 Planning Commission hearing, by a vote of 7-0 with two Commissioners absent and two Commission seats vacant, that Commission moved to accept the findings and recommendations of staff and moved to recommend approval to the City Commission the proposed subdivision plat, **Timber Parkway Tenth Addition** as outlined within the staff report, as the proposal complies with the 2001 Growth Plan, standards of Section 20-0907.B & C, standards of Article 20-06, and all other applicable requirements of the Land Development Code.

**Attachments:**

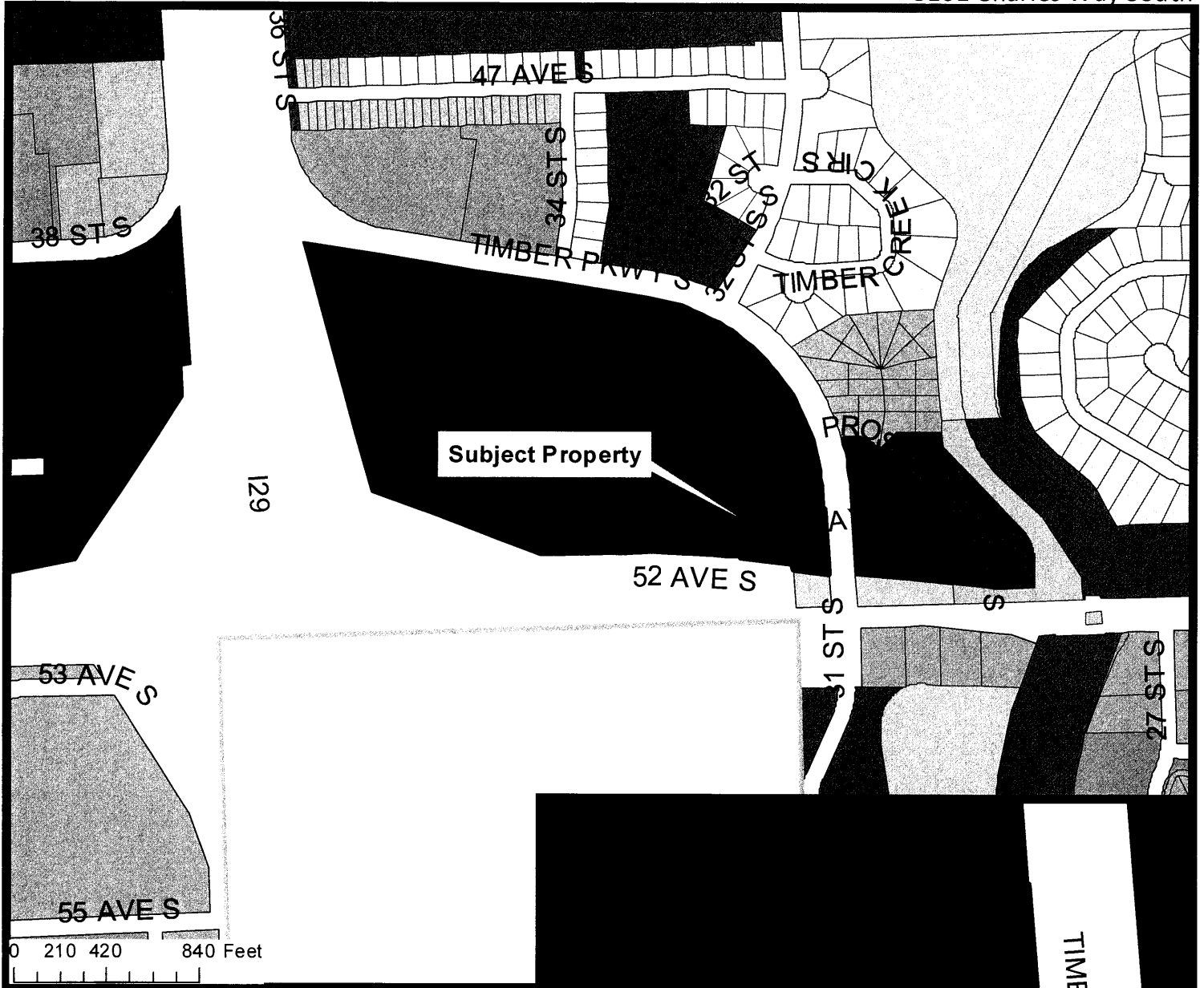
1. Zoning map
2. Location map
3. Preliminary plat



# Minor Subdivision

## Timber Parkway Tenth Addition

5161 Charles Way South



0 210 420 840 Feet



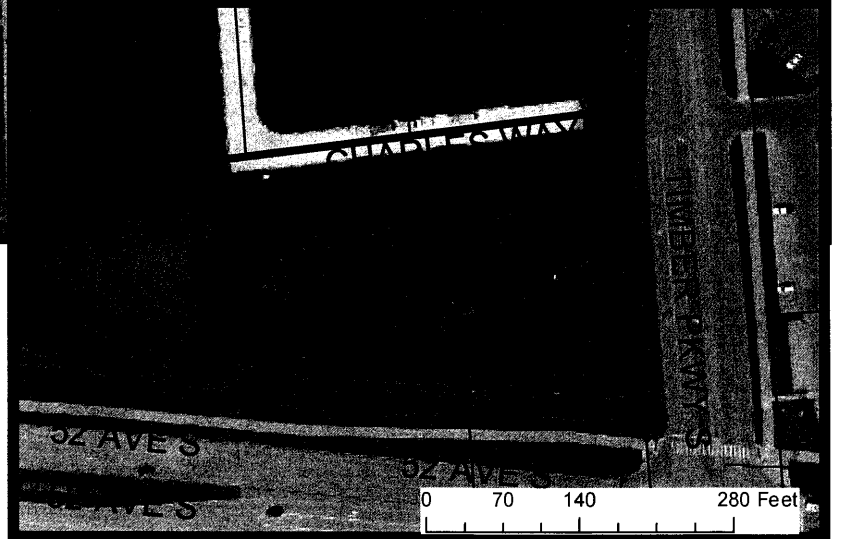
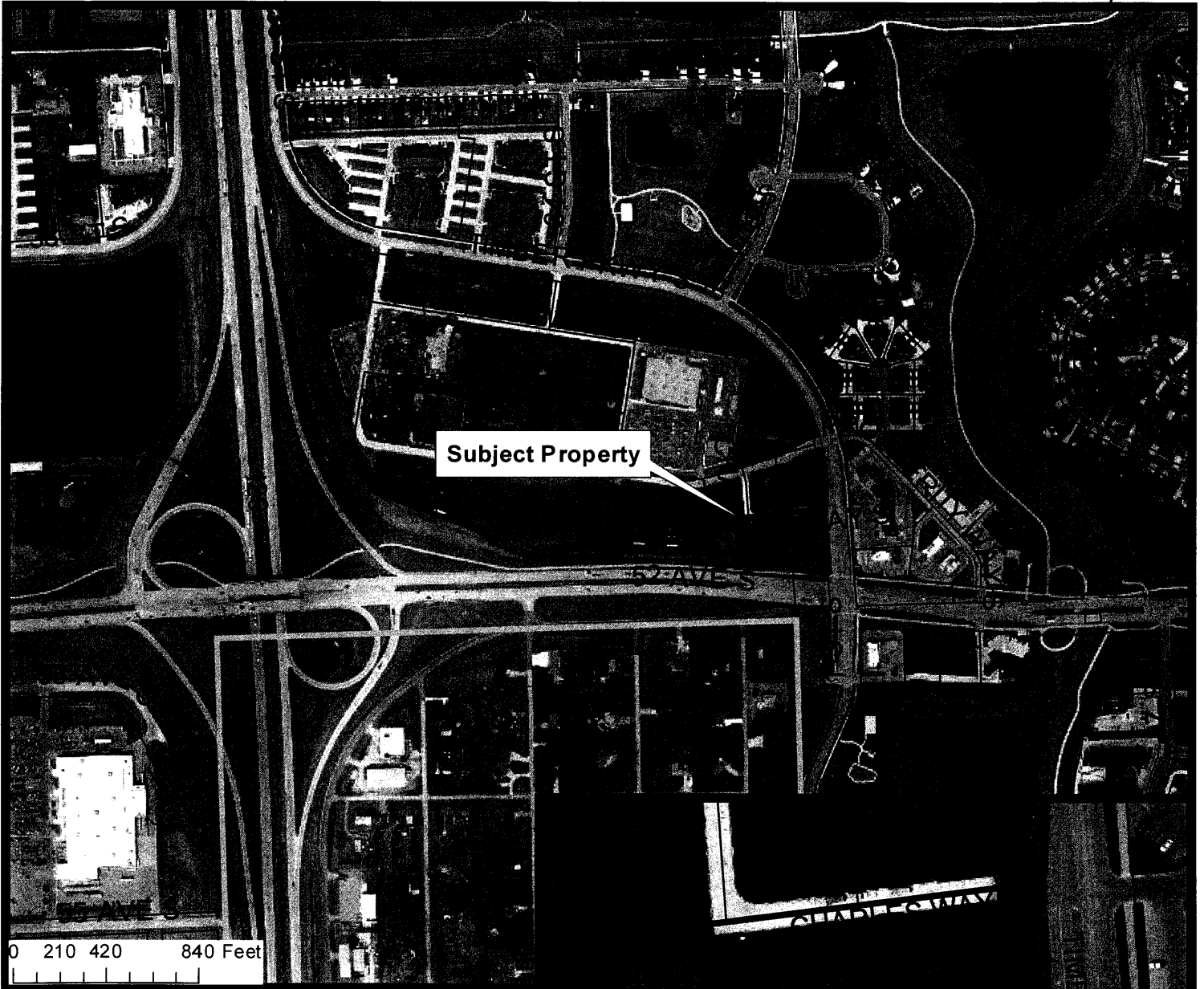
### Legend

AG	LC	MHP	SR-2
DMU	LI	MNC	SR-3
CC	MR-1	NC	SR-4
GO	MR-2	U	SR-5
	MR-3	UMU	City Limits

# Minor Subdivision

## Timber Parkway Tenth Addition

5161 Charles Way South



### Legend

 City Limits



(33)

<b>City of Fargo Staff Report</b>			
<b>Title:</b>	Village West Fourth Addition	<b>Date:</b>	6/28/2023
		<b>Update:</b>	9/14/2023
<b>Location:</b>	902 40 <sup>th</sup> Street South	<b>Staff Contact:</b>	Luke Morman, Planner
<b>Legal Description:</b>	Part of Lots 5 and 6, Block 1, Village West Addition		
<b>Owner(s)/Applicant:</b>	902 40 <sup>th</sup> LLC / Chris Mack (Christianson Companies)	<b>Engineer:</b>	Bolton & Menk
<b>Entitlements Requested:</b>	<b>Minor Subdivision</b> (Replat of part of Lots 5 and 6, Block 1, Village West Addition)		
<b>Status:</b>	City Commission Consent Agenda: September 18, 2023		

<b>Existing</b>	<b>Proposed</b>
<b>Land Use:</b> Commercial and undeveloped	<b>Land Use:</b> Commercial
<b>Zoning:</b> GC, General Commercial	<b>Zoning:</b> Unchanged
<b>Uses Allowed:</b> Allows colleges, community service, daycare centers of unlimited size, detention centers, health care facilities, parks and open areas, religious institutions, safety services, basic utilities, adult establishment, offices, off premise advertising signs, commercial parking, outdoor recreation and entertainment, retail sales and service, self-service storage, vehicle repair, limited vehicle service, and certain telecommunication facilities.	<b>Uses Allowed:</b> Unchanged
<b>Maximum Lot Coverage Allowed:</b> 85%	<b>Maximum Lot Coverage Allowed:</b> Unchanged

<b>Proposal:</b>
<p>The applicant is seeking approval of a minor subdivision located at 902 40<sup>th</sup> Street South. The request is to replat the existing lot into a two lot minor subdivision entitled Village West Fourth Addition. Lot 1 will remain a parking lot and Lot 2 will be developed for a commercial use. The existing parking lot was built in the year 2000 to account for parking required by an expansion of the Century Cinema movie theater, but is no longer needed to meet minimum parking requirements due to more recent interior remodeling of the movie theater.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p><b>Surrounding Land Uses and Zoning Districts:</b></p> <ul style="list-style-type: none"> <li>• North: Across 9 Ave S is GC, General Commercial with retail sales and service;</li> <li>• East: LC, Limited Commercial with retail sales and service;</li> <li>• South: GC, General Commercial with basic utility and retail sales and service;</li> <li>• West: Across 40 St S is GC, General Commercial with office.</li> </ul> <p><i>Note: Amenities Plans are not typically required for minor subdivisions, however, due to the existing stormwater pond and utilities the Engineering staff has worked with the developer to address the existing infrastructure.</i></p>
<b>Area Plans:</b>
There are no recent growth plans which apply directly to the subject property.

<p><b>Context:</b></p> <p><b>Schools:</b> The subject property is located within the West Fargo School District and is served by Eastwood Elementary, Cheney Middle, and West Fargo High schools.</p> <p><b>Neighborhood:</b> The subject property is located within the Village West neighborhood.</p> <p><b>Parks:</b> Village West Park is within one half of a mile to the west of the subject property. Amenities include a basketball court, dog park, picnic tables, playground for ages 5-12, recreational trails, restrooms, skate park, and warming houses.</p> <p><b>Pedestrian / Bicycle:</b> There are shared-use paths within one half of a mile of the subject property on the south side of Westrac Drive South (between 38<sup>th</sup> and 36<sup>th</sup> Street South), on the south side 13<sup>th</sup> Avenue South, and shared use paths within and around Village West Park.</p> <p><b>Bus Route:</b> The subject property is within a quarter mile of route 20. Route 20 runs along 38<sup>th</sup> Street South, 42<sup>nd</sup> Street South, and 9<sup>th</sup> Avenue South with stops on both sides of the street.</p>
<p><b>Staff Analysis:</b></p> <p><b>Minor Subdivision</b></p> <p>The LDC stipulates that the following criteria are met before a minor plat can be approved:</p> <ol style="list-style-type: none"> <li> <p><b>1. Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.</b></p> <p>This subdivision is intended to replat the existing lot into two new lots. The property within this plat is currently zoned GC, General Commercial, and no change is proposed. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received no inquiry about the application. Staff has reviewed this request and finds that this application complies with standards of Article 20-06 and all applicable requirements of the Land Development Code.</p> <p><b>(Criteria Satisfied)</b></p> </li> <li> <p><b>2. Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.</b></p> <p>While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principals.</p> <p><b>(Criteria Satisfied)</b></p> </li> </ol>
<p><b>Staff Recommendation:</b></p> <p>Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed subdivision plat, <b>Village West Fourth Addition</b> as outlined within the staff report, as the proposal complies with the standards of Section 20-0907.B &amp; C, standards of Article 20-06, and all other applicable requirements of the Land Development Code."</p>

**Planning Commission Recommendation: July 6, 2023**

At the July 6<sup>th</sup>, 2023 Planning Commission hearing, by a vote of 9-0 with two Commission seats vacant, that Commission moved to accept the findings and recommendations of staff and moved to recommend approval to the City Commission the proposed subdivision plat, **Village West Fourth Addition** as outlined within the staff report, as the proposal complies with the standards of Section 20-0907.B & C, standards of Article 20-06, and all other applicable requirements of the Land Development Code.

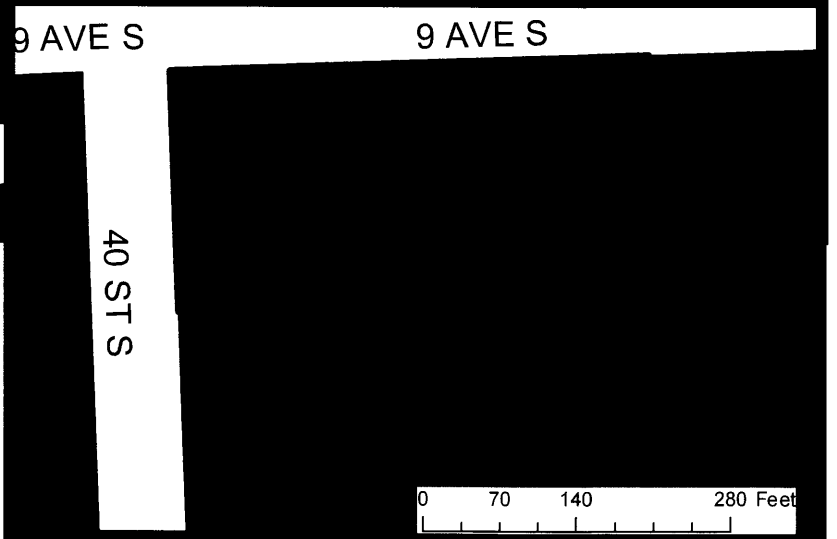
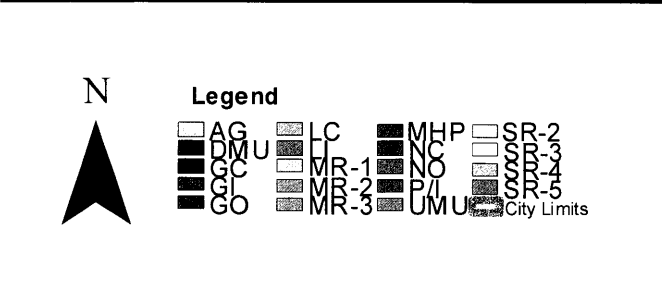
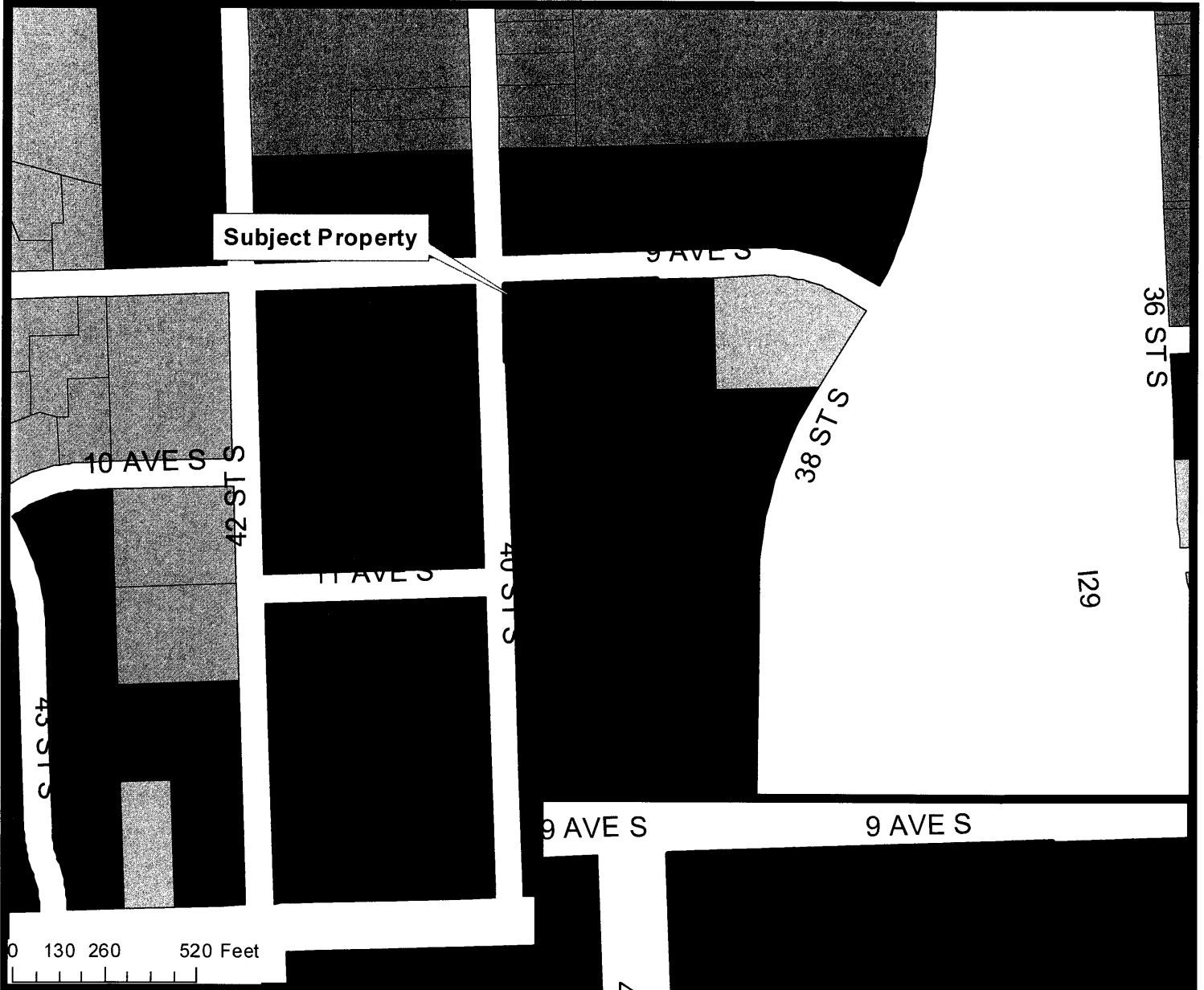
**Attachments:**

1. Zoning Map
2. Location Map
3. Preliminary Plat

# Minor Subdivision

## Village West Fourth Addition

902 40th Street South



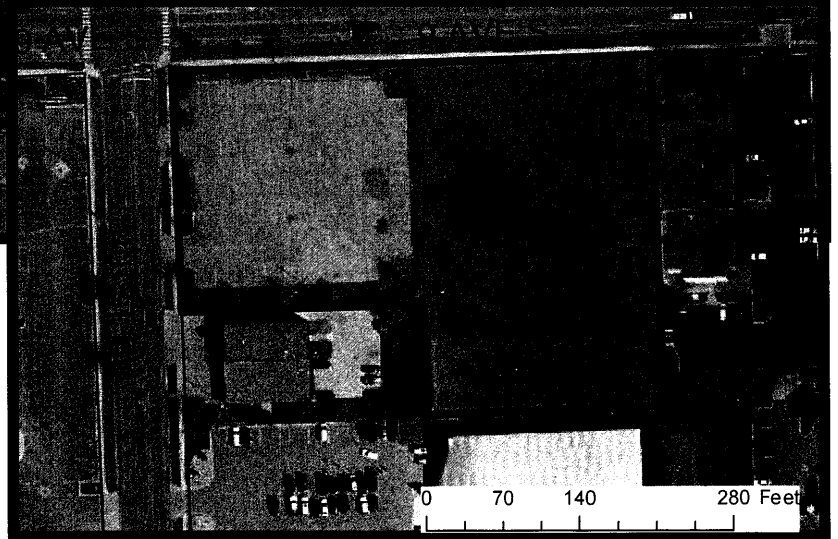
# Minor Subdivision

## Village West Fourth Addition

902 40th Street South



0 130 260 520 Feet



0 70 140 280 Feet



### Legend

 City Limits







## Fargo Inspections

City of Fargo  
225 Fourth Street North  
701-241-1561  
Fax: 701-476-6779



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### MEMORANDUM

**TO:** Board of City Commissioners  
**FROM:** Inspections Director Shawn Ouradnik  
**DATE:** September 18, 2023  
**SUBJECT:** Dangerous Building at 1809 14th Avenue South

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The property owner of 1809 14th Avenue South, Ruth E. Jensen, has failed to comply with the order to either obtain a permit to repair or remove the heavily damaged structure at that location within the time allowed for that removal. In accordance with Fargo Municipal Code Article 21-0405, it will be necessary to set a date and time for a dangerous building hearing of this order at which time the property owner will be able to appear and show cause as to why the building should not be removed and the costs of that removal assessed against the property.

**RECOMMENDED MOTION:** To set Monday, October 2, 2023 at 5:15 p.m. as the date and time for a Public Hearing on the dangerous building located at 1809 14th Avenue South.



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**INFORMATION SERVICES**

225 4th Street North  
Fargo, ND 58102  
Phone: 701.476.6700 | Fax: 701.241.8253  
[www.FargoND.gov](http://www.FargoND.gov)

TO: BOARD OF CITY COMMISSIONERS  
FROM: RON GRONNEBERG, CIO  
RE: CONTRACT FOR UKG – RFP23030  
DATE: SEPTEMBER 14, 2023

The attached contract with UKG is for the upgrade of Time and Attendance to Dimensions within the City of Fargo. This project was approved on the July 10<sup>th</sup>, 2023, Regular agenda item 41. This project will commence in the spring of 2024.

Suggested Motion:

Move to approve the contract for UKG.



Quote#: Q-185846  
Expires: 28 Sep, 2023  
Sales Executive: David Chetlain  
Effective Date: Effective as of the date of last signature of this Order

ORDER FORM  
Order Type: Quote  
Date: 14 Sep, 2023

Customer Legal Name:  
CITY OF FARGO

Customer Legal Address:  
200 3RD ST NORTH, FARGO, ND 58102 USA

Bill To: CITY OF FARGO  
225 4TH ST N  
FARGO, ND 58102 USA

Ship To: CITY OF FARGO  
225 4TH ST N  
FARGO, ND 58102 USA

Bill To Contact:

Ship To Contact: Ron Gronneberg  
  
Ship to Phone: 7012411312  
Ship to Mobile:  
Contact: Ron Gronnenberg  
Email: rgronneberg@cityoffargo.com

Currency: USD  
Customer PO Number:  
Solution ID: 6012291  
Initial Term: 60 months  
Uplift Percent: 4 %

Shipping Terms: Shipping Point  
Ship Method: FedEx Ground  
Freight Term: Prepay & Add  
Renewal Term: 12 months  
Payment Terms: Net 30 Days

Billing Start Date: Upon Signature of Order Form  
Data Center Location: USA

Subscription Services  
Billing Frequency: Annual in Advance

Subscription Services	Quantity	PEPM	Monthly Price
UKG DIMENSIONS TIMEKEEPING HOURLY	1,000	USD 5.00	USD 5,000.00
UKG DIMENSIONS ABSENCE	1,000	USD 1.00	USD 1,000.00
<b>Total Price</b>			<b>USD 6,000.00</b>

Professional Services - Fixed Fee

Billing Frequency: Billed 100% upon signature of the order form

Professional Services - Fixed Fee	Billing Role	Quantity	Unit Price	Total Price
UKG DIMENSIONS FF ONBOARDING SERVICES	Technology Consultant	1	USD 50,000.00	USD 50,000.00
<b>Total Price</b>				<b>USD 50,000.00</b>

Quote Summary

Item	Total Price
Total Monthly SaaS and Equipment Rental Fees	USD 6,000.00

Item	Total Price
Total Fixed Fees	USD 50,000.00

**Order Notes:**

The parties agree that Customer is migrating from their existing Workforce Central Software as a Service applications (the "Existing Applications") to the UKG Dimensions Software as a Service offering ("WFD SaaS"). Customer's Software as a Service Agreement governing the Existing Applications will continue for up to two payroll cycles within 60 days after migration to WFD SaaS, but in no event beyond December 31, 2025. After such period, Customer's rights to use the Existing Applications will be terminated, unless otherwise noted herein.

UKG Dimensions Monthly Service Fees shall be invoiced at the Billing Frequency indicated on this Order Form, commencing on the Billing Start Date. As of the Billing Start Date, UKG will credit Customer for any pre-paid but unused Monthly Service Fees for Existing Applications being migrated. Customer may apply credits against any amounts owed to UKG by Customer until such credit is expended. Customer understands that they remain responsible for payment of Monthly Service Fees on the Existing Applications until the UKG Dimensions Billing Start Date.

Before including any health related questions in UKG Dimensions Timekeeping please consult with your legal counsel to ensure you are compliant with applicable privacy laws and regulations.

After the Initial Term, the Subscription Fee shall increase per annum by the Uplift amount set forth above.



IN WITNESS WHEREOF, the parties have caused this Order to be executed by their authorized representatives and shall be effective as of the date of the last signature below.

<b>CITY OF FARGO</b>		<b>Kronos Incorporated</b>	
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____
<p>The monthly price on this Order has been rounded to two decimal places for display purposes. As many as eight decimal places may be present in the actual price. Due to the rounding calculations, the actual price may not display as expected when displayed on your Order. Nonetheless, the actual price on your invoice is the true and binding total for this Order for purposes of amounts owed for the term.</p>			

## UKG Migration Launch Statement of Work for City of Fargo

This Statement of Work (SOW) outlines the scope of services to be provided by UKG for the implementation of the Subscription Service(s) in the corresponding Order and is subject to the terms and conditions set forth in the UKG Master Services Agreement (MSA) or such other existing underlying agreement between Parties. The scope of services described herein are fixed price based and subject to the same terms and conditions as the corresponding Order. Unless otherwise defined herein, words and expressions defined in the Order shall have the same meaning in this Statement of Work. In the event of a conflict or discrepancy between the terms in this SOW and the MSA, the MSA shall prevail.

### 1. Introduction to Launch

UKG's launch methodology provides a framework for how the project will progress during the Customer's deployment. The project team follows this framework to transition the Customer's applicable functions from the legacy provider(s) to the UKG Subscription Service(s). The launch methodology includes the following phases:

Launch Phase	Description
Welcome	This phase involves four basic elements: UKG's internal readiness and team assignments, Customer preparation, a project team initial kick off meeting, and Subscription Service(s) access.
Requirements	This phase involves a review of the Customer's current system setup to validate configuration that can be moved "as-is" from the legacy system to the new UKG Subscription Service(s).
Build	This phase is designed to configure Customer's Subscription Service(s), build interfaces, and, if applicable, migrate employee data from the legacy system. This phase also includes unit testing to ensure each iteration delivers a fully configured component of the system.
Test	This phase includes the Customer's integration and functional user acceptance testing (UAT) for the applicable Application(s).
Go Live	This phase consists of UKG assisting the Customer with the first live processing, the rollout of the Subscription Service(s) and transition to support.

### 2. Subscription Service(s) in Scope

The following Subscription Services are in scope and will be configured in accordance with the launch methodology and assumptions described in this document.

Subscription Service	Project Type	Go Live Phase
UKG Dimensions Timekeeping	Migration	Phase 1
UKG Dimensions Accruals	Migration	Phase 1
UKG Dimensions Leave	Migration	Phase 1

### 3. Launch Parameters

The following parameters support UKG's launch methodology and provide an additional set of considerations as it applies to the Project, the Subscription Service(s), and Professional Services described in this document.

Launch Item	Guidelines
Project Launch and Go Live Phases	<ul style="list-style-type: none"> <li>A migration launch assumes all existing configuration will be moved "as-is" from the legacy system where possible and does not include additional services to introduce or retool workflows or policies during the migration. The launch of all net new or previously unconfigured Subscription Services, if purchased, takes place in Phase 2 following the Phase 1 migration launch.</li> <li>The target duration for the Phase 1 migration launch is expected to be twelve (12) to sixteen (16) working weeks and assumes a single Go Live event for the Phase 1 Subscription Service(s) and integrations.</li> <li>All Phase 1 launch services end when the agreed upon scope of services is completed or expire six (6) months after the Phase 1 project kick-off date, whichever comes first. Additional services, if necessary to complete the Phase 1 launch, will require a separate Service Request.</li> </ul>
Timeline and Pricing	<ul style="list-style-type: none"> <li>Project timeline and pricing assumes the Customer will have established standardized HR, pay, and time policies/practices for employees included within this Order. It is also assumed the services will be</li> </ul>

Launch Item	Guidelines
Interfaces and Custom Reports	<p>delivered as one continuous project. If any necessary Customer information, data, materials, access, cooperation and/or personnel is incomplete or delayed, UKG reserves the right to place the project on hold, reassign resources, and amend the quoted pricing accordingly.</p> <ul style="list-style-type: none"> <li>Depending upon the preparation and engagement by the Customer, there may be opportunities to complete the project in a compressed duration. If, however, Customer's project resources are unprepared or unavailable, the project's duration may need to be extended, increasing the budget required to complete this SOW.</li> <li>Any stated project duration is for guidance only and expected to be as set out in this SOW based upon UKG's experience with UKG customers and solutions.</li> <li>Scope changes are subject to review and may impact the project timeline or cost. If additional work beyond the initial scope of this SOW is needed, a separate Service Request will be required.</li> <li>UKG's quoted pricing does not include customization to the Subscription Service(s). A customization is defined as any system change that extends the functionality beyond what is provided by the delivered Subscription Service(s).</li> <li>UKG's quoted pricing does not include the Excluded Items set out in this SOW</li> <li>In the event Customer requires additional UKG interfaces not specified in this SOW, such files will be scoped based upon complexity, delivered after Phase 1 Go Live, and billed at the then current rate.</li> <li>In the event Customer requires custom reports not specified in this SOW, such reports will be created upon Customer request, delivered after Phase 1 Go Live, and billed at the then current rate.</li> <li>In the event Customer is live and requires additional consulting services, data conversions, or configuration, those services will be scoped based upon complexity and billed at the then current rate.</li> <li>UKG will not be responsible for troubleshooting Subscription Service(s), interfaces or hardware not provided by UKG.</li> </ul>
Customer Tasks and Communication	<ul style="list-style-type: none"> <li>Customer will complete tasks and training as indicated in the Roles and Responsibilities section of this document and as assigned in the final project plan by mutually agreed upon due dates.</li> <li>UKG will not be responsible for delays caused by Customer's failure to provide adequate resources for the project or complete tasks and training promptly.</li> <li>UKG will communicate with Customer's project manager, the appointed point of contact for Customer on this project. The Customer's project manager will be responsible for all communications and project management among all Customer parties (staff, vendors, consultants) and for the escalation and resolution of any issues for the Customer.</li> </ul>
Travel	<ul style="list-style-type: none"> <li>All project tasks are completed through UKG's remote deployment model unless otherwise mutually agreed to in advance or via an authorized service request or work order. Travel expenses are not included and will be invoiced separately as incurred.</li> <li>The Customer is responsible for airfare, lodging, and related travel expenses incurred while UKG resources are traveling for the Customer's business. All travel and expenses are billed at actual costs incurred. UKG resources will book travel through UKG's preferred travel management company.</li> </ul>

#### 4. Roles, Responsibilities, and Deliverables

A successful launch assumes Customer participation throughout each phase of the project. Roles and responsibilities for both UKG and the Customer are described below along with primary launch deliverables and acceptance criteria.

Launch Phase	UKG	Customer	Deliverables
Welcome	<ul style="list-style-type: none"> <li>Review Statement of Work (SOW), contract documents and resource assignments with Customer</li> <li>Facilitate and participate in the kick-off meeting</li> <li>Assist in defining Customer resources and training plan as part of the project plan</li> </ul>	<ul style="list-style-type: none"> <li>Validate Statement of Work (SOW), contract documents and resource assignments</li> <li>Share project goals/success criteria with UKG project team</li> <li>Participate in the kick-off meeting</li> <li>Ensure key project resources attend recommended training course(s) throughout</li> </ul>	<ul style="list-style-type: none"> <li>Statement of Work (SOW) and contract documents reviewed and align with those received with the Order</li> <li>Resource assignments, training plan, and initial project plan delivered and align with project goals/success criteria shared with UKG project team</li> </ul>



Launch Phase	UKG	Customer	Deliverables
Requirements	<ul style="list-style-type: none"> <li>Provide Customer access to the Subscription Service(s) as contracted in the Order</li> </ul>	implementation	<ul style="list-style-type: none"> <li>Access to the UKG Subscription Service(s) obtained as contracted in the Order</li> </ul>
Build	<ul style="list-style-type: none"> <li>Review legacy system setup and identify if configuration changes are needed in new system due to differences in functionality.</li> <li>Review any necessary configuration changes with the Customer and determine how to best configure the new system to meet their needs.</li> </ul>	<ul style="list-style-type: none"> <li>Review legacy system setup to identify outdated or unused items that should not be brought over to the new system.</li> <li>Partner with UKG to review any configuration changes needed due to differences in functionality between the legacy system and the new system.</li> </ul>	<ul style="list-style-type: none"> <li>Updated project plan delivered detailing activities and primary milestones</li> <li>Legacy system setup reviewed to determine how it will transfer to the new system.</li> </ul>
Test	<ul style="list-style-type: none"> <li>Complete mutually agreed upon UKG configuration tasks and complete unit testing to validate configuration</li> <li>Share data mapping process and field specifications with Customer</li> <li>Configure interfaces as defined in this document</li> <li>Supply technical support for UKG network infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>Complete mutually agreed upon Customer configuration tasks and complete unit testing to validate configuration</li> <li>Provide data translations and field mapping defaults for all required fields</li> <li>Supply technical support for system integration/data conversion, system networking and any Customer hardware</li> <li>Review configuration and agree to proceed to Test phase</li> </ul>	<ul style="list-style-type: none"> <li>Unit testing completed and configuration validated for Subscription Service(s)</li> <li>Data mapping process and field specifications shared supporting the provisioning of data necessary for required fields</li> <li>Interfaces are configured and align with those defined in the SOW</li> </ul>
Go Live	<ul style="list-style-type: none"> <li>Assist Customer with interface, system, functional, and conversion (if applicable) User Acceptance testing (UAT) per the defined testing strategy</li> <li>Resolve Customer-reported defects</li> </ul>	<ul style="list-style-type: none"> <li>Perform interface, system, functional, and conversion (if applicable) User Acceptance testing (UAT) per the defined testing strategy</li> <li>Report and retest identified defects</li> </ul>	<ul style="list-style-type: none"> <li>User Acceptance testing (UAT) completed and Customer's authorization to proceed to Go Live received</li> </ul>
	<ul style="list-style-type: none"> <li>Provide production support and post-live support for transition to UKG's Support Services team</li> </ul>	<ul style="list-style-type: none"> <li>Execute manager and end-user training</li> <li>Validate Subscription Service(s) and mutually agree to proceed with Go Live</li> </ul>	<ul style="list-style-type: none"> <li>First live date has been achieved</li> </ul>

### 5. Project Team Composition

UKG will provide experienced resources and subject matter experts (SMEs) specializing in specific areas of the launch associated with the Subscription Service(s) purchased. UKG may use trained and approved consulting services resources ("Certified Partners") to assist in the performance of the launch or consulting services under the Order. Customer hereby authorizes access by UKG, its affiliates, and Certified Partners to the Customer information necessary to perform such Professional Services which may include access to Customer's Confidential Information and Customer Data.

UKG Resource	Key Responsibilities
Service Manager	<ul style="list-style-type: none"> <li>Act as UKG project sponsor responsible to gain commitment for all project resources</li> <li>Serve as primary point of contact responsible for achieving project objectives by coordinating with all project resources on the timely completion of project tasks</li> </ul>
Project Manager	<ul style="list-style-type: none"> <li>Develop and manage project schedule. Communicate overall project status and provide project reporting.</li> <li>Serve as initial point of escalation for all project related issues. Identify and develop project risk mitigation plan and coordinate activities needed for resolution.</li> </ul>
Integration	<ul style="list-style-type: none"> <li>Create and deliver all in-scope integrations</li> </ul>

UKG Resource	Key Responsibilities
Consultant	<ul style="list-style-type: none"> <li>Work together with Customer and 3rd-party vendors (if applicable) to determine requirements for file automation; initiates and manages the setup of data exchange services</li> </ul>
User Adoption Consultant	<ul style="list-style-type: none"> <li>Serve as primary point of contact to advise designated Customer resources responsible to support the delivery of change management</li> </ul>
Subscription Service Consultant(s)	<ul style="list-style-type: none"> <li>Act as advisor and primary point of contact for Subscription Service(s) purchased under this agreement and associated service requests</li> <li>Complete the configuration life cycle per the launch methodology for Subscription Service(s) in scope</li> </ul>

The Customer will provide resources and subject matter experts (SMEs) as described below or as otherwise mutually agreed to in the project plan based upon the Subscription Service(s) purchased.

Customer Resource	Key Responsibilities
Executive Sponsor	<ul style="list-style-type: none"> <li>Act as Customer project sponsor responsible to gain commitment for all project resources</li> <li>Provide executive-level support to the project team</li> <li>Ensure the needs of the project team are well represented and met by the steering committee</li> <li>Serve as primary point of contact responsible for achieving project objectives by coordinating with Customer project resources on the timely completion of project tasks</li> </ul>
Project Manager/Lead	<ul style="list-style-type: none"> <li>Communicate overall project status and provide project reporting to Customer steering committee if applicable</li> <li>Identify and manage project risks and serve as Customer's initial point of escalation for all project related issues and coordinate activities needed for resolution</li> <li>Channel the team's activities toward Subscription Service(s) configuration and executing the project</li> </ul>
Education and Change Management Resource	<ul style="list-style-type: none"> <li>Act as Customer's primary resource and designated decision maker for end user training and change management</li> </ul>
System Administrator	<ul style="list-style-type: none"> <li>Serve as Customer's primary resource(s) for Subscription Service(s) configuration and on-going system support and knowledge</li> </ul>
Technical Resource	<ul style="list-style-type: none"> <li>Serve as Customer's primary resource(s) for technical issues related to integrations, network, Subscription Service(s) security, and data conversion when applicable</li> <li>Provide subject matter expertise pertaining to the Customer's current business processes and policies for functional areas associated with in scope Subscription Service(s)</li> </ul>
Subject Matter Experts (SMEs)	<ul style="list-style-type: none"> <li>Act as a primary resource and decision maker regarding Subscription Service(s) configuration</li> <li>Support Customer's User Acceptance Testing (UAT) effort during the Testing phase per the launch methodology and supplemental testing services, if purchased</li> </ul>

## 6. Professional Services and Subscription Service Assumptions

The following Subscription Service and Professional Service assumptions were used to formulate the Order and this SOW. Apart from Training and User Acceptance Testing (UAT) Support which will be provided throughout the project, services described below will be delivered during Phase 2 only unless specifically identified as Phase 1. Changes to these assumptions may require a separate Service Request resulting in additional costs and delayed timelines.

Professional Training and User Adoption Services	Assumptions
Training	<p>UKG will:</p> <ul style="list-style-type: none"> <li>Provide a product learning plan to prepare your project team during the launch via the UKG Community. Specific courses are required during each phase of the launch to minimize the amount of time between training delivery date and real-life system usage.</li> <li>Provide access to learning resources like job aids and videos for end users, superusers and administrators.</li> <li>Provide ongoing, post-live access to formal and informal learning for administrators and superusers to keep up to date with releases, quarter/year end and best practices.</li> </ul>

Professional Testing Services	Assumptions
User Acceptance Testing (UAT) Support	<p>UKG will:</p> <ul style="list-style-type: none"> <li>• Provide an overview of the UAT process, including testing tools and the approach to be used for issue management</li> <li>• Supply stock baseline test cases to validate system functionality and provide general guidance to aid the Customer in writing and executing test cases specific to their business</li> <li>• Offer consultation and provide issue support during the testing phase</li> <li>• Secure final confirmation from the Customer to validate system readiness prior to Go Live</li> </ul>
Professional Integration Services	Assumptions
Phase 1 Flat-File Integration Templates	<p>UKG will deliver the following standard integration templates as part of the Phase 1 migration launch (flat-file integration templates are delivered via encrypted flat-file through a secure FTP site and processed as a scheduled event):</p> <ul style="list-style-type: none"> <li>• One (1) Person Import</li> <li>• One (1) Payroll Export</li> <li>• One (1) Payroll Export - Sick Leave - Longevity Payout</li> <li>• One (1) Accrual Balance Export - Range of Dates</li> <li>• One (1) Pay Code Edit Import</li> <li>• One (1) Business Structure Import</li> </ul>
Professional Ancillary Services	Assumptions
Phase 1 Technical Services	<p>UKG will provide the following as part of the Phase 1 migration launch:</p> <ul style="list-style-type: none"> <li>• Strategic Technical Advisor to guide Customer in SSO and clock migration</li> <li>• ATK Custom Workflow Review (if applicable)</li> <li>• Existing Custom Report Assessment (if applicable)</li> <li>• Workforce Central Customer Historical Access including: <ul style="list-style-type: none"> <li>○ Historical access setup services with upgrade for read-only reporting to Customer's existing instance of Workforce Central</li> <li>○ Hardware recommendations and assistance with restoring the UKG database on-premise</li> <li>○ Installation/upgrade of base Workforce Central applications (if applicable)</li> <li>○ Moving reports (including custom if applicable) to the historical environment</li> <li>○ Excluded from scope: Modules such as Workforce Device Manager, Workforce Integration Manager, custom features, and Single Sign On</li> </ul> </li> </ul>

## 7. Service Requests

Requests for changes to this SOW, additional scope, or activities outside of this planned project scope must be submitted to the UKG project manager in writing or in the form of an electronic service request.

The following excluded items are considered out of scope and will require a service request ("Excluded Items"):

- Material changes in the scope or effort
- Material changes in the number or type of deliverables to meet the defined scope of effort
- Changes to the project resource requirements
- Changes to the launch duration

UKG will estimate the time and costs needed to implement the change and its impact on the project's delivery. UKG will perform the requested work once the service request has been completed and signed by the Customer.

## UKG Dimensions™ Agreement

This UKG Dimensions™ Agreement (the “Agreement”) governs the provision of UKG’s UKG Dimensions software as a service and other related offerings by Kronos Incorporated, a UKG company, and its Participating Entities (“UKG”) to City of Fargo and its Participating Entities (“Customer”). Capitalized terms not defined within the text of the Agreement are defined in Exhibit E.

This Agreement consists of this execution page and the following exhibits, which are incorporated by reference, and which form an integral part of this Agreement:

Exhibit A: General Terms and Conditions

Attachment A-1: Equipment Purchase, Rental, and Support

Attachment A-2: Professional and Educational Services Policies

Attachment A-3: Service Level Agreement

Exhibit B: UKG Dimensions Cloud Guidelines:

<https://www.ukg.com/ukg-dimensions/agreement/cloud-guidelines>

Exhibit C: Acceptable Use Policy (AUP):

<https://www.ukg.com/policies/acceptable-use>

Exhibit D: AtomSphere Service and Boomi Software

Exhibit E: Definitions

The description of the type, quantity, and cost of the specific offerings being ordered by Customer will be described in an Order Form, that will be mutually agreed upon and signed by the Parties pursuant and subject to this Agreement. If Implementation Services are to be delivered by UKG, the Parties may need to execute a Statement of Work, which will set forth the scope, objectives and other business terms of the Implementation Services ordered with the Order Form.

This Agreement will serve as a master agreement for the Service and its related offerings. This Agreement contemplates that Participating Entities will enter into multiple Order Forms. This approach will allow the Parties to contract for additional or diverse products or services simply by signing a mutually agreeable Order Form and SOW, if applicable, without having to renegotiate or re-execute this Agreement. When Participating Entities enter into an Order Form, they are deemed to be “Customer” for purposes of this

Agreement for that Order Form. Similarly, the UKG entity that enters into an Order Form is deemed to be "UKG " for purposes of this Agreement for that Order Form.

Kronos Incorporated
Dated:
By:
Name:
Title:

Customer
Dated:
By:
Name:
Title:

## Exhibit A: General Terms and Conditions

### Article 1. Order Forms

- 1.1 The following commercial terms may appear on an Order Form:
- a. The Application(s) included in the Service, and the other offerings being ordered by Customer
  - b. Billing Start Date (i.e., the date the PEPM Fees begin to accrue)
  - c. Initial Term (i.e., the initial billing term of the Service commencing on the Billing Start Date)
  - d. Renewal Term (i.e., the renewal billing term of the Service)
  - e. Billing Frequency (i.e., the frequency for the invoicing of the PEPM Fees such as Annual in Advance or Monthly in Arrears)
    - i. "Annual in Advance" means payment is due on an annual basis with the invoice being issued upon execution of the Order Form.
    - ii. "Monthly in Arrears" (usually for Implementation Services) means payment is due on a monthly basis with the invoice being issued at the end of the month.
  - f. Payment Terms (i.e., the amount of days in which Customer must pay a UKG invoice)
  - g. Shipping Terms (i.e., FOB – Shipping Point, Prepay and Add)
- 1.2 The following Fees may appear on an Order Form:
- a. PEPM Fees for use of the Service, including PEPM Fees for Seasonal Licenses
  - b. Implementation Services Fees (The Order Form will note if Implementation Services Fees are included in PEPM Fees.)
  - c. Equipment Purchase Fees
  - d. Equipment Rental Fees

1.3 UKG may also sell (or rent) Equipment to Customer, and provide related Equipment Support Services, if included on an Order Form. These offerings are subject to this Agreement and the terms and conditions set forth in Attachment A-1.

### Article 2. Billing

2.1 UKG will invoice the Fees on the Billing Frequency indicated on the Order Form. For each Order Form, the billing period of the PEPM Fees will start on the Billing Start Date and will continue for the time period indicated as the Initial Term. Customer will pay the Fees on the Payment Terms and in the currency, indicated on the Order Form. Customer will send payment to the attention of UKG at the address indicated on the applicable invoice unless the Parties have made an alternative payment arrangement (such as credit card, wire transfer, ACH payment or otherwise). Unless expressly provided in this Agreement, Customer payments are non-refundable. Unless Customer has provided UKG with valid evidence of tax-exemption, Customer is responsible for all applicable Taxes related to the Service and other items set forth on the Order Form. Each Party is responsible to pay all costs and fees attributable to such Party pursuant to the Shipping Terms indicated on the Order Form.

2.2 At the expiration of the Initial Term, and at the expiration of each Renewal Term, the Service will automatically renew for a Renewal Term. For each Renewal Term, UKG may increase the PEPM Fees by no more than four percent (4%) over the previous year's PEPM Fees for the same Applications and the same licensed quantity. UKG will reflect these increased PEPM Fees in the applicable invoice for each Renewal Term. For renewals based on the Annual in Advance Billing Frequency, UKG will provide

Customer with the renewal invoice prior to commencement of the Renewal Term and payment will be made by Customer in accordance with the payment terms agreed upon with Customer for the Initial Term.

2.3 UKG will provide the Service to Customer during the entire Initial Term and each Renewal Term. Customer will pay for the Service for the entire Initial Term and each Renewal Term.

## Article 3. Additional Services

### Section 3.1 Implementation and Professional Services

3.1.1 Implementation Services are described in a SOW that the Parties will sign or reference on a signed Order Form. These SOWs are subject to this Agreement. Implementation Services are invoiced monthly as delivered, except if otherwise indicated on an Order Form. Each Party will perform their respective obligations as outlined in a signed SOW.

3.1.2 While Customer may configure the Applications itself, as part of the Implementation Services as described in an SOW, UKG may also configure the Applications. UKG will configure the Applications based on Customer's instructions and direction. Customer is solely responsible for ensuring that the Configurations comply with Applicable Law.

3.1.3 UKG may also provide Professional Services to Customer that do not require an SOW but which will be as set forth on an Order Form.

3.1.4 UKG may also provide ala carte educational consulting services as Implementation Services or Professional Services as described in an SOW or Order Form.

3.1.5 The UKG policies set forth in Attachment A-2 shall apply to all Implementation Services and Professional Services provided by UKG. In the event of a conflict between the Professional Services Policies and this Agreement, the terms of this Agreement shall prevail.

### Section 3.2 Educational Services

3.2.1 As part of the PEPM Fees UKG will provide its live, hands-on virtual training facilitated by a knowledgeable instructor and delivered remotely via a published schedule. Training is intended for the following audiences:

- a. Core Team training to help key functional and technical users make informed solution design and configuration decisions, and to provide fundamental product knowledge.
- b. Application & System Administrator to prepare functional and technical super users to perform their most common tasks in the solution.

3.2.2 As part of the PEPM Fees UKG shall also provide self-paced product training.

3.2.3 UKG also offers fee-based consulting services that are not included under the terms of the Educational Services referenced above.

### Section 3.3 Support Services

3.3.1 Support Services for the Services will be provided and include (i) customer phone, email and online support 24 hours a day/7 days a week and (ii) periodic enhancements and modifications to the Applications, including bug fixes to correct verifiable and reproducible errors reported to UKG.

## Article 4. Service Level Agreement

UKG offers the Service Level Agreement and associated SLA Credits as described in Attachment A-3. The SLA Credits are Customer's sole and exclusive remedy in the event of any Outage. UKG remains obligated to provide the Service as otherwise described in this Agreement.

## Article 5. Data, Confidentiality, Security and Privacy

### Section 5.1 Data

5.1.1 Customer owns Customer Data. Customer is solely responsible for Customer Data, including ensuring that Customer Data complies with the Acceptable Use Policy and Applicable Law. Customer is solely responsible for any Claims that may arise out of or relating to Customer Data.

5.1.2 **"Aggregated Data"** is any statistical data that is derived from the operation of the Service, including without limitation, for analysis of the Service, Configurations or Customer Data, and is created by UKG in response to specified queries for a set point in time; including without limitation aggregation, metrics, trend data, correlations, benchmarking, determining best practices, the number and types of transactions, configurations, records, reports processed in the Service, and the performance results for the Service. UKG owns the Aggregated Data. Nothing in this Agreement will prohibit UKG from utilizing the Aggregated Data for any purposes, provided that UKG's use of Aggregated Data will anonymize Customer Data, will not reveal any Customer Confidential Information, and will not reveal any Personally Identifiable Information.

### Section 5.2 Confidentiality

Each Party will treat the Confidential Information of the other Party with a reasonable standard of care commensurate with the sensitivity of such Confidential Information and as further described in this Agreement. Each Party will only use the Confidential Information of the other Party for the purposes of fulfilling its obligations under this Agreement and as reasonably necessary to provide the Service. UKG agrees that it will not use any such Confidential Information for marketing or other commercial purposes. Confidential Information may be shared with and disclosed to (i) any subsidiary or affiliate of each of the Parties, or (ii) any court or governmental agency of competent jurisdiction, as required by a legal process, including in connection with any proceeding to establish a Party's rights or obligations under this Agreement (provided however that, when permitted by Applicable Law, a Party will give the other reasonable prior written notice so that the discloser has an opportunity to contest any disclosure required by a legal process). Either Party may seek injunctive relief to preserve its rights under this section without the requirement to post a bond.

### Section 5.3 Security and Privacy

5.3.1 UKG will maintain the Controls throughout the Term.

5.3.2 Each Party will comply with all Applicable Laws, including, without limitation, Data Protection Laws.



5.3.3 UKG employees will access Customer Data from the locations from which such employees work. Customer consents to UKG's handling, collection, use, transfer, and processing of Customer Data to provide the Service. As may be required by Applicable Law, Customer will ensure that Customer Data may be provided to UKG for the purposes of providing the Service. Customer has obtained all necessary consents from individuals to enable UKG to use the Customer Data to provide the Service. As may be contemplated by the applicable Data Protection Laws, Customer will remain the "controller" of Customer Data and UKG will be considered a "processor" of Customer Data.

5.3.4 UKG will notify Customer in accordance with Applicable Law upon becoming aware of an unauthorized access of Customer Data. To the extent reasonably possible, such a notification will include, at a minimum (i) a description of the breach, (ii) the information that may have been obtained as a result of the breach, and (iii) the corrective action UKG is taking in response to the breach.

5.3.5 Consent to Use Sub-processors. Customer agrees that UKG may use sub-processors to fulfill its contractual obligations under the Agreement. The list of sub-processors that are currently engaged by UKG to carry out processing activities on Customer Data on behalf of Customer can be found at: [www.ukg.com/ukg-dimensions/agreement/subprocessors](http://www.ukg.com/ukg-dimensions/agreement/subprocessors)

5.3.6 Customer hereby authorizes the engagement as sub-processors of all entities set forth in such list. Customer further generally authorizes the engagement as sub-processors of any other third parties engaged by UKG for such purposes. The foregoing authorizations will constitute Customer's prior written consent to the subcontracting by UKG of the processing of Customer Data if such consent is required under Applicable Laws.

5.3.7 At least 30 days before any new sub-processor will carry out processing activities on Customer Data on behalf of Customer, UKG will update the applicable website and provide Customer with a mechanism to obtain notice of that update. Customer may object to any such new sub-processor by terminating the Agreement upon written notice to UKG, such written notice to be provided within 60 days of being informed of the engagement of the sub-processor. This termination right is Customer's sole and exclusive remedy if Customer objects to any new sub-processor.

5.3.8 Sub-processor Obligations. When engaging any sub-processor:

- a. UKG will enter into a written agreement with the sub-processor;
- b. UKG will endeavor to ensure that the sub-processor provides sufficient guarantees to implement appropriate technical and organizational measures to meet the requirements of applicable Data Protection Laws; and,
- c. UKG will remain responsible for the performance of the sub-processor's data protection obligations pursuant to such written agreement and the requirements of applicable Data Protection Laws.

## Article 6. Warranty

UKG warrants that the Service will be provided in a professional and workmanlike manner. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, UKG DISCLAIMS ALL OTHER WARRANTIES RELATED TO THE SERVICE, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND

FITNESS FOR A PARTICULAR PURPOSE. If Customer informs UKG in writing that there is a material deficiency in the Service which is making this warranty untrue, UKG will use its reasonable commercial efforts to correct the non-conforming Service at no additional charge, and if UKG is unable to do so within a reasonable period of time, Customer may terminate the then remaining Term of the Agreement, which will be Customer's sole and exclusive remedy. Customer agrees to provide UKG with reasonable information and assistance to enable UKG to reproduce or verify the non-conforming aspect of the Service.

## Article 7. License

### Section 7.1 Technology License

7.1.1 As part of the Service, UKG will provide Customer access to and use of the Technology, including the Applications. UKG hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-assignable right to use the Service, including the Technology, during the Term and for internal business purposes only. Customer acknowledges and agrees that the right to use the Service, including Seasonal Licenses when included on the Order Form, is limited based upon the number of Authorized Users, and Customer's payment of the corresponding PEPM Fees. Customer agrees to use the Applications only for the number of employees stated on the total of all Order Forms for the applicable Applications. Customer agrees not to use any other Application nor increase the number of employees using an Application unless Customer enters into an additional Order Form that will permit the Customer to have additional Authorized Users.

7.1.2 UKG owns all title or possesses all intellectual property rights in and to the Technology used in delivering the Service. Customer has a right to use this Technology and to receive the Service subject to this Agreement. No other use of the Technology is permitted. Customer is specifically prohibited from reverse engineering, disassembling or decompiling the Technology, or otherwise attempting to derive the source code of the Technology. Customer cannot contact third party licensors or suppliers for direct support of the Technology. No license, right, or interest in any UKG trademark, trade name, or service mark, or those of any third party supplying Technology as part of the Service, is granted hereunder.

7.1.3 Customer shall be responsible for securing, paying for, and maintaining connectivity to the Services, including any and all related hardware, software, third party services and related equipment and components for such connectivity.

## Article 8. Scope and Authority

8.1 Participating Entities may order the Service and other related offerings from UKG by signing an Order Form contemporaneously with this Agreement, or in the future by signing an Order Form specifically referencing this Agreement. Only the Parties entering into a particular Order Form will be responsible under this Agreement for the items on that Order Form.

8.2 The person signing this Agreement on behalf of UKG and on behalf of Customer represent that they are lawfully able to enter into contracts and are authorized to sign this Agreement and bind the entity on whose behalf they are entering into this Agreement. By signing an Order Form, each person signing such Order Form represents that they are lawfully able to enter into contracts and are authorized to sign the Order Form and bind the Participating Entity on whose behalf they are signing the Order Form.

8.3 Authorized Users may access the Service on Customer's behalf, and Customer will be responsible for all actions taken by its Authorized Users. Customer will make sure that Authorized Users comply with Customer's obligations under this Agreement. Unless UKG breaches its obligations under this Agreement, UKG is not responsible for unauthorized access to Customer's account, nor activities undertaken with Customer's login credentials, nor by Customer's Authorized Users. Customer should contact UKG immediately if Customer believes an unauthorized person is using Customer's account or that Customer's account information has been compromised.

8.4 Use of the Service includes the ability to enter into agreements and/or to make transactions electronically. This feature of the Service is referred to as the "Marketplace". The use of the Marketplace can be configured, and Customer may disable use of the Marketplace by some or all of its Authorized Users. CUSTOMER ACKNOWLEDGES THAT WHEN AN AUTHORIZED USER INDICATES ACCEPTANCE OF AN AGREEMENT AND/OR TRANSACTION ELECTRONICALLY WITHIN THE MARKETPLACE, THAT ACCEPTANCE WILL CONSTITUTE CUSTOMER'S LEGAL AGREEMENT AND INTENT TO BE BOUND BY AND TO PAY FOR SUCH AGREEMENTS AND TRANSACTIONS. THIS ACKNOWLEDGEMENT THAT CUSTOMER INTENDS TO BE BOUND BY SUCH ELECTRONIC ACCEPTANCE APPLIES TO ALL AGREEMENTS AND TRANSACTIONS CUSTOMER ENTERS INTO THROUGH THE SERVICE, SUCH AS ORDERS, CONTRACTS, STATEMENTS OF WORK, AND NOTICES OF CANCELLATION.

## Article 9. Suspension

9.1 UKG may suspend the Service if any amount that Customer owes UKG is more than thirty (30) days overdue. UKG will provide Customer with at least seven (7) days prior written notice that the Customer's account is overdue before UKG suspends the Service. Upon payment in full of all overdue amounts, UKG will immediately restore the Service.

9.2 Customer is responsible for complying with the AUP. UKG and its third party cloud service provider reserve the right to review Customer's use of the Service and Customer Data for AUP compliance and enforcement. If UKG discovers an AUP violation, and UKG reasonably determines that UKG must take immediate action to prevent further harm, UKG may suspend Customer's use of the Service immediately without notice. UKG will contact Customer when UKG suspends the Service to discuss how the violation may be remedied, so that the Service may be restored as soon as possible. If UKG does not reasonably believe it needs to take immediate action, UKG will notify Customer of the AUP violation. Even if UKG doesn't notify Customer or suspend the Service, Customer remains responsible for any such AUP violation. UKG will restore the Service once the AUP violation is cured or as both Parties may agree.

## Article 10. Termination

### Section 10.1. Types of Termination

10.1.1 Non-renewal. Either Party may terminate the Service upon at least sixty (60) days prior written notice to be effective at the expiration of the then current Term. Customer may terminate Seasonal Licenses upon at least sixty (60) days prior written notice to be effective at the expiration of the then current Term.

10.1.2 For Cause. Either Party may terminate the Service and this Agreement if the other Party fails to perform any material obligation under this Agreement, and such Party is not able to cure the non-performance within thirty (30) days of the date such Party is notified by the other Party of such default.

10.1.3 For Bankruptcy. If either Party: (i) becomes insolvent, (ii) makes a general assignment for the benefit of our creditors, (iii) is adjudicated as bankrupt or insolvent, or (iv) has a proceeding commenced against it under applicable bankruptcy laws, the other Party may ask for a written assurance of future performance of a Party's obligations under this Agreement. If an assurance that provides reasonable evidence of future performance is not provided within ten (10) business days of a written request, the requesting Party may immediately terminate this Agreement upon written notice.

## Section 10.2 Effects of Termination

If the Agreement is terminated for any reason:

- a. All Fees will be paid by Customer for amounts owed through the effective date of termination.
- b. Any Fees paid by Customer for the Service not rendered prior to the effective date of termination will be credited against Customer's account, with any remaining amounts refunded to Customer within thirty (30) days of the effective date of termination.
- c. Customer's right to use the Service will end as of the effective date of termination. Notwithstanding such termination, Customer will have thirty (30) days after the effective date of termination to access the Service for purposes of retrieving Customer Data through tools provided by UKG that will enable Customer to so extract Customer Data. If Customer requires a longer period of access to the Service after termination to retrieve Customer Data, such access will be subject to additional Fees. Extended access and use of the Services will be subject to the terms of this Agreement.
- d. UKG will delete Customer Data after Customer's rights to access the Service and retrieve Customer Data have ended. UKG will delete Customer Data in a series of steps and in accordance with UKG's standard business practices for destruction of Customer Data and system backups. Final deletion of Customer Data will be completed when the last backup that contained Customer Data is overwritten.
- e. UKG and Customer will each return or destroy any Confidential Information of the other Party, with any retained Confidential Information remaining subject to this Agreement.
- f. Provisions in this Agreement which by their nature are intended to survive in the event of a dispute or because their obligations continue past termination of the Agreement will so survive.

## Article 11. Indemnification

11.1 UKG will defend the Customer Indemnified Parties, from and against any and all Claims alleging that the permitted uses of the Service, Technology or Applications infringe or misappropriate any legitimate copyright or patent. UKG will indemnify and hold harmless the Customer Indemnified Parties against any liabilities, obligations, costs or expenses (including, without limitation, reasonable attorneys' fees) actually awarded to a third party by a court of applicable jurisdiction as a result of such Claim, or as a result of UKG's settlement of such a Claim. In the event that a final injunction is obtained against Customer's use of the Service by reason of infringement or misappropriation of any such copyright or patent, or if in UKG's opinion, the Service is likely to become the subject of a successful claim of infringement or misappropriation, UKG (at its option and expense) will use commercially reasonable efforts to either (a) procure for Customer the right to continue using the Service as provided in the Agreement, or (b) replace or modify the Service so that the Service becomes non-infringing but remains substantively similar to the affected Service. Should neither (a) nor (b) be commercially reasonable, either Party may terminate the Agreement and the rights granted hereunder, at which time UKG will provide a refund to Customer of the PEPM Fees paid by Customer for the infringing elements of the Service covering the period of their unavailability.

11.2 UKG will have no liability to indemnify or defend Customer to the extent the alleged infringement or misappropriation is based on: (a) a modification of the Service undertaken by anyone other than UKG , or not undertaken at UKG's direction and in accordance with such direction; (b) use of the Service other than as authorized by this Agreement; or (c) use of the Service in conjunction with any equipment, service or software not provided by UKG, where the Service would not otherwise infringe, misappropriate or otherwise become the subject of the Claim.

11.3 To the extent permitted by law, Customer will defend the UKG Indemnified Parties and hold them harmless from and against any and all Claims alleging that: (a) the Configurations violate any law applicable to the rights of an Authorized User; (b) Customer's modification or combination of the Service with other services, software or equipment not furnished by UKG , infringes or misappropriates any copyright or patent, provided that such modification or combination is the cause of such infringement and was not authorized by UKG in writing; or, (c) a claim that the Customer Data or its collection or use by Customer violates the AUP or Applicable Laws. Customer will have sole control of the defense of any such action and all negotiations for its settlement or compromise. UKG will cooperate fully (at Customer's expense) in the defense, settlement or compromise of any such action. Customer will indemnify and hold harmless the UKG Indemnified Parties against any liabilities, obligations, costs or expenses (including, without limitation, reasonable attorneys' fees) actually awarded to a third party as a result of such Claims by a court of applicable jurisdiction or as a result of Customer settlement of such a Claim.

11.4 The Indemnified Party will provide written notice to the indemnifying party promptly after receiving notice of such Claim. If the defense of such Claim is materially prejudiced by a delay in providing such notice, the purported indemnifying party will be relieved from providing such indemnity to the extent of the delay's impact on the defense. The indemnifying party will have sole control of the defense of any indemnified Claim and all negotiations for its settlement or compromise, provided that such indemnifying party will not enter into any settlement which imposes any obligations or restrictions on the applicable Indemnified Parties without the prior written consent of the other Party. The Indemnified Parties will cooperate fully (at the indemnifying party's request and expense) with the indemnifying party in the defense, settlement or compromise of any such action. The indemnified party may retain its own counsel at its own expense, subject to the indemnifying party's rights above.

## Article 12. Extent and Limitations of Liability

12.1 EXCEPT FOR UKG'S INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE TOTAL AGGREGATE LIABILITY OF UKG TO CUSTOMER OR TO ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO ACTUAL AND DIRECT DAMAGES PROVEN BY CUSTOMER, SUCH DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO TWO TIMES (2X) THE TOTAL NET PAYMENTS RECEIVED BY UKG FOR THE SERVICE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE IN WHICH THE CLAIM ARISES.

12.2 **NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES.** NEITHER PARTY WILL BE LIABLE FOR THE COST OF ACQUIRING SUBSTITUTE OR REPLACEMENT SERVICES. NEITHER PARTY WILL BE LIABLE FOR ANY LOST OR IMPUTED PROFITS OR REVENUES OR LOST DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES OR SERVICES INTERRUPTION, HOWEVER CAUSED, ARISING FROM OR RELATED TO THE SERVICE OR THIS AGREEMENT. THESE LIMITATIONS APPLY FOR ANY REASON, REGARDLESS OF ANY LEGAL THEORY AND FOR WHATEVER

REASON LIABILITY IS ASSERTED. THIS IS TRUE EVEN IF UKG AND CUSTOMER HAVE TOLD EACH OTHER THAT EITHER ONE IS CONCERNED ABOUT A PARTICULAR TYPE OF LIABILITY.

## Article 13. Changes

The information found in any Exhibit (or at any URL referenced in this Agreement) may change over the Term. Any such change will be effective as of the start of the next Renewal Term after such change is announced or published by UKG.

## Article 14. Feedback

From time to time, Customer may provide Feedback. UKG has sole discretion to determine whether or not to undertake the development of any enhancements, new features or functionality contained in or with Feedback. Customer hereby grants UKG a royalty-free, fully paid up, worldwide, transferable, sublicensable, irrevocable, perpetual license to use, copy, distribute, transmit, display, perform, create derivative works of and otherwise fully exercise and commercially exploit the Feedback for any purpose in connection with UKG's business without any compensation to Customer or any other restriction or obligation, whether based on intellectual property right claim or otherwise. For the avoidance of doubt, no Feedback will be deemed to be Customer Confidential Information, and nothing in this Agreement limits UKG's right to independently use, develop, evaluate, or market products or services, whether incorporating Feedback or otherwise.

## Article 15. General

15.1 This Agreement is governed by and is to be interpreted in accordance with the laws of the state of North Dakota, without regard to any conflict of law provision if and as applicable. Each Party waives the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of the Agreement and waives and "opts out" of the Uniform Computer Information Transactions Act (UCITA), or such other similar laws as may have been adopted.

15.2 The invalidity or illegality of any provision in this Agreement will not affect the validity of any other provision. All unaffected provisions remain in full force and effect.

15.3 Customer may not assign this Agreement without UKG's prior written consent.

15.4 If there is some unforeseen event reasonably beyond the control of each of the Parties, such as acts of war, terrorism, or uprising, or acts of nature like earthquakes or floods, or civil unrest like embargoes, riots, sabotage or labor shortages, or changes in laws or regulations, or the failure of the internet or communications via common networks, or a power failure, or a delay in transportation, (collectively "Force Majeure"), each Party will be excused from performance of its obligations under this Agreement for the duration of the Force Majeure affecting such Party. The affected Party will use reasonable efforts to mitigate the impact of the Force Majeure on the other Party. UKG is still obligated to provide the disaster recovery portion of the Service if UKG's performance of those disaster recovery services is not also prevented by the Force Majeure.

15.5 When either Party needs to provide official notification under this Agreement, those notices will be in writing and considered delivered upon actual receipt to the addresses stated on the relevant Order

Form or as otherwise communicated in writing to each other. Each Party agrees that an e-signature (or a facsimile signature by the authorized representative) is evidence of acceptance of a valid and enforceable agreement.

15.6 No third party beneficiaries exist under this Agreement.

15.7 This Agreement (and any information in any referenced Exhibit or at any referenced URL or specifically incorporated by reference) along with the corresponding Order Form constitutes the entire agreement between the Parties pertaining to each Order Form. This Agreement supersedes all prior and contemporaneous representations, negotiations or communications between the Parties relating to its subject matter. Except as otherwise provided in this Agreement, this Agreement may only be amended in writing signed by each of the Parties. If Customer uses its own purchase order as an Order Form, no pre-printed terms of that purchase order shall apply to the items ordered, and any reference to a UKG quote number or order number shall be deemed to incorporate that UKG quote or order form into Customer's purchase order.

Attachment A-1: Equipment Purchase, Rental, and Support:

<https://www.ukg.com/equipment-purchase-rental-support>

Attachment A-2: Professional and Educational Services Policies:

<https://www.ukg.com/central-dimensions/agreement/ProfessionalandEducationalServicesPolicy>

Attachment A-3: Service Level Agreement:

<https://www.ukg.com/ukg-dimensions/agreement/service-level-agreement>

## Exhibit D: AtomSphere Service and Boomi Software

As part of the Service, Customer has the right to access and use the Boomi AtomSphere Service provided by Boomi, LP. ("Boomi") and a non-exclusive, non-transferable and non-sublicensable license to use the associated Boomi Software as part of the Boomi AtomSphere Service. Customer may use the Boomi AtomSphere Service and the Boomi Software only to create integrations to and from the Service. If the Agreement terminates, Customer's rights to access the Boomi AtomSphere Service and the Boomi Software also terminates.

Customer understands and agrees that the AtomSphere Service and the Boomi Software may work in conjunction with third party products and Customer agrees to be responsible for ensuring that it is properly licensed to use such third party products. Customer further understands and agrees that (i) the AtomSphere Service and the Boomi Software are protected by copyright and other intellectual property laws and treaties, (ii) Boomi, its Affiliates and/or its suppliers own the copyright, and other intellectual property rights in the AtomSphere Service and Boomi Software, (iii) the Boomi Software is licensed, and not sold, (iv) this Agreement does not grant Customer any rights to Boomi's trademarks or service marks, and (v) with respect to the AtomSphere Service and Boomi Software, Boomi reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement.

Customer may, at its discretion, store other data on the systems to which it is provided access in connection with its use of the AtomSphere Service (the "Hosted Environment"). Customer is solely responsible for collecting, inputting and updating all Customer data stored in the Hosted Environment, and for ensuring that Customer complies with the Acceptable Use Policy with respect to the AtomSphere Service and Boomi Software. Customer agrees that such data may be accessed and used by Boomi and its representatives worldwide as may be needed to support Boomi's standard business operations with respect to the AtomSphere Service and Boomi Software. Customer agrees that data consisting of Customer contact information (e.g., email addresses, names) provided as part of Maintenance AtomSphere Services may be sent to Boomi's third party service providers as part of Boomi's services improvement processes.

In connection with the use of the Hosted Environment and the AtomSphere Service, Customer may not (i) attempt to use or gain unauthorized access to Boomi's or to any third-party's networks or equipment; (ii) permit other individuals or entities to copy the Boomi Software; nor (iii) provide unauthorized access to or use of any Boomi Software or the associated access credentials. Customer shall cooperate with Boomi's reasonable investigation of Hosted Environment outages, security issues, and any suspected breach of this Section.



## Exhibit E: Definitions

**“Acceptable Use Policy”** and **“AUP”** are interchangeable terms referring to the UKG policy describing prohibited uses of the Service as further described in Exhibit C.

**“Applicable Law(s)”** means any applicable provisions of all laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders which govern the Party’s respective business.

**“Authorized User”** means any individual or entity that directly (or through another Authorized User) accesses or uses the Service with any login credentials or passwords Customer uses to access the Service.

**“Application(s)”** means those UKG Dimensions software application programs set forth on an Order Form which are made accessible for Customer to use under the terms of this Agreement.

**“Boomi AtomSphere Service”** means the third-party service for the creation of integrations by Customer as further described in Exhibit D, which the Customer and Customer’s Authorized Users have the right to access through the Service.

**“Boomi Software”** means the third-party proprietary software associated with the Boomi AtomSphere Service as further described in Exhibit D.

**“Claim(s)”** means any and all notices, charges, claims, proceedings, actions, causes of action and suits, brought by a third party.

**“Confidential Information”** is any non-public information relating to each of Customer’s and UKG’s businesses and those of UKG’s Technology suppliers that is disclosed pursuant to this Agreement and which reasonably should have been understood by the recipient of such information to be confidential because of (i) legends or other markings, (ii) the circumstances of the disclosure, or (iii) the nature of the information itself. Information will not be considered “Confidential Information” if the information was (i) in the public domain without any breach of this Agreement; (ii) disclosed to the Receiving Party on a non-confidential basis from a source which is lawfully in possession of such Confidential Information and, to the knowledge of the Receiving Party, is not prohibited from disclosing such Confidential Information to Receiving Party; or (iii) released in writing from confidential treatment by Delivering Party; or (iv) required to be disclosed pursuant to a subpoena, order, civil investigative demand or similar process with which the Receiving Party is legally obligated to comply, and of which the Receiving Party notifies Delivering Party.

**“Configuration(s)”** means the Customer specific settings of the parameters within the Applications(s), including pay and work rules, security settings such as log-in credentials, passwords, and private keys used to access the Service.

**“Controls”** means the administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of Customer Data, designed and implemented by UKG to secure Customer Data against accidental or unlawful loss, access or disclosure consistent with the AICPA Trust Principles Criteria for security, availability, confidentiality and processing integrity (SOC 2).

**“Customer Data”** means all content Customer, or its Authorized Users, posts or otherwise inputs into the Service, including but not limited to information, data (such as payroll data, vacation time, hours worked or other data elements associated with an Authorized User), text, multimedia images (e.g. graphics, audio and video files), or compilations.

**“Customer Indemnified Party(ies)”** means Customer and Customer’s respective directors, officers, and employees.

**“Data Protection Law(s)”** means all international, federal, state, and local laws, rules, regulations, directives and published governmental or regulatory decisions that specify data privacy, data protection or data security obligations, and which, in each case, have the force of law applicable to a Party’s collection, use, processing, storage, or disclosure of Personally Identifiable Information.

**“Documentation”** means the published specifications for the applicable Applications and Equipment, such as user manuals and administrator guides.

**“Educational Services”** means the services described in Section 3.2 (Educational Services), including but not limited to (i) UKG KnowledgeMap Learning Portal; (ii) UKG KnowledgeMap Live; and (iii) ala carte educational consulting services.

**“Equipment”** means UKG equipment such as time clocks, devices, or other equipment set forth on an Order Form.

**“Equipment Support Services”** means the maintenance and support services related to UKG’s support of Equipment as further described in Attachment A-1.

**“Feedback”** means suggestions, ideas, comments, know how, techniques or other information provided to UKG for enhancements or improvements, new features or functionality or other feedback with respect to the Service.

**“Fees”** means the charges to be paid by Customer for a particular item.

**“Implementation Services”** means those professional services provided by UKG to set up the cloud environment and to setup the Configurations within the Applications, as set forth in an SOW.

**“UKG KnowledgeMap™”** means the online educational portal providing access to learning resources.

**“UKG KnowledgeMap™ Live”** means the service providing instructor led training by user role on a rotating course schedule.

**“UKG Indemnified Party(ies)”** means UKG and its third-party Technology suppliers and each of their respective directors, officers, employees, agents and independent contractors.

**“Order Form”** means an order form mutually agreed upon by UKG and Customer setting forth, among other things, the items ordered by Customer and to be provided by UKG and the Fees to be paid by Customer.

**“Participating Entity(ies)”** means those UKG or Customer entities that (i) directly or indirectly control, are controlled by, or are under common control with UKG or Customer, respectively and (ii) sign an Order

Form for the Service. “Control” (in this context) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of the entity in respect of which the determination is being made through the ownership of the majority of its voting or equity securities, contract, voting trust or otherwise.

“Party(ies)” means UKG or Customer, or both of them, as the context dictates.

“PEPM” means the per employee per month fee for a Customer’s Authorized Users access to the Service.

“Personally Identifiable Information” means information concerning individually identifiable employees of Customer that is protected against disclosure under Applicable Data Protection Law.

“Professional Services” means the professional, consulting, or training services provided by UKG pursuant to an Order Form and which are not described in a Statement of Work.

“Seasonal Licenses” are limited use licenses that have the following attributes: (i) valid only for the four (4) consecutive months during the annual period identified on the Order Form; (ii) valid from the first day of the month in which they commence until the end on the last day of the month in which they expire; and (iii) will be effective automatically each year during the Term, subject to termination and non-renewal as provided in the Agreement.

“Service” means the UKG supply of the commercially available version of the UKG Dimensions SaaS Applications in UKG’s hosted environment and the services described in the Agreement related thereto.

“Statement of Work” and “SOW” are interchangeable terms referring to a written description of the Implementation Services.

“Taxes” means all applicable taxes relating to the goods and services provided by UKG hereunder, including all duties and country, federal, state, provincial or local taxes (including GST or VAT if applicable) but excluding taxes on UKG’s income or business privilege.

“Technology” means the intellectual property of UKG within the Service, including but not limited to the Applications.

“Term” means the Initial Term and any Renewal Terms.

## UKG Dimensions™ Agreement

This UKG Dimensions™ Agreement (the “Agreement”) governs the provision of UKG’s UKG Dimensions software as a service and other related offerings by Kronos Incorporated, a UKG company, and its Participating Entities (“UKG”) to City of Fargo and its Participating Entities (“Customer”). Capitalized terms not defined within the text of the Agreement are defined in Exhibit E.

This Agreement consists of this execution page and the following exhibits, which are incorporated by reference, and which form an integral part of this Agreement:

Exhibit A: General Terms and Conditions

Attachment A-1: Equipment Purchase, Rental, and Support

Attachment A-2: Professional and Educational Services Policies

Attachment A-3: Service Level Agreement

Exhibit B: UKG Dimensions Cloud Guidelines:

<https://www.ukg.com/ukg-dimensions/agreement/cloud-guidelines>

Exhibit C: Acceptable Use Policy (AUP):

<https://www.ukg.com/policies/acceptable-use>

Exhibit D: AtomSphere Service and Boomi Software

Exhibit E: Definitions

The description of the type, quantity, and cost of the specific offerings being ordered by Customer will be described in an Order Form, that will be mutually agreed upon and signed by the Parties pursuant and subject to this Agreement. If Implementation Services are to be delivered by UKG, the Parties may need to execute a Statement of Work, which will set forth the scope, objectives and other business terms of the Implementation Services ordered with the Order Form.

This Agreement will serve as a master agreement for the Service and its related offerings. This Agreement contemplates that Participating Entities will enter into multiple Order Forms. This approach will allow the Parties to contract for additional or diverse products or services simply by signing a mutually agreeable Order Form and SOW, if applicable, without having to renegotiate or re-execute this Agreement. When Participating Entities enter into an Order Form, they are deemed to be “Customer” for purposes of this

Agreement for that Order Form. Similarly, the UKG entity that enters into an Order Form is deemed to be "UKG " for purposes of this Agreement for that Order Form.

Kronos Incorporated
Dated:
By:
Name:
Title:

Customer
Dated:
By:
Name:
Title:

## Exhibit A: General Terms and Conditions

### Article 1. Order Forms

1.1 The following commercial terms may appear on an Order Form:

- a. The Application(s) included in the Service, and the other offerings being ordered by Customer
- b. Billing Start Date (i.e., the date the PEPM Fees begin to accrue)
- c. Initial Term (i.e., the initial billing term of the Service commencing on the Billing Start Date)
- d. Renewal Term (i.e., the renewal billing term of the Service)
- e. Billing Frequency (i.e., the frequency for the invoicing of the PEPM Fees such as Annual in Advance or Monthly in Arrears)
  - i. "Annual in Advance" means payment is due on an annual basis with the invoice being issued upon execution of the Order Form.
  - ii. "Monthly in Arrears" (usually for Implementation Services) means payment is due on a monthly basis with the invoice being issued at the end of the month.
- f. Payment Terms (i.e., the amount of days in which Customer must pay a UKG invoice)
- g. Shipping Terms (i.e., FOB – Shipping Point, Prepay and Add)

1.2 The following Fees may appear on an Order Form:

- a. PEPM Fees for use of the Service, including PEPM Fees for Seasonal Licenses
- b. Implementation Services Fees (The Order Form will note if Implementation Services Fees are included in PEPM Fees.)
- c. Equipment Purchase Fees
- d. Equipment Rental Fees

1.3 UKG may also sell (or rent) Equipment to Customer, and provide related Equipment Support Services, if included on an Order Form. These offerings are subject to this Agreement and the terms and conditions set forth in Attachment A-1.

### Article 2. Billing

2.1 UKG will invoice the Fees on the Billing Frequency indicated on the Order Form. For each Order Form, the billing period of the PEPM Fees will start on the Billing Start Date and will continue for the time period indicated as the Initial Term. Customer will pay the Fees on the Payment Terms and in the currency, indicated on the Order Form. Customer will send payment to the attention of UKG at the address indicated on the applicable invoice unless the Parties have made an alternative payment arrangement (such as credit card, wire transfer, ACH payment or otherwise). Unless expressly provided in this Agreement, Customer payments are non-refundable. Unless Customer has provided UKG with valid evidence of tax-exemption, Customer is responsible for all applicable Taxes related to the Service and other items set forth on the Order Form. Each Party is responsible to pay all costs and fees attributable to such Party pursuant to the Shipping Terms indicated on the Order Form.

2.2 At the expiration of the Initial Term, and at the expiration of each Renewal Term, the Service will automatically renew for a Renewal Term. For each Renewal Term, UKG may increase the PEPM Fees by no more than four percent (4%) over the previous year's PEPM Fees for the same Applications and the same licensed quantity. UKG will reflect these increased PEPM Fees in the applicable invoice for each Renewal Term. For renewals based on the Annual in Advance Billing Frequency, UKG will provide

Customer with the renewal invoice prior to commencement of the Renewal Term and payment will be made by Customer in accordance with the payment terms agreed upon with Customer for the Initial Term.

2.3 UKG will provide the Service to Customer during the entire Initial Term and each Renewal Term. Customer will pay for the Service for the entire Initial Term and each Renewal Term.

## Article 3. Additional Services

### Section 3.1 Implementation and Professional Services

3.1.1 Implementation Services are described in a SOW that the Parties will sign or reference on a signed Order Form. These SOWs are subject to this Agreement. Implementation Services are invoiced monthly as delivered, except if otherwise indicated on an Order Form. Each Party will perform their respective obligations as outlined in a signed SOW.

3.1.2 While Customer may configure the Applications itself, as part of the Implementation Services as described in an SOW, UKG may also configure the Applications. UKG will configure the Applications based on Customer's instructions and direction. Customer is solely responsible for ensuring that the Configurations comply with Applicable Law.

3.1.3 UKG may also provide Professional Services to Customer that do not require an SOW but which will be as set forth on an Order Form.

3.1.4 UKG may also provide ala carte educational consulting services as Implementation Services or Professional Services as described in an SOW or Order Form.

3.1.5 The UKG policies set forth in Attachment A-2 shall apply to all Implementation Services and Professional Services provided by UKG. In the event of a conflict between the Professional Services Policies and this Agreement, the terms of this Agreement shall prevail.

### Section 3.2 Educational Services

3.2.1 As part of the PEPM Fees UKG will provide its live, hands-on virtual training facilitated by a knowledgeable instructor and delivered remotely via a published schedule. Training is intended for the following audiences:

- a. Core Team training to help key functional and technical users make informed solution design and configuration decisions, and to provide fundamental product knowledge.
- b. Application & System Administrator to prepare functional and technical super users to perform their most common tasks in the solution.

3.2.2 As part of the PEPM Fees UKG shall also provide self-paced product training.

3.2.3 UKG also offers fee-based consulting services that are not included under the terms of the Educational Services referenced above.

### Section 3.3 Support Services

3.3.1 Support Services for the Services will be provided and include (i) customer phone, email and online support 24 hours a day/7 days a week and (ii) periodic enhancements and modifications to the Applications, including bug fixes to correct verifiable and reproducible errors reported to UKG.

## Article 4. Service Level Agreement

UKG offers the Service Level Agreement and associated SLA Credits as described in Attachment A-3. The SLA Credits are Customer's sole and exclusive remedy in the event of any Outage. UKG remains obligated to provide the Service as otherwise described in this Agreement.

## Article 5. Data, Confidentiality, Security and Privacy

### Section 5.1 Data

5.1.1 Customer owns Customer Data. Customer is solely responsible for Customer Data, including ensuring that Customer Data complies with the Acceptable Use Policy and Applicable Law. Customer is solely responsible for any Claims that may arise out of or relating to Customer Data.

5.1.2 "**Aggregated Data**" is any statistical data that is derived from the operation of the Service, including without limitation, for analysis of the Service, Configurations or Customer Data, and is created by UKG in response to specified queries for a set point in time; including without limitation aggregation, metrics, trend data, correlations, benchmarking, determining best practices, the number and types of transactions, configurations, records, reports processed in the Service, and the performance results for the Service. UKG owns the Aggregated Data. Nothing in this Agreement will prohibit UKG from utilizing the Aggregated Data for any purposes, provided that UKG's use of Aggregated Data will anonymize Customer Data, will not reveal any Customer Confidential Information, and will not reveal any Personally Identifiable Information.

### Section 5.2 Confidentiality

Each Party will treat the Confidential Information of the other Party with a reasonable standard of care commensurate with the sensitivity of such Confidential Information and as further described in this Agreement. Each Party will only use the Confidential Information of the other Party for the purposes of fulfilling its obligations under this Agreement and as reasonably necessary to provide the Service. UKG agrees that it will not use any such Confidential Information for marketing or other commercial purposes. Confidential Information may be shared with and disclosed to (i) any subsidiary or affiliate of each of the Parties, or (ii) any court or governmental agency of competent jurisdiction, as required by a legal process, including in connection with any proceeding to establish a Party's rights or obligations under this Agreement (provided however that, when permitted by Applicable Law, a Party will give the other reasonable prior written notice so that the discloser has an opportunity to contest any disclosure required by a legal process). Either Party may seek injunctive relief to preserve its rights under this section without the requirement to post a bond.

### Section 5.3 Security and Privacy

5.3.1 UKG will maintain the Controls throughout the Term.

5.3.2 Each Party will comply with all Applicable Laws, including, without limitation, Data Protection Laws.



5.3.3 UKG employees will access Customer Data from the locations from which such employees work. Customer consents to UKG's handling, collection, use, transfer, and processing of Customer Data to provide the Service. As may be required by Applicable Law, Customer will ensure that Customer Data may be provided to UKG for the purposes of providing the Service. Customer has obtained all necessary consents from individuals to enable UKG to use the Customer Data to provide the Service. As may be contemplated by the applicable Data Protection Laws, Customer will remain the "controller" of Customer Data and UKG will be considered a "processor" of Customer Data.

5.3.4 UKG will notify Customer in accordance with Applicable Law upon becoming aware of an unauthorized access of Customer Data. To the extent reasonably possible, such a notification will include, at a minimum (i) a description of the breach, (ii) the information that may have been obtained as a result of the breach, and (iii) the corrective action UKG is taking in response to the breach.

5.3.5 Consent to Use Sub-processors. Customer agrees that UKG may use sub-processors to fulfill its contractual obligations under the Agreement. The list of sub-processors that are currently engaged by UKG to carry out processing activities on Customer Data on behalf of Customer can be found at: [www.ukg.com/ukg-dimensions/agreement/subprocessors](http://www.ukg.com/ukg-dimensions/agreement/subprocessors)

5.3.6 Customer hereby authorizes the engagement as sub-processors of all entities set forth in such list. Customer further generally authorizes the engagement as sub-processors of any other third parties engaged by UKG for such purposes. The foregoing authorizations will constitute Customer's prior written consent to the subcontracting by UKG of the processing of Customer Data if such consent is required under Applicable Laws.

5.3.7 At least 30 days before any new sub-processor will carry out processing activities on Customer Data on behalf of Customer, UKG will update the applicable website and provide Customer with a mechanism to obtain notice of that update. Customer may object to any such new sub-processor by terminating the Agreement upon written notice to UKG, such written notice to be provided within 60 days of being informed of the engagement of the sub-processor. This termination right is Customer's sole and exclusive remedy if Customer objects to any new sub-processor.

5.3.8 Sub-processor Obligations. When engaging any sub-processor:

- a. UKG will enter into a written agreement with the sub-processor;
- b. UKG will endeavor to ensure that the sub-processor provides sufficient guarantees to implement appropriate technical and organizational measures to meet the requirements of applicable Data Protection Laws; and,
- c. UKG will remain responsible for the performance of the sub-processor's data protection obligations pursuant to such written agreement and the requirements of applicable Data Protection Laws.

## Article 6. Warranty

UKG warrants that the Service will be provided in a professional and workmanlike manner. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, UKG DISCLAIMS ALL OTHER WARRANTIES RELATED TO THE SERVICE, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND

FITNESS FOR A PARTICULAR PURPOSE. If Customer informs UKG in writing that there is a material deficiency in the Service which is making this warranty untrue, UKG will use its reasonable commercial efforts to correct the non-conforming Service at no additional charge, and if UKG is unable to do so within a reasonable period of time, Customer may terminate the then remaining Term of the Agreement, which will be Customer's sole and exclusive remedy. Customer agrees to provide UKG with reasonable information and assistance to enable UKG to reproduce or verify the non-conforming aspect of the Service.

## Article 7. License

### Section 7.1 Technology License

7.1.1 As part of the Service, UKG will provide Customer access to and use of the Technology, including the Applications. UKG hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-assignable right to use the Service, including the Technology, during the Term and for internal business purposes only. Customer acknowledges and agrees that the right to use the Service, including Seasonal Licenses when included on the Order Form, is limited based upon the number of Authorized Users, and Customer's payment of the corresponding PEPM Fees. Customer agrees to use the Applications only for the number of employees stated on the total of all Order Forms for the applicable Applications. Customer agrees not to use any other Application nor increase the number of employees using an Application unless Customer enters into an additional Order Form that will permit the Customer to have additional Authorized Users.

7.1.2 UKG owns all title or possesses all intellectual property rights in and to the Technology used in delivering the Service. Customer has a right to use this Technology and to receive the Service subject to this Agreement. No other use of the Technology is permitted. Customer is specifically prohibited from reverse engineering, disassembling or decompiling the Technology, or otherwise attempting to derive the source code of the Technology. Customer cannot contact third party licensors or suppliers for direct support of the Technology. No license, right, or interest in any UKG trademark, trade name, or service mark, or those of any third party supplying Technology as part of the Service, is granted hereunder.

7.1.3 Customer shall be responsible for securing, paying for, and maintaining connectivity to the Services, including any and all related hardware, software, third party services and related equipment and components for such connectivity.

## Article 8. Scope and Authority

8.1 Participating Entities may order the Service and other related offerings from UKG by signing an Order Form contemporaneously with this Agreement, or in the future by signing an Order Form specifically referencing this Agreement. Only the Parties entering into a particular Order Form will be responsible under this Agreement for the items on that Order Form.

8.2 The person signing this Agreement on behalf of UKG and on behalf of Customer represent that they are lawfully able to enter into contracts and are authorized to sign this Agreement and bind the entity on whose behalf they are entering into this Agreement. By signing an Order Form, each person signing such Order Form represents that they are lawfully able to enter into contracts and are authorized to sign the Order Form and bind the Participating Entity on whose behalf they are signing the Order Form.

8.3 Authorized Users may access the Service on Customer's behalf, and Customer will be responsible for all actions taken by its Authorized Users. Customer will make sure that Authorized Users comply with Customer's obligations under this Agreement. Unless UKG breaches its obligations under this Agreement, UKG is not responsible for unauthorized access to Customer's account, nor activities undertaken with Customer's login credentials, nor by Customer's Authorized Users. Customer should contact UKG immediately if Customer believes an unauthorized person is using Customer's account or that Customer's account information has been compromised.

8.4 Use of the Service includes the ability to enter into agreements and/or to make transactions electronically. This feature of the Service is referred to as the "Marketplace". The use of the Marketplace can be configured, and Customer may disable use of the Marketplace by some or all of its Authorized Users. CUSTOMER ACKNOWLEDGES THAT WHEN AN AUTHORIZED USER INDICATES ACCEPTANCE OF AN AGREEMENT AND/OR TRANSACTION ELECTRONICALLY WITHIN THE MARKETPLACE, THAT ACCEPTANCE WILL CONSTITUTE CUSTOMER'S LEGAL AGREEMENT AND INTENT TO BE BOUND BY AND TO PAY FOR SUCH AGREEMENTS AND TRANSACTIONS. THIS ACKNOWLEDGEMENT THAT CUSTOMER INTENDS TO BE BOUND BY SUCH ELECTRONIC ACCEPTANCE APPLIES TO ALL AGREEMENTS AND TRANSACTIONS CUSTOMER ENTERS INTO THROUGH THE SERVICE, SUCH AS ORDERS, CONTRACTS, STATEMENTS OF WORK, AND NOTICES OF CANCELLATION.

## Article 9. Suspension

9.1 UKG may suspend the Service if any amount that Customer owes UKG is more than thirty (30) days overdue. UKG will provide Customer with at least seven (7) days prior written notice that the Customer's account is overdue before UKG suspends the Service. Upon payment in full of all overdue amounts, UKG will immediately restore the Service.

9.2 Customer is responsible for complying with the AUP. UKG and its third party cloud service provider reserve the right to review Customer's use of the Service and Customer Data for AUP compliance and enforcement. If UKG discovers an AUP violation, and UKG reasonably determines that UKG must take immediate action to prevent further harm, UKG may suspend Customer's use of the Service immediately without notice. UKG will contact Customer when UKG suspends the Service to discuss how the violation may be remedied, so that the Service may be restored as soon as possible. If UKG does not reasonably believe it needs to take immediate action, UKG will notify Customer of the AUP violation. Even if UKG doesn't notify Customer or suspend the Service, Customer remains responsible for any such AUP violation. UKG will restore the Service once the AUP violation is cured or as both Parties may agree.

## Article 10. Termination

### Section 10.1. Types of Termination

10.1.1 Non-renewal. Either Party may terminate the Service upon at least sixty (60) days prior written notice to be effective at the expiration of the then current Term. Customer may terminate Seasonal Licenses upon at least sixty (60) days prior written notice to be effective at the expiration of the then current Term.

10.1.2 For Cause. Either Party may terminate the Service and this Agreement if the other Party fails to perform any material obligation under this Agreement, and such Party is not able to cure the non-performance within thirty (30) days of the date such Party is notified by the other Party of such default.

10.1.3 For Bankruptcy. If either Party: (i) becomes insolvent, (ii) makes a general assignment for the benefit of our creditors, (iii) is adjudicated as bankrupt or insolvent, or (iv) has a proceeding commenced against it under applicable bankruptcy laws, the other Party may ask for a written assurance of future performance of a Party's obligations under this Agreement. If an assurance that provides reasonable evidence of future performance is not provided within ten (10) business days of a written request, the requesting Party may immediately terminate this Agreement upon written notice.

## Section 10.2 Effects of Termination

If the Agreement is terminated for any reason:

- a. All Fees will be paid by Customer for amounts owed through the effective date of termination.
- b. Any Fees paid by Customer for the Service not rendered prior to the effective date of termination will be credited against Customer's account, with any remaining amounts refunded to Customer within thirty (30) days of the effective date of termination.
- c. Customer's right to use the Service will end as of the effective date of termination. Notwithstanding such termination, Customer will have thirty (30) days after the effective date of termination to access the Service for purposes of retrieving Customer Data through tools provided by UKG that will enable Customer to so extract Customer Data. If Customer requires a longer period of access to the Service after termination to retrieve Customer Data, such access will be subject to additional Fees. Extended access and use of the Services will be subject to the terms of this Agreement.
- d. UKG will delete Customer Data after Customer's rights to access the Service and retrieve Customer Data have ended. UKG will delete Customer Data in a series of steps and in accordance with UKG's standard business practices for destruction of Customer Data and system backups. Final deletion of Customer Data will be completed when the last backup that contained Customer Data is overwritten.
- e. UKG and Customer will each return or destroy any Confidential Information of the other Party, with any retained Confidential Information remaining subject to this Agreement.
- f. Provisions in this Agreement which by their nature are intended to survive in the event of a dispute or because their obligations continue past termination of the Agreement will so survive.

## Article 11. Indemnification

11.1 UKG will defend the Customer Indemnified Parties, from and against any and all Claims alleging that the permitted uses of the Service, Technology or Applications infringe or misappropriate any legitimate copyright or patent. UKG will indemnify and hold harmless the Customer Indemnified Parties against any liabilities, obligations, costs or expenses (including, without limitation, reasonable attorneys' fees) actually awarded to a third party by a court of applicable jurisdiction as a result of such Claim, or as a result of UKG's settlement of such a Claim. In the event that a final injunction is obtained against Customer's use of the Service by reason of infringement or misappropriation of any such copyright or patent, or if in UKG's opinion, the Service is likely to become the subject of a successful claim of infringement or misappropriation, UKG (at its option and expense) will use commercially reasonable efforts to either (a) procure for Customer the right to continue using the Service as provided in the Agreement, or (b) replace or modify the Service so that the Service becomes non-infringing but remains substantively similar to the affected Service. Should neither (a) nor (b) be commercially reasonable, either Party may terminate the Agreement and the rights granted hereunder, at which time UKG will provide a refund to Customer of the PEPM Fees paid by Customer for the infringing elements of the Service covering the period of their unavailability.

11.2 UKG will have no liability to indemnify or defend Customer to the extent the alleged infringement or misappropriation is based on: (a) a modification of the Service undertaken by anyone other than UKG , or not undertaken at UKG's direction and in accordance with such direction; (b) use of the Service other than as authorized by this Agreement; or (c) use of the Service in conjunction with any equipment, service or software not provided by UKG, where the Service would not otherwise infringe, misappropriate or otherwise become the subject of the Claim.

11.3 To the extent permitted by law, Customer will defend the UKG Indemnified Parties and hold them harmless from and against any and all Claims alleging that: (a) the Configurations violate any law applicable to the rights of an Authorized User; (b) Customer's modification or combination of the Service with other services, software or equipment not furnished by UKG , infringes or misappropriates any copyright or patent, provided that such modification or combination is the cause of such infringement and was not authorized by UKG in writing; or, (c) a claim that the Customer Data or its collection or use by Customer violates the AUP or Applicable Laws. Customer will have sole control of the defense of any such action and all negotiations for its settlement or compromise. UKG will cooperate fully (at Customer's expense) in the defense, settlement or compromise of any such action. Customer will indemnify and hold harmless the UKG Indemnified Parties against any liabilities, obligations, costs or expenses (including, without limitation, reasonable attorneys' fees) actually awarded to a third party as a result of such Claims by a court of applicable jurisdiction or as a result of Customer settlement of such a Claim.

11.4 The Indemnified Party will provide written notice to the indemnifying party promptly after receiving notice of such Claim. If the defense of such Claim is materially prejudiced by a delay in providing such notice, the purported indemnifying party will be relieved from providing such indemnity to the extent of the delay's impact on the defense. The indemnifying party will have sole control of the defense of any indemnified Claim and all negotiations for its settlement or compromise, provided that such indemnifying party will not enter into any settlement which imposes any obligations or restrictions on the applicable Indemnified Parties without the prior written consent of the other Party. The Indemnified Parties will cooperate fully (at the indemnifying party's request and expense) with the indemnifying party in the defense, settlement or compromise of any such action. The indemnified party may retain its own counsel at its own expense, subject to the indemnifying party's rights above.

## Article 12. Extent and Limitations of Liability

12.1 EXCEPT FOR UKG'S INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE TOTAL AGGREGATE LIABILITY OF UKG TO CUSTOMER OR TO ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO ACTUAL AND DIRECT DAMAGES PROVEN BY CUSTOMER, SUCH DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO TWO TIMES (2X) THE TOTAL NET PAYMENTS RECEIVED BY UKG FOR THE SERVICE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE IN WHICH THE CLAIM ARISES.

12.2 **NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES.** NEITHER PARTY WILL BE LIABLE FOR THE COST OF ACQUIRING SUBSTITUTE OR REPLACEMENT SERVICES. NEITHER PARTY WILL BE LIABLE FOR ANY LOST OR IMPUTED PROFITS OR REVENUES OR LOST DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES OR SERVICES INTERRUPTION, HOWEVER CAUSED, ARISING FROM OR RELATED TO THE SERVICE OR THIS AGREEMENT. THESE LIMITATIONS APPLY FOR ANY REASON, REGARDLESS OF ANY LEGAL THEORY AND FOR WHATEVER

REASON LIABILITY IS ASSERTED. THIS IS TRUE EVEN IF UKG AND CUSTOMER HAVE TOLD EACH OTHER THAT EITHER ONE IS CONCERNED ABOUT A PARTICULAR TYPE OF LIABILITY.

## Article 13. Changes

The information found in any Exhibit (or at any URL referenced in this Agreement) may change over the Term. Any such change will be effective as of the start of the next Renewal Term after such change is announced or published by UKG.

## Article 14. Feedback

From time to time, Customer may provide Feedback. UKG has sole discretion to determine whether or not to undertake the development of any enhancements, new features or functionality contained in or with Feedback. Customer hereby grants UKG a royalty-free, fully paid up, worldwide, transferable, sublicensable, irrevocable, perpetual license to use, copy, distribute, transmit, display, perform, create derivative works of and otherwise fully exercise and commercially exploit the Feedback for any purpose in connection with UKG's business without any compensation to Customer or any other restriction or obligation, whether based on intellectual property right claim or otherwise. For the avoidance of doubt, no Feedback will be deemed to be Customer Confidential Information, and nothing in this Agreement limits UKG's right to independently use, develop, evaluate, or market products or services, whether incorporating Feedback or otherwise.

## Article 15. General

15.1 This Agreement is governed by and is to be interpreted in accordance with the laws of the state of North Dakota, without regard to any conflict of law provision if and as applicable. Each Party waives the application of the United Nations Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of the Agreement and waives and "opts out" of the Uniform Computer Information Transactions Act (UCITA), or such other similar laws as may have been adopted.

15.2 The invalidity or illegality of any provision in this Agreement will not affect the validity of any other provision. All unaffected provisions remain in full force and effect.

15.3 Customer may not assign this Agreement without UKG's prior written consent.

15.4 If there is some unforeseen event reasonably beyond the control of each of the Parties, such as acts of war, terrorism, or uprising, or acts of nature like earthquakes or floods, or civil unrest like embargoes, riots, sabotage or labor shortages, or changes in laws or regulations, or the failure of the internet or communications via common networks, or a power failure, or a delay in transportation, (collectively "Force Majeure"), each Party will be excused from performance of its obligations under this Agreement for the duration of the Force Majeure affecting such Party. The affected Party will use reasonable efforts to mitigate the impact of the Force Majeure on the other Party. UKG is still obligated to provide the disaster recovery portion of the Service if UKG's performance of those disaster recovery services is not also prevented by the Force Majeure.

15.5 When either Party needs to provide official notification under this Agreement, those notices will be in writing and considered delivered upon actual receipt to the addresses stated on the relevant Order

Form or as otherwise communicated in writing to each other. Each Party agrees that an e-signature (or a facsimile signature by the authorized representative) is evidence of acceptance of a valid and enforceable agreement.

15.6 No third party beneficiaries exist under this Agreement.

15.7 This Agreement (and any information in any referenced Exhibit or at any referenced URL or specifically incorporated by reference) along with the corresponding Order Form constitutes the entire agreement between the Parties pertaining to each Order Form. This Agreement supersedes all prior and contemporaneous representations, negotiations or communications between the Parties relating to its subject matter. Except as otherwise provided in this Agreement, this Agreement may only be amended in writing signed by each of the Parties. If Customer uses its own purchase order as an Order Form, no pre-printed terms of that purchase order shall apply to the items ordered, and any reference to a UKG quote number or order number shall be deemed to incorporate that UKG quote or order form into Customer's purchase order.

Attachment A-1: Equipment Purchase, Rental, and Support:

<https://www.ukg.com/equipment-purchase-rental-support>

Attachment A-2: Professional and Educational Services Policies:

<https://www.ukg.com/central-dimensions/agreement/ProfessionalandEducationalServicesPolicy>

Attachment A-3: Service Level Agreement:

<https://www.ukg.com/ukg-dimensions/agreement/service-level-agreement>

## Exhibit D: AtomSphere Service and Boomi Software

As part of the Service, Customer has the right to access and use the Boomi AtomSphere Service provided by Boomi, LP. ("Boomi") and a non-exclusive, non-transferable and non-sublicensable license to use the associated Boomi Software as part of the Boomi AtomSphere Service. Customer may use the Boomi AtomSphere Service and the Boomi Software only to create integrations to and from the Service. If the Agreement terminates, Customer's rights to access the Boomi AtomSphere Service and the Boomi Software also terminates.

Customer understands and agrees that the AtomSphere Service and the Boomi Software may work in conjunction with third party products and Customer agrees to be responsible for ensuring that it is properly licensed to use such third party products. Customer further understands and agrees that (i) the AtomSphere Service and the Boomi Software are protected by copyright and other intellectual property laws and treaties, (ii) Boomi, its Affiliates and/or its suppliers own the copyright, and other intellectual property rights in the AtomSphere Service and Boomi Software, (iii) the Boomi Software is licensed, and not sold, (iv) this Agreement does not grant Customer any rights to Boomi's trademarks or service marks, and (v) with respect to the AtomSphere Service and Boomi Software, Boomi reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement.

Customer may, at its discretion, store other data on the systems to which it is provided access in connection with its use of the AtomSphere Service (the "Hosted Environment"). Customer is solely responsible for collecting, inputting and updating all Customer data stored in the Hosted Environment, and for ensuring that Customer complies with the Acceptable Use Policy with respect to the AtomSphere Service and Boomi Software. Customer agrees that such data may be accessed and used by Boomi and its representatives worldwide as may be needed to support Boomi's standard business operations with respect to the AtomSphere Service and Boomi Software. Customer agrees that data consisting of Customer contact information (e.g., email addresses, names) provided as part of Maintenance AtomSphere Services may be sent to Boomi's third party service providers as part of Boomi's services improvement processes.

In connection with the use of the Hosted Environment and the AtomSphere Service, Customer may not (i) attempt to use or gain unauthorized access to Boomi's or to any third-party's networks or equipment; (ii) permit other individuals or entities to copy the Boomi Software; nor (iii) provide unauthorized access to or use of any Boomi Software or the associated access credentials. Customer shall cooperate with Boomi's reasonable investigation of Hosted Environment outages, security issues, and any suspected breach of this Section.



## Exhibit E: Definitions

**“Acceptable Use Policy”** and **“AUP”** are interchangeable terms referring to the UKG policy describing prohibited uses of the Service as further described in Exhibit C.

**“Applicable Law(s)”** means any applicable provisions of all laws, codes, legislative acts, regulations, ordinances, rules, rules of court, and orders which govern the Party’s respective business.

**“Authorized User”** means any individual or entity that directly (or through another Authorized User) accesses or uses the Service with any login credentials or passwords Customer uses to access the Service.

**“Application(s)”** means those UKG Dimensions software application programs set forth on an Order Form which are made accessible for Customer to use under the terms of this Agreement.

**“Boomi AtomSphere Service”** means the third-party service for the creation of integrations by Customer as further described in Exhibit D, which the Customer and Customer’s Authorized Users have the right to access through the Service.

**“Boomi Software”** means the third-party proprietary software associated with the Boomi AtomSphere Service as further described in Exhibit D.

**“Claim(s)”** means any and all notices, charges, claims, proceedings, actions, causes of action and suits, brought by a third party.

**“Confidential Information”** is any non-public information relating to each of Customer’s and UKG’s businesses and those of UKG’s Technology suppliers that is disclosed pursuant to this Agreement and which reasonably should have been understood by the recipient of such information to be confidential because of (i) legends or other markings, (ii) the circumstances of the disclosure, or (iii) the nature of the information itself. Information will not be considered “Confidential Information” if the information was (i) in the public domain without any breach of this Agreement; (ii) disclosed to the Receiving Party on a non-confidential basis from a source which is lawfully in possession of such Confidential Information and, to the knowledge of the Receiving Party, is not prohibited from disclosing such Confidential Information to Receiving Party; or (iii) released in writing from confidential treatment by Delivering Party; or (iv) required to be disclosed pursuant to a subpoena, order, civil investigative demand or similar process with which the Receiving Party is legally obligated to comply, and of which the Receiving Party notifies Delivering Party.

**“Configuration(s)”** means the Customer specific settings of the parameters within the Applications(s), including pay and work rules, security settings such as log-in credentials, passwords, and private keys used to access the Service.

**“Controls”** means the administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of Customer Data, designed and implemented by UKG to secure Customer Data against accidental or unlawful loss, access or disclosure consistent with the AICPA Trust Principles Criteria for security, availability, confidentiality and processing integrity (SOC 2).

**“Customer Data”** means all content Customer, or its Authorized Users, posts or otherwise inputs into the Service, including but not limited to information, data (such as payroll data, vacation time, hours worked or other data elements associated with an Authorized User), text, multimedia images (e.g. graphics, audio and video files), or compilations.

**“Customer Indemnified Party(ies)”** means Customer and Customer’s respective directors, officers, and employees.

**“Data Protection Law(s)”** means all international, federal, state, and local laws, rules, regulations, directives and published governmental or regulatory decisions that specify data privacy, data protection or data security obligations, and which, in each case, have the force of law applicable to a Party’s collection, use, processing, storage, or disclosure of Personally Identifiable Information.

**“Documentation”** means the published specifications for the applicable Applications and Equipment, such as user manuals and administrator guides.

**“Educational Services”** means the services described in Section 3.2 (Educational Services), including but not limited to (i) UKG KnowledgeMap Learning Portal; (ii) UKG KnowledgeMap Live; and (iii) ala carte educational consulting services.

**“Equipment”** means UKG equipment such as time clocks, devices, or other equipment set forth on an Order Form.

**“Equipment Support Services”** means the maintenance and support services related to UKG’s support of Equipment as further described in Attachment A-1.

**“Feedback”** means suggestions, ideas, comments, know how, techniques or other information provided to UKG for enhancements or improvements, new features or functionality or other feedback with respect to the Service.

**“Fees”** means the charges to be paid by Customer for a particular item.

**“Implementation Services”** means those professional services provided by UKG to set up the cloud environment and to setup the Configurations within the Applications, as set forth in an SOW.

**“UKG KnowledgeMap™”** means the online educational portal providing access to learning resources.

**“UKG KnowledgeMap™ Live”** means the service providing instructor led training by user role on a rotating course schedule.

**“UKG Indemnified Party(ies)”** means UKG and its third-party Technology suppliers and each of their respective directors, officers, employees, agents and independent contractors.

**“Order Form”** means an order form mutually agreed upon by UKG and Customer setting forth, among other things, the items ordered by Customer and to be provided by UKG and the Fees to be paid by Customer.

**“Participating Entity(ies)”** means those UKG or Customer entities that (i) directly or indirectly control, are controlled by, or are under common control with UKG or Customer, respectively and (ii) sign an Order

Form for the Service. “Control” (in this context) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of the entity in respect of which the determination is being made through the ownership of the majority of its voting or equity securities, contract, voting trust or otherwise.

“**Party(ies)**” means UKG or Customer, or both of them, as the context dictates.

“**PEPM**” means the per employee per month fee for a Customer’s Authorized Users access to the Service.

“**Personally Identifiable Information**” means information concerning individually identifiable employees of Customer that is protected against disclosure under Applicable Data Protection Law.

“**Professional Services**” means the professional, consulting, or training services provided by UKG pursuant to an Order Form and which are not described in a Statement of Work.

“**Seasonal Licenses**” are limited use licenses that have the following attributes: (i) valid only for the four (4) consecutive months during the annual period identified on the Order Form; (ii) valid from the first day of the month in which they commence until the end on the last day of the month in which they expire; and (iii) will be effective automatically each year during the Term, subject to termination and non-renewal as provided in the Agreement.

“**Service**” means the UKG supply of the commercially available version of the UKG Dimensions SaaS Applications in UKG’s hosted environment and the services described in the Agreement related thereto.

“**Statement of Work**” and “**SOW**” are interchangeable terms referring to a written description of the Implementation Services.

“**Taxes**” means all applicable taxes relating to the goods and services provided by UKG hereunder, including all duties and country, federal, state, provincial or local taxes (including GST or VAT if applicable) but excluding taxes on UKG’s income or business privilege.

“**Technology**” means the intellectual property of UKG within the Service, including but not limited to the Applications.

“**Term**” means the Initial Term and any Renewal Terms.



THE FARGO POLICE DEPARTMENT  
CHIEF DAVID B. ZIBOLSKI  
105 25th Street North  
Fargo, ND 58102-4002  
Main Line: 701.235.4493 | Fax: 701.297.7789  
FargoPolice.com

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September 11, 2023

Board of City Commissioners  
City Hall  
Fargo, ND 58102

RE: Acceptance of North Dakota Department of Transportation Grant Funding for Occupant Protection, Impaired Driving, Distracted Driving Enforcement, Speed Enforcement and Underage Drinking Enforcement and Education Activities (CFDA #20.616 and 20.600).

Dear Commissioners:

The North Dakota Department of Transportation is again offering to provide Fargo Police Department with grant funding for the purpose of conducting occupant protection, impaired driving, distracted driving, speed enforcement and underage drinking enforcement and education activities. The funding made available through the National Highway Traffic Safety Administration (NHTSA) is intended to reimburse the police department for overtime expenses associated with having officers work extra hours towards conducting the enforcement and education activities.

The DOT is making a total of \$59,500 in grant money available to the Police Department, \$17,500 is intended for impaired driving enforcement. The remaining grant funding is \$15,000 to be used for occupant protection enforcement, \$5,000 for underage drinking enforcement, \$12,000 for speed enforcement, and \$10,000 for distracted driving enforcement. There is no requirement for the City of Fargo to match any of the grant funding provided.

**Recommended Motion:**

*Sign the North Dakota Department of Transportation Traffic Safety Contract, accept the grant funding in the amount of \$59,500 and adjust Police Department's budget line items as follows:*

- *Occupant Protection: Account # 101-5045-411-11-01 – PD11 in the amount of \$15,000*
- *Underage Drinking Account # 101-5045-411-11-01 – PD12 in the amount of \$5,000*
- *Impaired Driving Account # 101-5045-411-11-01 – PD31 in the amount of \$17,500*
- *Distracted Driving Account # 101-5045-411-11-01 – PD37 in the amount of \$10,000*
- *Speed Enforcement Account# 101-5045-411-11-01 – PD36 in the amount of \$12,000*

Please contact me if you have any questions regarding the grant funding or the police department's budget adjustment request.

Sincerely,

David B. Zibolski  
Chief of Police

Cc: Susan Thompson, Finance Director



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THE FARGO POLICE DEPARTMENT  
CHIEF DAVID B. ZIBOLSKI  
105 25th Street North  
Fargo, ND 58102-4002  
Main Line: 701.235.4493 | Fax: 701.297.7789  
FargoPolice.com

September 14, 2023

Board of City Commissioners  
City Hall  
Fargo, ND 58102

**COPY**

RE: Fargo Police Department Request to Use Seized Asset Forfeiture Funds

Dear Commissioners,

We are seeking the City Commission's approval to go forward with a request to purchase Lexipol/Police1 Academy training software using funds from our seized assets account in 2024. The Department will use available 2023 budget funds to cover October 1, 2023 through December 31, 2023.

As described in Deputy Chief Anderson's memorandum dated August 25, 2023, the training offered was assessed by four members of the Department's Training & Development Unit, and they believe the courses would be beneficial not only to the sworn members of the Department, but also to the civilian staff. (The complete course listing is provided with this request)

The cost to implement the Police1 Academy is broken down as follows:

- October 1, 2023 through December 31, 2023
  - Sworn users \$2,548.52
  - Civilian users \$141.75
  - **Total: \$2,690.27**
  
- January 1, 2024 through December 31, 2024
  - Sworn users \$10,190.70
  - Civilian users \$567.00
  - **Total: \$10,757.70**

**Recommendation**

Allow Fargo Police Department to use seized assets totaling \$10,757.70 in 2024 for the purchase of Lexipol/Academy1 training software.

Sincerely,

Travis S. Stefonowicz  
Assistant Chief of Police

Attachment: Lexipol/Academy1 Courses



# FARGO POLICE DEPARTMENT

A SAFE AND UNIFIED COMMUNITY BUILT ON TRUST, ACCOUNTABILITY AND INCLUSION

## PROFESSIONAL STANDARDS DIVISION

### MEMORANDUM

To: Chief Zibolski

From: Deputy Chief Anderson *AM*

Date: 08.25.2023

RE: Police 1 Academy Recommendation

RECEIVED  
 FARGO POLICE DEPARTMENT  
 SEP 01 2023  
 DAVID L. ZIBOLSKI  
 CHIEF OF POLICE  
 REF: *PLC ANDERSON*

*\* APPROVED*  
*- PLEASE PREP COMMISSION REQUEST FOR A.F. FOR 10/2/23 MEETING*  
*cc: A/L ✓*  
*- P. SWIFT ✓*  
*- ALSO, NEED DEPT HOW OUR PLAN*

In May 2023, the Training and Development Unit (TDU) was tasked to review the Police 1 Academy for potential implementation within the department. Four members of the TDU (Kristan, Essler, Hannig, and Berger) were given temporary administrative privileges in order to access and review the Police 1 Academy site. Their overall assessment was positive and they believed the variety of courses available would be beneficial for the department. However, they do not recommend using any of the firearms or defensive tactics modules since those courses may not align with our policies and philosophies.

#### Police 1 Academy Overview

Lexipol/Police 1 Academy offers 398 ND POST approved courses totaling 470 hours of training. Not all of the 398 ND POST approved courses are law enforcement content. Some dispatch and corrections courses would not be applicable for our training needs. The Police 1 Academy does also offer course content for our civilian staff as well. The major areas of content for our sworn and civilian staff include, but are not limited to, the following:

- Community Policing
  - Anti-bias training
  - Civil rights
  - Cultural awareness
  - Hate Crime training
  - Implicit bias
  - Racial profiling
  - The LGBTQ community
- Active shooter
- Defensive tactics
- Emergency Response
  - Intro to ICS
  - Responding to emergencies
  - Understanding hostage incidents

RECEIVED  
 FARGO POLICE DEPARTMENT  
 AUG 28 2023  
 TRAVIS STEFONOWICZ  
 ASSISTANT CHIEF OF POLICE  
 REF: *Chief Zibolski - FYI*

*\* CONCUR*

- Emotional Disturbed Person
  - Autism for LE
  - Crisis intervention
  - Emotional and Psychological disorders
  - Interacting with the Mentally ill
  - Missing persons with Alzheimer's
  - Understanding and Responding to Excited Delerium
- Ethics
- EVOC
- Firearms
- General Health and Wellness
- General Human Resources
- General Management Skills
- General Professional Skills
- General Safety/Compliance
- Investigative Skills
- LE Technology
- Legal
- Mass casualty incidents
- Officer survival
- Patrol
- Police leadership
- Report writing
- Terrorism
- Use of Force

The Police 1 Academy offers a training course bridge to get us to the TDU's CBT plan. Similar to Launch Pad, TDU staff would assign, track, and monitor course progress through the Police 1 Academy website. The Police 1 Academy can also offer additional training to officers based on their career development needs, officer interest, mandated department training, and professional accountability recommendations for additional training. We could also ensure officers are not taking too many courses and exceeding their yearly online total of 18/20 hours per ND POST Board. Police 1 Academy reports course completions to ND POST twice per month similar to how Lexipol reports DTB completions to ND POST.

The cost to implement the Police 1 Academy is broken down into two options.

- Oct 1, 2023 through Dec 31, 2023 - Sworn users: \$2,548.52, Civilian users: \$141.75 - Totaling: **\$2,690.27**
- Jan 1, 2024 through Dec 31, 2024 - Sworn users: \$10,190.70, Civilian users: \$567 - Totaling: **\$10,757.70**

### Recommendation

Our recommendation is to proceed with purchasing the Police 1 Academy for Oct 1, 2023 through Dec 31, 2023 using available 2023 budget funds. It is our recommendation to use seized asset funds to purchase the Police 1 Academy for 2024.

Exhibit A

SELECTED SERVICES AND ASSOCIATED FEES

Agency is purchasing the following:

Receiving Contract by  
September 15th P1A  
Subscription Prorated Oct -  
December

QTY	DESCRIPTION	UNIT PRICE	DISC	DISC AMT	EXTENDED
169	PoliceOne Academy Annual Rate With OLL Services (Start: 10/1/2023 End: 12/31/2023)	USD 16.75	10%	USD 282.23	USD 2,548.52
21	PoliceOne Academy Annual Rate for Civilian Users (Start: 10/1/2023 End: 12/31/2023)	USD 7.50	10%	USD 15.75	USD 141.75
	<b>Subscription Line Items Total</b>			<b>USD 297.98</b>	<b>USD 2,690.27</b>
				<b>USD 297.98</b>	<b>USD 2,690.27</b>
	Receiving Contract by September 15th P1A Subscription Prorated Oct - December Discount:				USD 297.98
	Receiving Contract by September 15th P1A Subscription Prorated Oct - December TOTAL:				USD 2,690.27

P1A Subscription - January 2024

QTY	DESCRIPTION	UNIT PRICE	DISC	DISC AMT	EXTENDED
169	PoliceOne Academy Annual Rate With OLL Services (12 Months)	USD 67.00	10%	USD 1,132.30	USD 10,190.70
21	PoliceOne Academy Annual Rate for Civilian Users (12 Months)	USD 30.00	10%	USD 63.00	USD 567.00
	<b>Subscription Line Items Total</b>			<b>USD 1,195.30</b>	<b>USD 10,757.70</b>
				<b>USD 1,195.30</b>	<b>USD 10,757.70</b>
	P1A Subscription - January 2024 Discount:				USD 1,195.30
	P1A Subscription - January 2024 TOTAL:				USD 10,757.70

The foregoing pricing has been prorated for the benefit of Agency and Agency therefore agrees that they will waive the right to cancel this agreement until the end of the first renewal period.

Discount Notes  
Policy Client Discount





PoliceOne Academy	Autism for Law Enforcement: Definition and Prevalence	LEX22008	2
PoliceOne Academy	Autism for Law Enforcement: Promoting Safe Outcomes	LEX22007	2
PoliceOne Academy	Back Injuries	LEXI2009	1
PoliceOne Academy	Basic Firearm Safety	LEXI2010	1
PoliceOne Academy	Basic First Aid	LEXI1991	2
PoliceOne Academy	Basic Jail Security Principles	LEXI1992	1
PoliceOne Academy	Basic Telephone Skills	LEXI1993	1
PoliceOne Academy	Becoming a Leader in Law Enforcement	LEX20277	1
PoliceOne Academy	Best Practices in Dangerous Canine Encounters	LEXI1994	1
PoliceOne Academy	Bloodborne Pathogens	LEXI1997	2
PoliceOne Academy	Bloodborne Pathogens (1 hour)	LEXI1996	1
PoliceOne Academy	Bloodborne Pathogens for First Responders	LEXI1995	1
PoliceOne Academy	Body-Worn Cameras for Law Enforcement	LEXI1998	2
PoliceOne Academy	Bomb Threats in School	LEXI1999	1
PoliceOne Academy	Booking and Admissions	LEXI2000	1
PoliceOne Academy	Building Financial Strength in First Responder Families	LEXI1981	3
PoliceOne Academy	Business Continuity	LEXI1982	1
PoliceOne Academy	Business Writing Basics	LEXI1983	1
PoliceOne Academy	Campus Based Training: Clery Act	LEXI1984	1
PoliceOne Academy	Campus Policing	LEXI1985	1
PoliceOne Academy	Career Professionalism	LEXI1986	1
PoliceOne Academy	Child Abuse and Neglect	LEX20237	2
PoliceOne Academy	Children and Law Enforcement	LEXI1987	1
PoliceOne Academy	CIT for Correctional Facilities	LEXI1988	1
PoliceOne Academy	Civil Rights	LEXI1989	4
PoliceOne Academy	Classification of Inmates	LEXI1990	1
PoliceOne Academy	Cognitive Behavioral Training in Juvenile Corrections	LEXI1973	1
PoliceOne Academy	Commercial Motor Vehicle Safety	LEXI1912	1



## North Dakota - PoliceOne Academy Course Guide

Provider	Course Title	Course Number	Hours
PoliceOne Academy	988 – Suicide & Crisis Lifeline Operational Readiness	LEX23013	2
PoliceOne Academy	Absorbents and Spills	LEXI1921	1
PoliceOne Academy	<b>Achieve Peak Performance in Emotional Survival**</b>	LEX22014	1.5 (will receive 1 hour of credit)
PoliceOne Academy	Active Shooter	LEX23020	1
PoliceOne Academy	Active Shooter 1	LEXI1925	1
PoliceOne Academy	Active Shooter 2	LEXI1926	1
PoliceOne Academy	Active Shooter 3	LEXI1927	1
PoliceOne Academy	Active Shooter 4	LEXI1928	1
PoliceOne Academy	Active Shooter Preparation and Response for Schools	LEXI1923	1
PoliceOne Academy	Active Shooter: Phases & Prevention	LEXI1922	1
PoliceOne Academy	Active Shooter: Recognition and Basic Response	LEXI1924	1
PoliceOne Academy	ADA Compliance in Business	LEXI1929	1
PoliceOne Academy	Addressing Homeless Populations	LEX21005	2
PoliceOne Academy	Adult Learning Concepts for Field Trainers	LEXI1930	1
PoliceOne Academy	Advanced Defensive Driving Techniques	LEXI2001	1
PoliceOne Academy	Advanced Policing: Emotional Intelligence	LEX22012	1
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# ***ONLINE COURSE CATALOG***

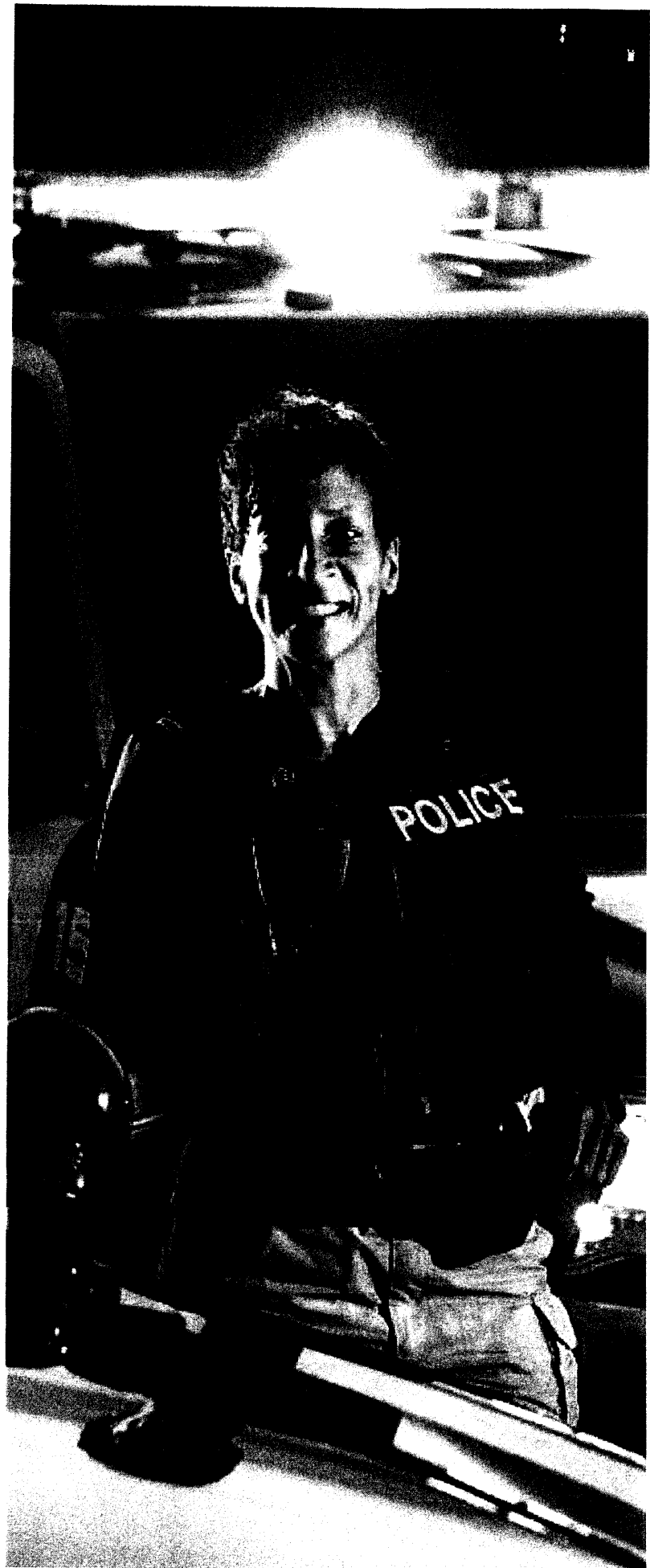
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  - Terrorism
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## FOCAL POINT COURSES

Focal Point is a unique training series included as part of the PoliceOne Academy subscription. Focal Point courses address contemporary training challenges through a combination of top-tier content developed by law enforcement and legal experts and technology that keeps officers focused and engaged in the learning. Courses are POST-approved in 18 states.

- Increase learning retention with an immersive, interactive format
- Address topics and tactics that carry high risk and liability
- Obtain 8 hours of POST-approved training credits each year

### COURSES AVAILABLE NOW

- 2H Courtroom Testimony in Civil Litigation
- 2H Addressing Homeless Populations
- 2H Employee Free Speech
- 2H Investigating Officer-Involved Shootings

### UPCOMING COURSES

- Duty to Intercede
- De-Escalation
- Managing Officer Fatigue
- Electronic Tools for Criminal Investigations

## ALSO FEATURING MICROLEARNING OPPORTUNITIES

Leverage technology to make roll call and other short windows of training time more effective for your department. PoliceOne Academy includes more than 1,100 short videos perfect for microlearning. And with our full-service learning management system, you can make daily briefings count by tracking training completed as a group with just a few clicks and combining videos into training blocks to create courses approved for continuing education credits.

- Use your 5-15 minute windows available during roll call to communicate key concepts
- Break up learning into shorter “bursts” to drive officer engagement and retention
- Smaller segments are ideal for adult learners who may have short attention spans

### MICROLEARNING TOPICS INCLUDE:

- Reality Training
- Police Leadership
- Today’s Tips
- Investigative Skills
- Defensive Tactics
- Active Shooter
- Officer Survival

## ACTIVE SHOOTER

- 1H Active Shooter 1
- 1H Active Shooter 2
- 1H Active Shooter 3
- 1H Active Shooter 4
- 1H Active Shooter: Phases and Prevention
- 1H Active Shooter: Recognition and Basic Response
- 1H Ambush Awareness and Preparation
- 2H Law Enforcement Response to Active Shooter Incidents

## CAMPUS POLICING

- 2H Campus Based Training: Clery Act
- 1H Campus Policing

## COMMUNITY POLICING

- 1H Anti-Bias Training for Law Enforcement (1 hour)
- 2H Anti-Bias Training for Law Enforcement (2 hours)
- 4H Civil Rights
- 1H Community Policing
- 1H Community Policing Strategies
- 2H Constitutional and Community Policing
- 1H Cultural Awareness 1
- 1H Cultural Awareness 2
- 1H Cultural Awareness and Diversity Overview
- 1H Generational Differences for Law Enforcement
- 1H Hate Crimes Training for Law Enforcement
- 1H Implicit Bias
- 1H MedicAlert: Community Policing Support
- 4H Problem Oriented Policing
- 3H Racial Profiling and Data Collection for Missouri
- 1H Racial Profiling for Missouri
- 1H Racial Profiling Part 1
- 2H Racial Profiling Part 2: Data Collection
- 1H The LGBTQ Community

## DEFENSIVE TACTICS FOR POLICE

- 2H Courthouse Security
- 1H Crowd Control 1
- 1H Crowd Control 2
- 1H Crowd Control 3
- 1H Dealing with Armed Suspects
- 2H Decreasing Intensity in LE Interactions (Texas-only course)
- 2H De-Escalation and Minimizing Use of Force
- 2H De-Escalation and Reasonable Use of Force

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- 1H Subject Control 2
- 1H Subject Control 3
- 1H Subject Control 4
- 1H Tactical Operations 1
- 1H Tactical Operations 2
- 1H Using Oleoresin Capsicum
- 1H Using the Straight Armbar to Gain Subject Compliance

## DISPATCH COMMUNICATIONS FOR POLICE

- 1H Dispatch Communications 1
- 2H Dispatcher Specialized Call Types (Active Shooter)
- 1H Dispatcher Specialized Call Types (Bomb Threats)
- 1H Dispatcher Specialized Call Types (Chemical Suicides)
- 2H Dispatcher Specialized Call Types (Missing Persons/Sexual Exploitation)
- 1H Dispatcher Specialized Call Types (Sovereign Citizens, Domestic Terrorism, and Lone Wolf Attacks)
- 1H Dispatcher: Ethics in Public Service
- 1H Dispatcher: Liability and Legal Issues
- 1H Dispatcher: Stress Management
- 1H Dispatcher: TTY

- 2H Domestic Violence Intervention for Dispatchers
- 1H Handling Missing Children Calls for Dispatchers

### EMERGENCY RESPONSE FOR POLICE

- 1H Environmental Crimes 1
- 2H Hostage Negotiations
- 1H Introduction to Incident Command System for Police Officers
- 1H Responding to Emergencies 1
- 1H Responding to Emergencies 2
- 1H Understanding Hostage Incidents

### EMOTIONALLY DISTURBED PERSONS (EDP)

- 2H Autism for Law Enforcement: Definition and Prevalence
- 2H Autism for Law Enforcement: Promoting Safe Outcomes
- 2H Crisis Intervention in Dealing with Mentally Ill Subjects
- 1H Emotional & Psychological Disorders 1
- 1H Emotional & Psychological Disorders 2
- 1H Indiana State Suicide Prevention Plan
- 1H Interacting with the Mentally Ill as a First Responder
- 1H Missing Persons with Alzheimer's Disease
- 10M Responding to Mental Illness with Compassion
- 2H Responding to People with Mental Illness
- 1H Understanding and Responding to Excited Delirium Calls

### ETHICS

- 2H Ethical Behavior for Corrections Officers
- 1H Ethics in Law Enforcement

### EVOC-LAW ENFORCEMENT

- 1H Defensive Driving Principles
- 1H Driving Techniques
- 1H Professional Police Driving
- 1H Pursuit Driving Basics
- 1H Vehicle Safety

### FIREARMS TRAINING

- 1H Basic Firearm Safety
- 1H Equipment Training 1
- 1H Firearms 1
- 1H Firearms 2
- 1H Firearms 3

- 1H Firearms 4
- 1H Firearms 5
- 1H Firearms 6
- 1H Firearms Tactics
- 20M Investigative Leads for MCT

### GENERAL HEALTH AND WELLNESS

- 1H Dealing with Stress
- 1H Diabetic Emergencies
- 1H High Blood Pressure – Reducing Your Risks
- 1H Managing Your Healthcare
- 1H Sleep and Your Health
- 1H Smoking Cessation
- 1H Tourette Syndrome and Other Neurological Disorders
- 1H Understanding Anxiety Disorders, OCD, and PTSD
- 1H Understanding Autism Spectrum Disorder
- 1H Understanding Behavior, Burnout, and Depression
- 1H Understanding Carpal Tunnel Syndrome
- 1H Understanding Depression and Bipolar Disorder
- 1H Understanding Eating Disorders
- 1H Understanding Prediabetes
- 1H Walking Your Way to Fitness
- 1H Yoga for First Responders

### GENERAL HUMAN RESOURCES

- 1H Acoso Sexual en el Lugar de Empleo
- 2H Acoso Sexual para Gerentes
- 1H ADA Compliance in Business
- 1H Anti-Harassment in the Workplace
- 1H Cybersecurity Awareness Training
- 1H Dealing with Angry Employees
- 1H Dealing with the Media
- 1H Diversity in the Workplace
- 1H Drug and Alcohol Awareness
- 1H Family and Medical Leave Act (FMLA)
- 1H FMLA Training for Supervisors
- 1H Form I-9 and Employment Eligibility Verification
- 1H HR Recruitment and Selection Process
- 1H Managing a Remote Workforce
- 1H Personnel Record Retention (Federal Standards)
- 2H Reasonable Suspicion Training for Supervisors
- 1H Recognizing Child Abuse
- 2H Recognizing Domestic Violence
- 2H Risks of Social Media in the Workplace
- 2H Sexual Harassment Awareness AB 1825 (California)
- 2H Sexual Harassment for Managers

- 1H Sexual Harassment in the Workplace
- 1H Sexual Harassment in the Workplace AB 1825 (California)
- 1H Violence in the Workplace
- 1H Workers' Compensation: Sprain and Strain Injury Prevention
- 1H Workplace Bullying

**GENERAL MANAGEMENT SKILLS**

- 1H Conflict and Dispute Resolution
- 1H Parliamentary Procedures
- 1H Press Conference and Briefing Basics
- 1H Running an Effective Board Meeting
- 1H Training for Small Communities

**GENERAL PROFESSIONAL SKILLS**

- 1H An Introduction to Requests for Proposal
- 1H Basic Math Concepts
- 1H Basic Telephone Skills
- 1H Business Writing Basics
- 1H Career Professionalism
- 1H Developing Effective Communication Skills
- 1H Developing Leadership
- 1H Effective Presentation Basics
- 1H Emotional Intelligence for Leaders
- 1H Employee Recognition
- 1H Employee Retention
- 1H Enhancing Work Relationships
- 1H Finance 101 for Non-Financial Managers
- 1H Generational Differences
- 1H Goal Setting Skills
- 1H Interviewing Skills for Managers: Conducting an Interview
- 1H Leadership v. Management
- 1H Managing Risk in an Aging Workforce
- 1H Meeting Management
- 1H Navigating the Work Environment
- 1H Performance Management
- 1H Providing Effective Onboarding
- 1H Retaining Talent
- 1H Science of Employee Engagement
- 1H Shaping an Ethical Workplace Culture
- 1H Skills for the New Trainer
- 1H Supervisor Skills
- 1H The Aging Workforce: Leveraging the Talents of Mature Employees
- 1H Time Management Skills
- 1H Transition from Peer to Supervisor
- 1H Workplace Stress Resiliency

**GENERAL SAFETY/COMPLIANCE**

- 1H Absorbents and Spills
- 1H Advanced Defensive Driving Techniques
- 1H Airborne and Bloodborne Pathogens
- 1H Back Injuries
- 2H Basic First Aid
- 1H Bloodborne Pathogens for Public Entities
- 1H Computer Security Basics
- 1H Confined Spaces 101
- 1H Confined Spaces 102
- 1H Crisis Management
- 1H Dealing with Cold Stress
- 1H Dealing with Heat Stress
- 1H Defensive Driving Basics
- 1H Electrical and Fire Safety
- 1H Emergency Preparation and Egress
- 1H Equipment Safety
- 1H Fall Protection
- 30M FEMA Benefit-Cost Analysis Fundamentals
- 1H FEMA Emergency Support Function #6: Mass Care, Emergency Assistance, Housing, and Human Services
- 4H FEMA Fundamentals of Emergency Management
- 2H FEMA Fundamentals of Risk Management
- 2H FEMA Integrated Public Alert and Warning System (IPAWS) for Alerting Authorities
- 2H FEMA Introduction to Homeland Security Planning
- 2H FEMA Social Media in Emergency Management
- 1H FEMA Surveillance Awareness: What You Can Do?
- 2H FEMA The Role of Voluntary Organizations in Emergency Management
- 1H FEMA Wildfire Mitigation Basics
- 1H Global SDS and the Hazardous Communication Standards
- 2H Highway Incident Safety Guidelines for Emergency Responders
- 1H HIPAA: Protected Health Information for Public Entities
- 2H ICS-100c: Introduction to the Incident Command System
- 1H Ladder Safety
- 1H Lockout/Tagout 101
- 1H Lockout/Tagout 102
- 1H Means of Egress
- 1H Personal Protective Equipment
- 1H Preventing Accidents in the Workplace
- 1H Preventing Slips, Trips, and Falls

- 1H Public Employee Safety in the Community
- 30M Respirators and Air Quality
- 1H Safeguarding Your Community from Terrorism
- 1H Workplace Ergonomics
- 1H Absorbents and Spills

## HEALTH AND WELLNESS FOR POLICE

- 2H Bloodborne Pathogens
- 1H Bloodborne Pathogens (1 hour)
- 1H Children and Law Enforcement
- 1H COVID-19 for Law Enforcement
- 1H Eating Right for Health and Fitness
- 1H Fitness & Nutrition 1
- 1H Fitness & Nutrition 2
- 1H Fitness & Nutrition 3
- 1H Fitness & Nutrition 4
- 1H Fitness & Nutrition 5
- 1H Human Fatigue in 24/7 Operations
- 1H Law Enforcement and the Family Dynamic
- 1H Law Enforcement Stress Indicators
- 1H Officer Well-Being
- 2H Officer Wellness & Mental Health Awareness
- 1H Opioid Crisis: Protecting Our First Responders
- 1H Subject Precipitated Homicide
- 1H Suicide by Cop
- 1H Suicide Prevention for Law Enforcement

## IADLEST NATIONAL CERTIFICATION PROGRAM™

- 2H Addressing Homeless Populations
- 1H Ambush Awareness and Preparation
- 1H Anti-Bias Training for Law Enforcement
- 1H Anti-Harassment in the Workplace
- 2H Applications of the Fourth Amendment in Search and Seizure
- 3H Building Financial Strength in First Responder Families
- 2H Campus Based Training: Clery Act
- 2H Child Abuse and Neglect
- 2H Courtroom Testimony in Civil Matters (Litigation)
- 1H COVID-19 for Law Enforcement
- 1H Cultural Awareness and Diversity Overview
- 2H De-escalation and Reasonable Use of Force
- 1H Developing Leadership
- 1H Dispatcher: Stress Management
- 2H Driving While Distracted
- 1H Emotional Intelligence for Leaders
- 2H Employee Free Speech
- 1H Employee Recognition
- 1H Ethics in Law Enforcement

- 1H Generational Differences for Law Enforcement
- 1H Hate Crimes Training for Law Enforcement
- 2H Human Trafficking Part 1
- 1H Implicit Bias
- 1H Interacting with the Mentally Ill as a First Responder
- 2H Investigating Officer-Involved Shootings
- 1H Law Enforcement and the Family Dynamic
- 1H Litigation Procedures
- 2H Officer Wellness & Mental Health Awareness
- 1H Opioid Crisis: Protecting Our First Responders
- 1H Presenting Effective Testimony in a Courtroom
- 1H Racial Profiling Part 1
- 2H Recognizing and Responding to Domestic Violence
- 1H School Resource Officers
- 2H Sexual Harassment for Managers
- 1H Sexual Harassment in the Workplace
- 1H Shaping an Ethical Workplace Culture
- 1H Suspects in Medical Distress
- 1H The LGBTQ Community
- 1H Understanding and Responding to Excited Delirium Calls

## INVESTIGATIVE SKILLS

- 2H Arrest, Search, & Seizure (Fourth Amendment)
- 2H Child Abuse and Neglect
- 1H Child Safety Check Alert List - 4068 TCOLE
- 1H Contraband Control
- 2H Current Drug Trends
- 1H Cyberstalking
- 1H Evidence Collection, Control, and Storage
- 8H Eyewitness Evidence and Identification – 3286 TCOLE
- 4H Financial Crimes
- 1H Handling Robbery Calls
- 2H Human Trafficking, Part I
- 2H Human Trafficking, Part II
- 3H Identity Theft Crimes
- 4H Intermediate Human Trafficking - 3270 TCOLE
- 1H Interviews and Interrogations
- 2H Investigating Child Abuse and Neglect
- 1H Investigative Skills 1
- 1H Investigative Skills 2
- 4H Law Enforcement Intelligence
- 2H Lethality Assessment Program (LAP)
- 4H Missing and Exploited Children
- 1H Narcotics Enforcement 1
- 1H Narcotics Enforcement 2

- 2H Recognizing and Responding to Domestic Violence
- 5H Sudden Unexplained Infant Death (SUID)
- 1H Suicide Investigation for Law Enforcement Investigators
- 2H Using Social Media for Investigations
- 2H Arrest, Search, & Seizure (Fourth Amendment)
- 15M Virtual Tour of the National Center for Missing & Exploited Children

## JAILS AND CORRECTIONS

- 1H Corrections 1
- 1H Corrections 2
- 1H Corrections 3
- 1H Corrections 4
- 2H Jail Chemical Addiction Programs (JCAPs)
- 1H Mental Health in Jails
- 1H Temporary Holding Facilities (National)

## K-9 BEHAVIORS HANDLING AND TRAINING

- 1H Best Practices in Dangerous Canine Encounters
- 1H K-9 Operations
- 2H Law Enforcement Encounters with Canines

## LAW ENFORCEMENT TECHNOLOGY

- 2H Body-Worn Cameras for Law Enforcement
- 2H Implementing a Body-Worn Camera Program
- 1H Internet/Technology in Law Enforcement 1
- 1H Protection from Ransomware and Phishing Attacks
- 1H Public Recording of Police Activities
- 1H Social Media and Law Enforcement

## LEGAL

- 2H Applications of the Fourth Amendment in Search and Seizure
- 1H Constitutional Law
- 1H Corrections Liability
- 8H Court Security Officer - 10999 TCOLE
- 1H Courtroom Preparation, Conduct, and Presentation
- 30M Electronic Search Warrant Procedure
- 1H Ethics For Inspection Professionals (CACEO)
- 1H First Amendment Rights of Public Sector Employees
- 1H HIPAA For First Responders
- 1H Legal 1

- 1H Legal 2
- 1H Legal 3
- 1H Litigation Procedures
- 2H Officer Liability
- 1H PREA – Prison Rape Elimination Act
- 1H Presenting Effective Testimony in a Courtroom
- 2H Procedural Justice
- 1H Search and Seizure SCOTUS Update
- 4H State and Federal Law Update 3184
- 3H State and Federal Law Update 3185
- 3H State and Federal Law Update 3186
- 1H Warrantless DWI Blood Draws

## MAINE MANDATORY COURSES

- 2H Implicit Human Bias (Maine)
- 2H Investigation of Electronic Evidence (Maine)

## MASS CASUALTY INCIDENTS FOR POLICE

- 1H Crisis Intervention Training Overview
- 3.5H FEMA IS-0700.b An Introduction to the National Incident Management System
- 3H IS-800.D: National Response Framework, An Introduction
- 1H Mass Casualty, Natural Disaster Standards

## NEW MEXICO BIENNIUM COURSES

- 2H NM Biennium: Child Abuse or Neglect Investigations
- 2H NM Biennium: Domestic Violence Training
- 1H NM Biennium: Ensuring Child Safety Upon Parental Arrest
- 2H NM Biennium: Hate Crimes
- 2H NM Biennium: Interaction with Persons with Mental Impairment
- 2H NM Biennium: Legal Update
- 1H NM Biennium: Missing Persons/AMBER Alert
- 3H NM Biennium: Off-Highway Vehicle (OHV) Enforcement Training
- 4H NM Biennium: Safe Pursuit Act

## OFFICER SURVIVAL

- 1H Controlling the Situation
- 1H Expect the Unexpected 1
- 1H Off-Duty Safety & Survival 1
- 1H Off-Duty, Safe, and Ready
- 1H Officer Safety
- 2H Officer Safety and Procedure in Domestic Violence Response

- 1H Officer Survival 1
- 1H Officer Survival 2
- 1H Officer Survival 3
- 1H Officer Survival 4
- 1H Officer Survival 5
- 1H Overcoming Resistance: Start with Mental Preparation
- 1H Preparing Your Response to Challenging Situations
- 1H Responders at Risk: Protecting First Responders from Opioid Exposure
- 1H The Will to Win 1
- 1H The Will to Win 2
- 1H The Will to Win 3
- 1H The Will to Win 4
- 1H The Will to Win 5
- 1H The Will to Win 6
- 15M Will to Win: Kelly Kalmbach

**P1 ROLL CALL/ REALITY TRAINING**

- 1H Real-Life Video Training 1

**PATROL**

- 1H Child Safety Upon Parental Arrest
- 2H Civilian Interaction - 30418 TCOLE
- 4H Driving for Law Enforcement
- 1H Drunk Driving
- 2H First Responder Traffic Incident Management
- 1H Intoxicated Driving
- 3H Law Enforcement Encounters with Dogs
- 1H Patrol 1
- 1H Patrol 2
- 1H Patrol 3
- 1H Patrol 4
- 2H Professional Police Driving for Tennessee
- 1H Pursuit Driving
- 2H Pursuit Driving Fundamentals
- 1H Suspects in Medical Distress
- 1H Tactical Patrol Considerations
- 1H Traffic Incident Management - Quick Clearance
- 1H Traffic Stops & Safety 1
- 1H Traffic Stops & Safety 2
- 1H Traffic Stops & Safety 3
- 1H Traffic Stops & Safety 4
- 1H Traffic Stops & Safety 5
- 1H Traffic Stops and Officer Safety

**POLICE LEADERSHIP**

- 1H Adult Learning Concepts for Field Trainers
- 1H Advanced Policing: Emotional Intelligence
- 1H Becoming a Leader in Law Enforcement
- 3H Building Financial Strength in First Responder Families
- 1H Communication Skills 1
- 1H Communication Skills 2
- 1H Communication Skills 3
- 1H Communication Skills 4
- 1H Leadership 1
- 1H Leadership 2
- 1H Leadership 3
- 1H Leadership 4
- 1H Leadership 5
- 1H Leadership 6
- 1H Leadership 7
- 1H Leadership 8
- 1H Leadership in Law Enforcement
- 1H Recruiting Excellent Employees
- .5H Just in Time Training: Responding to a Line of Duty Death
- 1H The Importance of Communication in Law Enforcement
- 1H Adult Learning Concepts for Field Trainers

**PRODUCTS AND TECHNOLOGIES FOR POLICE**

- 1H Annual Conducted Electrical Weapon (CEW) User Update Version 20.2 Effective: January 15, 2018
- 1H Annual Conducted Electrical Weapon (CEW) User Update Version 21 Effective: January 14, 2019
- 1H Annual Conducted Electrical Weapon (CEW) User Update Version 22 Effective: June 22, 2020
- 1H Body Armor and the Changing Landscape of Public Safety
- 1H OnStar Public Safety

**REPORT WRITING**

- 1H Report Writing 1
- 1H Report Writing 2
- 1H Written Communication and Report Writing



## **SECURITY THREAT GROUPS FOR POLICE**

- 1H** Gangs 1
- 1H** Gangs 2
- 1H** Gangs 3
- 1H** Juvenile Justice
- 1H** Reducing Graffiti in Your Community

## **TCOLE INTERMEDIATE COURSES (TEXAS ONLY)**

- 16H** Intermediate Arrest, Search and Seizure - 2108 TCOLE
- 2H** Intermediate Asset Forfeiture- 3255 TCOLE
- 24H** Intermediate Child Abuse - 2105 TCOLE
- 8H** Intermediate Cultural Diversity - 3939 TCOLE
- 3H** Intermediate Identity Crimes - 3277 TCOLE

- 4H** Intermediate Racial Profiling - 3256 TCOLE
- 8H** Intermediate Special Investigative Topics - 3232 TCOLE
- 13H** Intermediate Use of Force - 2107 TCOLE

## **TERRORISM**

- 1H** Terrorism 1
- 1H** Terrorism 2
- 1H** Terrorism 3

## **USE OF FORCE**

- 2H** Use of Force
- 1H** Use of Force Situations
- 1H** Use of Less Lethal Force



**PUBLIC  
WORKS**

38

**FLEET MANAGEMENT, FORESTRY  
STREETS & SEWERS  
WATERMANS & HYDRANTS**  
402 23rd Street North  
Fargo, ND 58102  
Phone: 701.241.1453 | Fax: 701.241.8100  
FargoND.gov

September 11, 2023

The Honorable Board of City Commissioners  
City of Fargo  
225 N 4<sup>th</sup> St.  
Fargo, ND 58102

RE: Authorization to extend 2022/2023 snow hauling contracts (RFP22137) with the four approved vendors for the 2023/2024 snow season.

Commissioners:

On August 11, 2022, a total of eight (8) proposals were received for the Request for Proposals for Snow Hauling Trucking Services (RFP22137). See attached bid tabulation. This contracted service is intended to provide trucking services to assist Public Works with snow and material hauling, and has been crucial to safe, efficient, and successful snow removal operations. As part of the 2022/2023 RFP, language was included that allows for two (2), one (1) year extensions under the original terms of the RFP.

The proposals were evaluated and Public Works staff recommended selection of four (4) contractors; Master Construction (four trucks), Lenzmeier Trucking Inc. (four trucks), J D Kraemer Enterprises LLC (four trucks), and Diesel Dogs Trucking Inc. (eight trucks). Public Works staff has visited with all four 2022/2023 approved contract holders, and at this time is requesting authorization to extend their contracts for the 2023/2024 snow season under the terms of the initial 2022 RFP (RFP22137).

**RECOMMENDED MOTION:**

I/we hereby move based on the request for proposal (RFP22137), to extend the initial 2022/2023 award contracts for Snow Hauling Trucking Services with Master Construction, Lenzmeier Trucking Inc., J D Kraemer Enterprises LLC, and Diesel Dogs Trucking Inc. for the 2023/2024 season under the terms and conditions of the initial 2022 RFP (RFP22137).

Respectfully submitted,

Corey Houim  
Services Manager  
Fargo Public Works

**Bid Tabulation for Snow Hauling Trucking Services**  
**City of Fargo RFP 22137**  
**Bids Received August 11th, 2022**

Proposer	Quantity	11-15 CY Truck Unit Price	Quantity	15-20 CY Truck Unit Price	Quantity	>20 CY Truck Unit Price	Quantity	Side Dump Unit Price
Hubert Oye and Sons	1	\$175.00	3	\$220.00	-	-	1	\$250.00
Master Construction	6	\$110.00	2	\$110.00	-	-	1	\$145.00
Precision Inc.	6	\$110.00	-	-	-	-	-	-
Lenzmeier Trucking Inc.	-	-	4	\$110.00	-	-	-	-
JD Kraemer Enterprises	7	\$105.00	2	\$110.00	-	-	-	-
JT Lawn Services	-	-	2	\$140.00	-	-	1	\$140.00
Diesel Dogs Trucking Inc.	-	-	8	\$110.00	-	-	-	-
Industrial Builders Inc.	-	-	4	\$135.00	-	-	-	-

## SERVICES AGREEMENT

### SNOW HAULING TRUCKING SERVICES

#### I. Agreement

This agreement is between the City of Fargo (City) and Diesel Dogs Trucking, LLC. (Contractor) to provide snow hauling services for the City. This agreement shall commence upon signing by both parties and expire on September 30, 2024. The term of this agreement may be extended, if accepted and signed by the Contractor and City, for one (1) additional one (1) year extensions, provided the extension is signed by parties on or before September 30 of the contract year. A mutually agreeable contract increase may be initiated in August of the renewing year.

#### II. Scope of Services

Contractor agrees to provide eight (8) quad, triaxle or side dump/trailer trucks for purposes of hauling snow to assist and supplement the City's snow hauling operations with the downtown area of City. All Contractor trucks must be capable of carrying a minimum of 11CY of snow per load. Contractor may also assist the City's spring cleanup week and all trucks will display a solid waste transporter permit at contractor's expense. Contractor must ensure that all trucks are properly insured, registered and inspected. Contractor is responsible for the condition of the truck, and if unsatisfactory to the sole discretion of City, the truck will be removed from service and billable time will cease. Contractor is responsible for ensuring all drivers are properly licensed. Contractor must comply with all State, Federal and Local laws, regulations and ordinances applicable to the operation of Contractor's equipment.

#### III. Responsibility of the City

City shall oversee the execution of this agreement and disbursing of funds. City shall be entitled to verify the condition and registration of the truck, as well as contractor license/driver operators' license status.

#### IV. Contractor's Compensation and Method of Payment

City will reimburse Contractor at a rate of;

- \$110.00 15 to 20 cubic yard truck,

Commencing at the time of arrival of each truck at the location designated by the City, until such time the truck is released by the City, to the nearest ½ hour.

Contractor shall receive no less than \$2,500 per truck contracted for the contract period, provided Contractor is not in breach of the terms of this Agreement at the end of the contract period. Failure to provide the truck and driver when properly noticed shall be deemed a default. Termination prior to the end of the contract period shall be deemed a default, terminating the City's obligation to pay the minimum compensation amount.

Final invoices shall be submitted no later than November 1 of the contract year. Contractor will be paid either the amount due for services rendered or the Minimum Compensation Amount, whichever is greater.

**V. Termination of the Agreement**

This contract may be terminable at will by either party after giving ten (10) days written notice to the other party.

**VI. Assignability**

This agreement will not be assigned or transferred by Contractor to another party without the prior written consent of the City.

**VII. Hold Harmless and Insurance**

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this contract. Contractor's employees must be covered by North Dakota's Workers Compensation. Contractor shall carry appropriate liability insurance coverage, including but not limited to Public Liability Insurance in the amount of \$1,000,000 per person, \$500,000 per accident, and property damage in the amount of \$300,000 per accident. Contractor shall provide City as Certificate of Insurance naming the City of Fargo as an additional insured, and such insurance must be maintained during the term of this Agreement and any extension agreed to thereafter.

**VIII. Contractor Records**

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. The City, or their authorized representatives, shall have access to any records of Contractor pertinent to the agreement.

**IX. Monitoring and Evaluation**

City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

**X. Independence of Recipient**

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

**XI. Conflict of Interest**

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

**XII. Entire Agreement**

The provisions as set forth in Items I, and all attachments of this agreement constitute the entire agreement between the parties.

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 8-15-23

CONTRACTOR

Diesel Dogs Trucking, LLC

By: Al. Khan

Its: President

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

CITY OF FARGO, North Dakota, a North  
Dakota Municipal Corporation

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

ATTEST:

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

## SERVICES AGREEMENT

### SNOW HAULING TRUCKING SERVICES

#### **I. Agreement**

This agreement is between the City of Fargo (City) and Master Construction. (Contractor) to provide snow hauling services for the City. This agreement shall commence upon signing by both parties and expire on September 30, 2024. The term of this agreement may be extended, if accepted and signed by the Contractor and City, for one (1) additional one (1) year extensions, provided the extension is signed by parties on or before September 30 of the contract year. A mutually agreeable contract increase may be initiated in August of the renewing year.

#### **II. Scope of Services**

Contractor agrees to provide four (4) quad, triaxle or side dump/trailer trucks for purposes of hauling snow to assist and supplement the City's snow hauling operations with the downtown area of City. All Contractor trucks must be capable of carrying a minimum of 11CY of snow per load. Contractor may also assist the City's spring cleanup week and all trucks will display a solid waste transporter permit at contractor's expense. Contractor must ensure that all trucks are properly insured, registered and inspected. Contractor is responsible for the condition of the truck, and if unsatisfactory to the sole discretion of City, the truck will be removed from service and billable time will cease. Contractor is responsible for ensuring all drivers are properly licensed. Contractor must comply with all State, Federal and Local laws, regulations and ordinances applicable to the operation of Contractor's equipment.

#### **III. Responsibility of the City**

City shall oversee the execution of this agreement and disbursing of funds. City shall be entitled to verify the condition and registration of the truck, as well as contractor license/driver operators' license status.

#### **IV. Contractor's Compensation and Method of Payment**

City will reimburse Contractor at a rate of;

- \$110.00 11 to 15 cubic yard truck (2),
- \$110.00 15 to 20 cubic yard truck (2)

Commencing at the time of arrival of each truck at the location designated by the City, until such time the truck is released by the City, to the nearest ½ hour.

Contractor shall receive no less than \$2,500 per truck contracted for the contract period, provided Contractor is not in breach of the terms of this Agreement at the end of the contract period. Failure to provide the truck and driver when properly noticed shall be deemed a default. Termination prior to the end of the contract period shall be deemed a default, terminating the City's obligation to pay the minimum compensation amount.

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City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

**X. Independence of Recipient**

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

**XI. Conflict of Interest**

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

**XII. Entire Agreement**

The provisions as set forth in Items I, and all attachments of this agreement constitute the entire agreement between the parties.



IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 9/6/2023

CONTRACTOR

[Signature]

By: Fred Schlauser

Its: President

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

CITY OF FARGO, North Dakota, a North  
Dakota Municipal Corporation

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

ATTEST:

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

## SERVICES AGREEMENT

### SNOW HAULING TRUCKING SERVICES

#### **I. Agreement**

This agreement is between the City of Fargo (City) and Lenzmeier Trucking Inc. (Contractor) to provide snow hauling services for the City. This agreement shall commence upon signing by both parties and expire on September 30, 2024. The term of this agreement may be extended, if accepted and signed by the Contractor and City, for one (1) additional one (1) year extensions, provided the extension is signed by parties on or before September 30 of the contract year. A mutually agreeable contract increase may be initiated in August of the renewing year.

#### **II. Scope of Services**

Contractor agrees to provide four (4) quad, triaxle or side dump/trailer trucks for purposes of hauling snow to assist and supplement the City's snow hauling operations with the downtown area of City. All Contractor trucks must be capable of carrying a minimum of 11CY of snow per load. Contractor may also assist the City's spring cleanup week and all trucks will display a solid waste transporter permit at contractor's expense. Contractor must ensure that all trucks are properly insured, registered and inspected. Contractor is responsible for the condition of the truck, and if unsatisfactory to the sole discretion of City, the truck will be removed from service and billable time will cease. Contractor is responsible for ensuring all drivers are properly licensed. Contractor must comply with all State, Federal and Local laws, regulations and ordinances applicable to the operation of Contractor's equipment.

#### **III. Responsibility of the City**

City shall oversee the execution of this agreement and disbursing of funds. City shall be entitled to verify the condition and registration of the truck, as well as contractor license/driver operators' license status.

#### **IV. Contractor's Compensation and Method of Payment**

City will reimburse Contractor at a rate of;

- \$110.00 15 to 20 cubic yard truck,

Commencing at the time of arrival of each truck at the location designated by the City, until such time the truck is released by the City, to the nearest ½ hour.

Contractor shall receive no less than \$2,500 per truck contracted for the contract period, provided Contractor is not in breach of the terms of this Agreement at the end of the contract period. Failure to provide the truck and driver when properly noticed shall be deemed a default. Termination prior to the end of the contract period shall be deemed a default, terminating the City's obligation to pay the minimum compensation amount.

Final invoices shall be submitted no later than November 1 of the contract year. Contractor will be paid either the amount due for services rendered or the Minimum Compensation Amount, whichever is greater.

**V. Termination of the Agreement**

This contract may be terminable at will by either party after giving ten (10) days written notice to the other party.

**VI. Assignability**

This agreement will not be assigned or transferred by Contractor to another party without the prior written consent of the City.

**VII. Hold Harmless and Insurance**

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this contract. Contractor's employees must be covered by North Dakota's Workers Compensation. Contractor shall carry appropriate liability insurance coverage, including but not limited to Public Liability Insurance in the amount of \$1,000,000 per person, \$500,000 per accident, and property damage in the amount of \$300,000 per accident. Contractor shall provide City as Certificate of Insurance naming the City of Fargo as an additional insured, and such insurance must be maintained during the term of this Agreement and any extension agreed to thereafter.

**VIII. Contractor Records**

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. The City, or their authorized representatives, shall have access to any records of Contractor pertinent to the agreement.

**IX. Monitoring and Evaluation**

City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

**X. Independence of Recipient**

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

**XI. Conflict of Interest**

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

**XII. Entire Agreement**

The provisions as set forth in Items I, and all attachments of this agreement constitute the entire agreement between the parties.

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 8-16-2023

CONTRACTOR

Lenzmeier Trucking Inc.

By:  Dave Lenzmeier

Its: President

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

CITY OF FARGO, North Dakota, a North  
Dakota Municipal Corporation

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

ATTEST:

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

## SERVICES AGREEMENT

### SNOW HAULING TRUCKING SERVICES

#### I. Agreement

This agreement is between the City of Fargo (City) and J D Kraemer Enterprises, LLC. (Contractor) to provide snow hauling services for the City. This agreement shall commence upon signing by both parties and expire on September 30, 2024. The term of this agreement may be extended, if accepted and signed by the Contractor and City, for one (1) additional one (1) year extensions, provided the extension is signed by parties on or before September 30 of the contract year. A mutually agreeable contract increase may be initiated in August of the renewing year.

#### II. Scope of Services

Contractor agrees to provide four (4) quad, triaxle or side dump/trailer trucks for purposes of hauling snow to assist and supplement the City's snow hauling operations with the downtown area of City. All Contractor trucks must be capable of carrying a minimum of 11CY of snow per load. Contractor may also assist the City's spring cleanup week and all trucks will display a solid waste transporter permit at contractor's expense. Contractor must ensure that all trucks are properly insured, registered and inspected. Contractor is responsible for the condition of the truck, and if unsatisfactory to the sole discretion of City, the truck will be removed from service and billable time will cease. Contractor is responsible for ensuring all drivers are properly licensed. Contractor must comply with all State, Federal and Local laws, regulations and ordinances applicable to the operation of Contractor's equipment.

#### III. Responsibility of the City

City shall oversee the execution of this agreement and disbursing of funds. City shall be entitled to verify the condition and registration of the truck, as well as contractor license/driver operators' license status.

#### IV. Contractor's Compensation and Method of Payment

City will reimburse Contractor at a rate of;

- \$105.00 11 to 15 cubic yard truck (2), *Semi End dump or Side dump*
- \$110.00 15 to 20 cubic yard truck (2), *#155 Hr.*

Commencing at the time of arrival of each truck at the location designated by the City, until such time the truck is released by the City, to the nearest ½ hour.

Contractor shall receive no less than \$2,500 per truck contracted for the contract period, provided Contractor is not in breach of the terms of this Agreement at the end of the contract period. Failure to provide the truck and driver when properly noticed shall be deemed a default. Termination prior to the end of the contract period shall be deemed a default, terminating the City's obligation to pay the minimum compensation amount.

Final invoices shall be submitted no later than November 1 of the contract year. Contractor will be paid either the amount due for services rendered or the Minimum Compensation Amount, whichever is greater.

**V. Termination of the Agreement**

This contract may be terminable at will by either party after giving ten (10) days written notice to the other party.

**VI. Assignability**

This agreement will not be assigned or transferred by Contractor to another party without the prior written consent of the City.

**VII. Hold Harmless and Insurance**

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this contract. Contractor's employees must be covered by North Dakota's Workers Compensation. Contractor shall carry appropriate liability insurance coverage, including but not limited to Public Liability Insurance in the amount of \$1,000,000 per person, \$500,000 per accident, and property damage in the amount of \$300,000 per accident. Contractor shall provide City as Certificate of Insurance naming the City of Fargo as an additional insured, and such insurance must be maintained during the term of this Agreement and any extension agreed to thereafter.

**VIII. Contractor Records**

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. The City, or their authorized representatives, shall have access to any records of Contractor pertinent to the agreement.

**IX. Monitoring and Evaluation**

City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

**X. Independence of Recipient**

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

**XI. Conflict of Interest**

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

**XII. Entire Agreement**

The provisions as set forth in Items I, and all attachments of this agreement constitute the entire agreement between the parties.

**IN WITNESS WHEREOF**, the undersigned enter into this agreement.

Date: 8-21-2023

CONTRACTOR

JD Kraemer Ent. LLC

By: JD Kraemer

Its: President

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

CITY OF FARGO, North Dakota, a North  
Dakota Municipal Corporation

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

ATTEST:

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



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FLEET MANAGEMENT, FORESTRY  
STREETS & SEWERS  
WATERMANS & HYDRANTS  
402 23rd Street North  
Fargo, ND 58102  
Phone: 701.241.1453 | Fax: 701.241.8100  
FargoND.gov

September 13, 2023

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

RE: Street Snow Plowing Services Contract with Master Construction  
Company (RFP23138)

Commissioners:

Proposals were opened on Monday, August 8, 2023, in response to a Request for Proposal (RFP23138) for "Street Snow Plowing Services". A total of one (1) sealed responses was received.

Proposals received were reviewed and evaluated on the following criteria:

- Past Work Experience,
- Available Resources,
- Proposed Fees (Attached Bid Tab).

Based on the review of the stated criteria we are recommending award of the Street Snow Plowing contract to Master Construction Company.

RECOMMENDED MOTION: I/we hereby move to approve and authorize the execution of the enclosed Street Snow Plowing contract with Master Construction Company for the 2023/2024 snow season (RFP23138).

Respectfully submitted,

Ben Dow  
Public Works Ops Director



## **STREET SNOW PLOWING SERVICES AGREEMENT**

**I. Agreement**

This agreement is between the City of Fargo (City) and Master Construction Co., Inc. (Contractor) to provide street snow plowing services for the City. This agreement shall commence upon signing by both parties and ending May 31, 2024. The term of this agreement may be renewed on an annual basis by written mutual consent of both City and Contractor, provided the extension is signed by parties on or before September 15 of the contract year.

**II. Scope of Services**

As set forth within this agreement, Contractor shall provide snow removal operations on local city streets and rights-of-way within the city.

Snow Plowing Service Area

Contractor area map has been provided and attached as Exhibit A.

If at some point areas are added, City will work with Contractor on a mutually agreeable increase in service fees if the contract is renewed.

Removal of Snowfall

Contractor will complete plowing of snow from all city streets, cul-de-sacs and other right-of-ways within area designated as shown in Exhibit A.

Timeframe

Contractor area has been sized to allow snow removal operations to be completed in approximately 12 hours under typical storm conditions with optimum equipment allocations. Contractor will make every attempt to complete designated area in approximated time frame as previously stated.

Response Time

Contractor shall respond and begin snow removal operations within one (1) hour from the start time requested by City.

Equipment

Contractor will provide the designated equipment and manpower required for cleaning snow to include two motor graders, each with a moldboard measuring 12ft in length or greater and wing plow measuring 10ft in length or greater.

City reserves the right to reject any piece of equipment from continued or further engagement of services due to inability of the piece of equipment to function properly.

Safety

All snow removal will be conducted in a safe manner, with care given to the safety of the general public. All equipment shall be properly equipped and outfitted to meet all local, county, state or federal laws required for on-the-road emergency snow removal operations. City reserves the right to reject at any time, with notice to Contractor, any equipment that does not appear to meet any applicable legal requirements.

Personnel

Contractor shall provide City with the name, address and telephone number(s) for at least two designated contact personnel responsible for ensuring response to the City's request for snow removal service. Contractor shall ensure that at least one of the contact persons is available and accessible 24 hours per day, during the period the contract is in force including Saturdays, Sundays and Holidays.

Down Time

Contractor shall ensure that all equipment provided is maintained in a proper manner to minimize required maintenance or emergency repairs during the performance of snow removal operations. Contractor will not be compensated for any time in which a piece of equipment is not in operation.

Communications

Contractor will contact City before plowing operations begin and will ensure City issued portable automated vehicle location unit is activated. When Contractor area is completed, Contractor will contact City and confirm that Contractor area is completed.

Failure to do so may result in forfeiture of payment for that area.

**III. Responsibility of the City**

City shall oversee the execution of this agreement, disbursing of funds and provide discretion and direction to when, and if, plowing operations will be initiated.

**IV. Contractor's Compensation and Seasonal Minimum Compensation**

City will reimburse Contractor for services rendered per snow event as shown in the attached Exhibit B.

Contractor is guaranteed to be paid no less than \$80,000 (Minimum Compensation) for each snow season, provided Contractor has performed in accordance with all contract provisions throughout the snow season. If the total dollar amount paid to Contractor for that snow season equals less than the Minimum Compensation, City will pay Contractor the difference between the amount paid during the snow season and the Minimum Compensation. If Contractor has already been paid the amount of the Minimum Compensation or more for the snow season, it will not be entitled to any additional payment. If Contractor is called upon and does not respond, Minimum Compensation will be forfeited for season.

Eligible Seasonal Minimum Compensation amounts due or portions thereof shall be determined by City at the end of the snow season and the contractor shall submit an invoice after April 30, but before June 1, for payment.

If contract has been terminated prior to the end of the snow season, Seasonal Minimum Compensation will be forfeited.

**V. Termination of the Agreement**

This contract may be terminable at will by either party after giving ten (10) days written notice to the other party.

**VI. Assignability**

This agreement will not be assigned or transferred by Contractor to another party without the prior written consent of City.

**VII. Hold Harmless and Insurance**

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this contract. All insurance (Worker's Compensation, Comprehensive General Liability, and/or Automobile) shall be maintained at the expense of the contractor during the term of this contract.

Contractor shall be responsible for any, and all, damage to private as well as public property (including public utilities) due to its own or its employee's negligence in performing snow removal operations.

Insurance shall be in such form as will protect Contractor from all claims and liabilities for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under the contract whether such operation by themselves or by anyone directly or indirectly employed by them.

Contractor shall furnish certificates of the following insurance to the City of Fargo, Public Works Department:

1. Workers' Compensation
2. Public Liability in the amount of \$1,000,000 per person.  
\$3,000,000 per accident and property damage in the amount of  
\$1,000,000 per accident. All such liability insurance shall apply to liability  
assured under these specifications.

City shall be named as an additional insured to the extent of the operations under this contract.

Failure to maintain insurance during this contract period will result in contract forfeiture and Seasonal Minimum Compensation will be forfeited.

All certificates of insurance required herein shall state that thirty (30) days written notice will be given to the City before the policy is canceled or changed. All certificates of insurance shall be delivered to the City prior to the time that any operations under this Contract are started.

**VIII. Contractor Records**

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. City, or their authorized representatives, shall have access to any records of Contractor pertinent to the agreement.

**IX. Monitoring and Evaluation**

City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

**X. Independence of Recipient**

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

**XI. Conflict of Interest**

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

**XII. Non-Performance**

Contractor shall waive any and all objections, rights to objections and claims for additional compensation, damages or loss of revenue resulting from work performed by City either prior to, during, or after any scheduled or emergency snow removal operation in lieu of these contractual services as may be necessary due to nonperformance or excessive delays of Contractor.

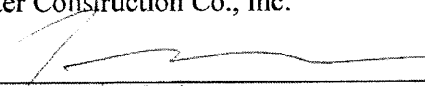
**XIII. Entire Agreement**

The provisions as set forth and all attachments of this agreement constitute the entire agreement between the parties.

**IN WITNESS WHEREOF**, the undersigned enter into this agreement.

Date: 9/6/2023

Master Construction Co., Inc.

By: 

Its: Fred Schlanser  
President

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

CITY OF FARGO, North Dakota, a North  
Dakota Municipal Corporation

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

ATTEST:

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



# Exhibit B

## SCHEDULE OF PRICES

### CITY OF FARGO DEPARTMENT OF PUBLIC WORKS

#### STREET SNOW PLOWING

The undersigned agrees to furnish personnel and equipment described on the preceding pages in accordance with the terms of this Proposal and Agreement at the rates entered below and at such time as they may be requested by the City.

A quotation may be rejected if any alteration or erasure is made in entering the rates. Quotation rates must be entered in ink or typewritten.

#### Proposal

The following format may be used in the proposal to bid the Contractor area. The proposer may develop their own format, as long as all rates shown below are included.

#### Contractor Area Equipment Proposal

Equipment	Unit Price (per hour)	Available Units
Cat 14M Blade	\$375.00	2
JD 870 Blade	\$375.00	1

**Additional Equipment**

Provide a list of other types of equipment that the Contractor could provide during extraordinary events or winter conditions. This might include but is not limited to equipment such as dozers, front-end loaders, motor graders, etc. Rates should be hourly and include all applicable costs such as operators, fuel, etc. A table similar to this one or another format can be utilized. Make sure all aspects included below are covered.

Description of Equipment	Unit Price (per hour)	Available Units
JD 724 Loader 5 CY	\$275.00	1
JD 644K Loader 4 CY	\$250.00	2
JD 624K Loader 3.5 CY	\$240.00	2
Skidsteers/Wheel	\$100.00	4
Skidsteers/Track	\$100.00	4





## Metropolitan Area Transit

650 23rd Street N  
Fargo, ND 58102  
Phone: 701-241-8140  
Fax: 701-241-8558

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September 18, 2023

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

Dear Commissioners:

On November 28, 2022 the Fargo City Commission authorized the approval of grant applications, local share and grant execution to the State of North Dakota (see attached).

The resulting contracts received from the North Dakota Department of Transportation (NDDOT) Transit Division are attached.

The grants include capital discretionary (1) \$977,500 for replacement of two fixed route buses, (2) \$800,000 for completion of the bus deck repair at the Ground Transportation Center (GTC) and (3) \$560,000 for fixed route AVL/AVA replacement software in 5339 CDFR No. 20.526 funds. The Transit Department did incorporate the local share for the projects in the 2023 Transit capital budget.

The contract awards will have a profound impact on our community's transit system and the transportation options we offer our residents and visitors. These awards will vastly improve our ability to address the critical need to get equipment purchases/repairs on a regular schedule.

***The requested motion is to approve the attached contracts with NDDOT.***

Thank you.

A handwritten signature in cursive script that reads "Julie Bommelman".

Julie Bommelman  
Transit Director  
City of Fargo  
701.476.6737

/enc



**Metropolitan Area Transit**

650 23rd Street N  
 Fargo, ND 58102  
 Phone: 701-241-8140  
 Fax: 701-241-8558

November 28, 2022

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

Dear Commissioners:

The State of North Dakota has made \$12.8M available in grant funding for public transportation (transit). The grant opportunity is for capital discretionary 5339 CFDA No. 20.526 and 5310 CFDA No. 20.513 funds (for bus and bus facilities by the Federal Transit Administration (FTA) and administered by the NDDOT). The Transit Department budgeted the local share (\$822,400) for these projects in the Transit capital budget for 2023:

**CITY OF FARGO TRANSIT DEPARTMENT 2024 CAPITAL STATE GRANT REQUESTS:**

TRANSIT	552-2561-510.74-10	Replace Paratransit Scheduling Software (Local Share)	100,000			
	552-2561-510.74-10	Automated Bus Announcement System (Local Share)	600,000			
	552-2561-510.74-10	Miscellaneous Support Equipment (Local Share)	100,000			
	552-2561-510.74-10	Replace Toolcat (Local Share)	64,000			
	552-2561-510.74-10	Update MTG Building (Local Share)	566,000			
	552-2561-510.74-10	Mobility Manager (Local Share)	102,000			
	552-2561-510.74-10	Fixed Route Bus Replacements	1,150,000			
	552-2561-510.74-10	Paratransit Bus Replacements	230,000			
	552-2561-510.74-10	GTC Deck Overlay	1,000,000			
	552-2561-510.74-10	Supervisor Vehicle Replacement	40,000	3,952,000	3,952,000	822,400
<b>Total Transit</b>			<b>3,952,000</b>	<b>3,952,000</b>	<b>3,952,000</b>	<b>822,400</b>

These grants would have a profound impact on our community's transit system and the transportation options we offer our residents. There is a critical need to keep vehicle purchases on a regular, rotating schedule – these grants would allow for the replacement of two (2) 35-foot and two (2) paratransit vehicles, the final phase of the bus deck resurfacing at the Ground Transportation Center, replacement of the automatic vehicle location/automated vehicle announcement system, replacement of the paratransit scheduling software/hardware, miscellaneous interior replacements/upgrades to the Metro Transit Garage (MTG) which is fifteen years old (i.e. replacement of the bus wash), the Mobility Manager position and a replacement service vehicle. Several of these items are cost shared with Moorhead, the displayed amounts are Fargo's share only. The MAT Coordinating Board reviewed and approved this request at the November 16, 2022 Board meeting.

The Transit Development Plan identified the need to upgrade and rehab equipment, and the Federal Transit Administration has implemented a requirement to have and follow a Transit Asset Management Plan which outlines equipment maintenance and lifecycle requirements.

The requested motion is to approve applying for grant funding for the items listed, and, upon successful receipt of funds, approve the grant execution. Thank you.

Sincerely,

Julie Bommelman  
 City of Fargo Transit Director  
 701-476-6737  
[jbommelman@cityoffargo.com](mailto:jbommelman@cityoffargo.com)

For Schedule Information: 701-232-7500

MEMORANDUM

TO: Chad Orn  
Deputy Director for Planning

FROM: Stacey Hanson  
Assistant Engineer for Local Government  
Becky Hanson  
Transit Program Manager

DATE: 8/30/2023

SUBJECT: Section 5339(b), Bus and Bus Facilities Competitive Program  
City of Fargo/Fargo Metro Area Transit  
SFY 2024

This is a contract to provide capital funding to replace two ADA vehicles under the regulations of Section 5339(b) Bus and Bus Facilities Competitive Grant Funds.

Federal Transit Administration Funds of \$977,500 are allocated for capital assistance for the purchase of two ADA replacement vehicles. Fifteen percent (15%) local match is required.

38/bh 328-2542

NORTH  
**Dakota** | Transportation  
Be Legendary.™

August 30, 2023

Julie Bommelman  
Fargo Metro Area Transit  
650 23<sup>rd</sup> St N  
Fargo, ND 58102

FY 2024 – Section 5339 Bus & Bus Facilities Grant, CFDA No. 20.526

Thank you for your 5339 grant application for capital needs. We are pleased to inform you we are able to provide funding for your transit agency. Your award amount is \$977,500 to purchase two replacement ADA vehicles.

During the grant review process, the committee looks at your current grant application request along with your current capital list. The committee has awarded you money to purchase four ADA vehicles to replace the following vehicles:

Purchase Replacement Std 35 Ft Bus -- Replaces 2011, VIN# 5FYH5KU10BB038631
Purchase Replacement Std 35 Ft Bus -- Replaces 2011, VIN # 5FTG5KU19BB038630

Once the contract is signed, you must request approval to order the replacement vehicles and provide the procurement documentation. Due to the dollar value and State/Federal procurement guidelines, you cannot go directly to a dealership and purchase these vehicles. If the required procurement guidelines are not followed the Transit Section cannot reimburse your agency for these vehicles.

When the new vehicles are operating in your service, you will need to dispose of the old vehicles in your inventory list. Please contact the NDDOT regarding the disposal or transfer of these vehicles. These vehicles will no longer be eligible to be replaced in future grant applications.

The NDDOT has made changes to this contract that you need to be aware of. The contract documents now include a detailed Scope of Work (Section 2) and updates to Closeout Requirements (Section 17). Also review Section 5. Risk Assessment, Section 6. Risk Based Monitoring and Section 14. Audit and Inspection for additional requirements that effect your agency.

FY 2024 – Section 5339 Bus & Bus Facilities Grant  
August 30, 2023  
Page 2

In order to begin the funding process, please:

1. Complete the contractor and witness information in DocuSign (**the contractor and witness must be different people**).
2. Have your organization's president or chairman digitally sign and date the agreement (under Contractor)—this signature **must be an authorized signatory** for your project. Please also submit a proof of authorization to sign if it is not the president or chairperson of your agency.
3. Finish the DocuSign process to send to the witness for signature.
4. Have a witness sign and date the agreement (under Witness) and upload current proof of insurance in the form of **Confirmation of Coverage OR Certificate of Insurance for automobiles and premises/commercial**, if it is required. This is required for all Non-Profit and For-Profit agencies. **Commercial general liability and automobile liability insurance minimum limits or liability required are \$500,000 per person and \$2,000,000 per occurrence.** Multiple pages can be uploaded as one attachment.
5. Upon completion of executing all documents, finish the DocuSign process and the contract documents will return to NDDOT for processing.

Thank you for your continuing efforts to improve transportation in North Dakota. If you have any questions or need assistance, please contact Sara Susie at (701) 328-2540 or [ssusie@nd.gov](mailto:ssusie@nd.gov).

With gratitude,

*Becky Hanson*

Becky Hanson  
Transit Program Manager

Cc: Kevin Hanson, Board Chair  
Dan Farnsworth, Fargo/Moorhead COG  
Enclosure

**North Dakota Department of Transportation  
SECTION 5339 TRANSIT GRANT AGREEMENT**

**Federal Award Information**

Assistance Listing No.: 20.526

Assistance Listing Title: Bus and Bus Facilities Formula & Discretionary Program

Awarding Federal Agency: Federal Transit Administration (FTA)

Pass-through entity: North Dakota Department of Transportation (NDDOT)

NDDOT Program Mgr.: Hanson, Becky R.

Telephone (701) 328-2542 Email: bhanson@nd.gov

Subrecipient/Contractor Name: City of Fargo DUNS No.: 070265871 Unique Entity ID: K2QJQZVH5PM6

Federal Award Project Description: FFY2020 - 5339(b) Competitive Capital Remaining funds for Rural, Small Urban and ICB Operators

Federal Aid Identification No. (FAIN) and Award Date: ND2023-003, 01/03/2023

Period of Performance: 01/03/2023 - 12/31/2025

Subaward Period of Performance Start Date: July 1, 2023 End Date: August 31, 2025

Subaward Budget Period Start Date: July 1, 2023 End Date: August 31, 2025

Total Federal Award: \$977,500

Total Project Budget Including Local Match: \$1,150,000

Total Capital Budget: \$1,150,000      Federal Funds: \$977,500, 85%      Matching Funds: \$172,500, 15%

Research and Development Activities: This award does not include funds for Research and Development activities.

Indirect Cost Rate (ICAP): N/A

**Notice to Subrecipients: This agreement is subject to all the Certifications and Assurances required by the FTA. 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 Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.

WHEREAS, Section 5339 of the Fixing America's Surface Transportation (FAST) Act and the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (IIJA), makes federal resources available to States and designated recipients to replace, rehabilitate and purchase buses and related equipment and to contract bus-related facilities including technological changes or innovation to modify low or no emission vehicles or facilities. Funding is provided through formula allocations and competitive grants. The 5339 (b) sub-program provides competitive grants for buses and bus facilities that support low and zero emission vehicles.

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 in accordance with the guidelines of the State Management Plan for Public Transportation, the FTA Circular 5100.1 Bus and Bus Facilities Formula Program Guidance and Application Instructions, Federal Certifications and Assurances, and the Master Agreement with the FTA; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds to finance capital bus and bus related projects such as rolling stock, equipment, facility construction, and/or capital improvements which will support the continuation and expansion of public transportation in 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. Period of Performance.** For the period of July 1, 2023, through August 31, 2025, the Contractor shall undertake and provide the transportation services as described in the project description and budget (Attachment A) and the Contractor's grant application, on file with NDDOT. The term of the agreement shall begin upon execution of this agreement by both parties and terminate on August 31, 2025.

**Section 2. Scope of Work.**

The Contractor shall undertake and complete the Project in accordance with this agreement and as described in its application, which is incorporated into the agreement by this reference.

See attached Scope of Work

**Section 3. Cost.** NDDOT shall reimburse the Contractor for costs incurred while performing this service not to exceed \$977,500, providing these costs are incurred in accordance and within the rates of participation, as indicated in Attachment A, and are allowable costs as determined under 48 CFR 31.2 or 48 CFR 31.6, and 2 CFR Part 200, as applicable. Requests for reimbursements can be submitted to NDDOT at the end of the quarter being reported. NDDOT reserves the right to request supporting documentation for any and all submittals. NDDOT will reimburse those eligible costs based on the program guidelines for the item categories and its appropriate reimbursement ratio (Attachment A).

Eligible costs item categories may include:

Purchase Replacement – Std 35 ft Bus



**Section 4. Indirect Cost Rate Provision.** Federal agencies and NDDOT shall review and approve the negotiated indirect cost rate, unless there is a federal statute that states otherwise, or a federal agency head has made other approved provisions. Any rate approved by a federal agency, or a cognizant agency must be approved by NDDOT.

If the contractor does not have a federally negotiated indirect cost rate, the NDDOT can either:

- negotiate an indirect rate with the contractor, or
- allow the de minimis 10% flat rate (the de minimis rate, is not applicable in certain cases (200.414(f); Appendix VII.D.1.B).) This rate may be used indefinitely, until the contractor seeks to formally negotiate a rate. If the de minimis rate is used, the NDDOT does not need to review and approve.

**Section 5. Risk Assessments.** The NDDOT shall conduct pre-award risk assessments of applicants prior to issuing a contract. The contractor shall conduct risk assessments of their subawardees either before or after making the award to determine the appropriate level of monitoring. The contractor shall document its procedures for assessing risk and have them available upon NDDOT request.

**Section 6. Risk Based Monitoring.** The NDDOT shall conduct a risk assessment on the contractor and the following specific conditions shall be met and/or maintained throughout this agreement.

1. Compliance Review every three (3) years.
2. Submit Receipts one (1) Random Quarter each year.
3. Review audit reports and determine how material any audit findings are in the audit reports and where they pose an increased risk to subrecipients abilities to comply and carry out their Statements of Work.
4. Provide ongoing training and technical assistance on program related areas.

The NDDOT reserves the right to increase the monitoring during the agreement period based on periodical review of audit reports, audit findings, compliance review findings, federal reports, and reimbursement requests.

**Section 7. Property.** All purchases, property management, and property disposition shall be made in accordance with State and Federal requirements, copies of which will be provided by NDDOT on request. Such property shall be used for the duration of its useful life. If any project property 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. The NDDOT may choose to transfer any assets in good working condition to other eligible Contractors or approve the asset to be sold. If the NDDOT has approved the property to be sold, the Contractor may retain \$5,000 plus the percentage of its local share. Any remaining federal share must be returned to FTA.

**Section 8. Purchase of Project Assets.** The purchase of all project asset financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and Federal regulations.

**Section 9. Use of Project Assets.** The Contractor agrees that the project asset shall be used for providing transportation service in accordance with the project description in the grant application. Such asset shall be used for the duration of its useful life. If any project asset 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 10. Amendments & Contract Changes.** All modifications or changes in this agreement shall be in writing and agreed upon by both parties.

**Section 11. 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 12. Assignments.** Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or asset 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 13. 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 14. 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 assets 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. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

- All entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process.
- All entities must complete the Single Audit Certification form
- All entities must provide a schedule of expenditures.

**Section 15. 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 16. Action Upon Termination.** The Contractor agrees to dispose of the project assets in accordance with NDDOT's program policy, copies of which will be made available by NDDOT upon request.



**Section 17. Closeout.** The Federal awarding agency or pass-through entity and contractor will comply with CFR §200.344 closeout requirements. The NDDOT is responsible for closing out the agreement when it determines that all application administrative actions and all required work have been completed and the agreement has reached its period of performance end date. The contractor shall submit, no later than 90 calendar days after the period of performance end date of this agreement, all financial, performance and other reports as required by the terms and conditions of this agreement. The NDDOT may, if necessary, offer extensions of this deadline as long as the request is in writing at least 30 days prior to the agreement period of performance end date.

Other Closeout requirements are attached.

**Section 18. 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 19. Other Federal Provisions.** The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them: See Attachment B and complete required forms.

**Section 20. 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 or for-profit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

**Section 21. Statement of Financial Assistance.** This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

**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. 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 FTA Master Agreement (from FTA MA (29) dated February 7, 2022) 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 24. Disputes.** FTA Cir. 4220.1. 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 25. 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 26. Conflicts of Interest.** No official or employee of a state or any other governmental instrumentality who is authorized in their official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a state or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than their employment or retention by a state or other governmental instrumentality, in a contract or subcontract in connection with such project. No officer or employee of such person retained by a state or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of NDDOT and of such other governmental instrumentality, and such officer, employee, or person has not participated in such acquisition for and in behalf of the state.

**Section 27. 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 28. Insurance.** The Contractor shall maintain insurance coverage on the project asset in an amount adequate to protect the fair market value of the asset throughout the duration of this agreement.

**Section 29. 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 4220.1, 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 30. 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 31. 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

WITNESS:

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

CONTRACTOR:

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
DIRECTOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

SS

APPROVED as to substance by:

Paul Benning

\_\_\_\_\_  
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

*Paul Benning*  
\_\_\_\_\_  
SIGNATURE

SH

08/30/23

\_\_\_\_\_  
DATE

CLA 1073 (Div. 38)  
L.D. Approved 9-8-08; 8-23



**CERTIFICATION OF LOCAL MATCH**

It is hereby certified that \_\_\_\_\_ 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:**

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

Executed at \_\_\_\_\_, North Dakota, the last date below signed.

**WITNESS:**

**APPROVED:**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\*  
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\*Director or President of Transit Board

CLA 1073 (Div. 38)  
L.D. Approved 9-8-08; 8-23



**Attachment A**

**Project Name**                      **City of Fargo -- Fargo Metro Area Transit**  
**SFY 2024 (July 1, 2023 - August 31, 2025)**

	<b>Local Match Percentage</b>	<b>Funding Source</b>	<b>TOTAL Federal Share ND2023-003</b>	<b>Local Share</b>	<b>Total</b>
<b>Funding Category</b>					
<b>111202 Purchase Replacement Std 35 Ft Bus -- Replaces 5FYH5KU10BB038631</b>	<b>15</b>	<b>5339(b)</b>	<b>\$488,750</b>	<b>\$86,250</b>	<b>\$575,000</b>
<b>111202 Purchase Replacement Std 35 Ft Bus -- Replaces 5FTG5KU19BB038630</b>	<b>15</b>	<b>5339(b)</b>	<b>\$488,750</b>	<b>\$86,250</b>	<b>\$575,000</b>
<b>TOTALS</b>			<b>\$977,500</b>	<b>\$172,500</b>	<b>\$1,150,000</b>

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.

<b>CFDA Title</b>	<b>CFDA No.</b>	<b>Title 49 USC Chapter 53 Section</b>	<b>Award Name</b>
<b>Capital Assistance Program</b>	<b>CFDA No 20.526</b>	<b>5339(b)</b>	<b>Bus and Bus Facilities Competitive</b>
Section 5339 provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing mass transportation.			

NDDOT CONTRACT No. 38231169

Scope of Work – Section 5339 Bus and Bus Facilities – Vehicle Purchase

1. Provide public transportation services throughout the Contractors service area.
2. Must follow your agencies Procurement Plan for all purchases.
3. Must be Active on sam.gov and remain so for the duration of this contract.
4. Must have signed the current FTA Annual Certifications and Assurances in the BlackCat system.
5. Must contact the NDDOT for approval prior to placing vehicle order from an approved vendor.
6. Must have vehicle(s) available for NDDOT inspection upon request.
7. Must track all maintenance into BlackCat or NDDOT approved software and be available to NDDOT upon request.
8. Must be in compliance with all federal and state requirements.

Attachment B

**Rolling Stock Over \$250,000  
Federal Clauses**

**ACCESS TO RECORDS AND REPORTS**

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

**AMERICANS WITH DISABILITIES ACT(ADA)**

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with 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 persons with disabilities, including any subsequent amendments to that Act, and with 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 persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

**BUS TESTING**

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

**BUY AMERICA REQUIREMENTS**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all 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 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- 1. all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- 2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- 3. all construction materials 44 are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Waivers:

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

- a. When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:
  - 1. applying the domestic content procurement preference would be inconsistent with the public interest;



2. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [link to awarding agency web site with information on currently applicable general applicability waivers].

Definitions:

"Construction materials" includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives 46—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

"Domestic content procurement preference" means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

"Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

"Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States.

## CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent 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 United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

**1 Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

- a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
- b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

**2 Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

**3 Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

**4 Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

**Civil Rights and Equal Opportunity**

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

**1. Nondiscrimination.** In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., 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, 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.

**4. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**5. Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

**CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA."

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

## CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

## CORONAVIRUS RELIEF AND CARES ACT CERTIFICATION

The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Pub. L. 116–260, Div. M), requires that, to the maximum extent possible, funds made available under the Act and in title XII of division B of the CARES Act (Pub. L. 116–136) shall be directed to payroll and operations of public transit (including payroll and expenses of private providers of public transportation), unless the recipient certifies that it has not furloughed any employees.

## DEBARMENT AND SUSPENSION

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. 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 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## DISADVANTAGED BUSINESS ENTERPRISE (DBE)

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

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 C.F.R. part 26 in the award and administration of DOT-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 Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

## **DISPUTES, BREACHES, DEFAULTS, AND LITIGATION**

(a) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

(b) Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. (3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a 95 criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

(c) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

(d) Enforcement. The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

## **DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre approval.

## **ENERGY CONSERVATION**

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 (42 U.S.C. § 6201).

## **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## FLY AMERICA

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Recipient 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 Recipient, 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 the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **NOTIFICATION TO FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

## **NOTICE TO THIRD PARTY PARTICIPANTS**

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

## **NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

The contractor shall report any current or prospective legal matter with potentially serious consequences, including a major dispute, default, breach, or litigation, or knowledge that the contractor has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance; suspension, debarment, or other similar administrative or enforcement action against OCTA or the contractor; or any matter or situation, including any other change or legal action that may adversely affect the Federal Government's interest in a Project or related activities.

## **PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES**

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

## **PROCUREMENT OF RECOVERED MATERIALS**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in

guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. 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.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - iii. Telecommunications or video surveillance equipment or services procured or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c. See Public Law 115-232, section 889 for additional information.

d. See also § 200.471.

## **PROMPT PAYMENT**

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. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, 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 Agency.

## **PUBLIC TRANSPORTATION AGENCY SAFETY PLANS (PTASP)**

For Fiscal Year 2020, FTA required this certification from each applicant under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), each rail operator that is subject to FTA's state safety oversight programs, and each State that is required to draft and certify a public transportation agency safety plan on behalf of a small public transportation provider pursuant to 49 CFR § 673.11(d) by July 20, 2020. This certification does not apply to any applicant that receives financial assistance from FTA exclusively under the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or combination of these two programs.

## **RESTRICTIONS ON LOBBYING**

Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence 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 any of the following covered Federal actions: 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.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence 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 that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence 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 that loan insurance or guarantee.

Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

- (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.



## SAFE OPERATION OF MOTOR VEHICLES

### Seat Belt Use

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.

### Distracted Driving

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 Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## SEVERABILITY

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

## SIMPLIFIED ACQUISITION THRESHOLD

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

## SOLID WASTES

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

## TERMINATION

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the 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 the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency 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 Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

If the 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 Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will 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 the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Transportation Services)

If the 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 the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will 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 the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete 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. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency

Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the 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 Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### **TRAFFICKING IN PERSONS**

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

### **VETERANS HIRING PREFERENCE**

Veterans Employment - Recipients and subrecipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would 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.

### **VIOLATION AND BREACH OF CONTRACT**

#### **Disputes:**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the agencies authorized representative. 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 agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

#### **Performance during Dispute:**

Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.

#### **Claims for Damages:**

Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

#### **Remedies:**

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

#### **Rights and Remedies:**

Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**PRE- AWARD CERTIFICATION REQUIREMENT FOR PROCUREMENT OF ROLLING STOCK (RECIPIENT)**

**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.

As required by Title 49 of the CFR, Part 663 – Subpart B, \_\_\_\_\_ (the recipient) is satisfied that the buses to be purchased, \_\_\_\_\_ (number and description of buses) from \_\_\_\_\_ (the manufacturer), meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The recipient or its appointed analyst \_\_\_\_\_ (the analyst, not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the buses identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the buses, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

**PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION**

As required by Title 49 of the CFR, Part 663 – Subpart B, \_\_\_\_\_ (the recipient) certifies that the buses to be purchased, \_\_\_\_\_ (number and description of buses) from \_\_\_\_\_ (the manufacturer), are the same product described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce a bus that meets the specifications.

**PRE-AWARD FMVSS COMPLIANCE CERTIFICATION**

As required by Title 49 of the CFR, Part 663 – Subpart D, \_\_\_\_\_ (the recipient) certifies that it received, at the pre-award stage, a copy of \_\_\_\_\_ 's (the manufacturer) self-certification information stating that the buses, \_\_\_\_\_ (number and description of buses), will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 of the Code of Federal Regulations, Part 571.

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

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

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

**PRE-AWARD CERTIFICATION FOR PROCUREMENT OF ROLLING STOCK (VENDOR)**

**PRE-AWARD AUDIT REQUIREMENTS:** A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock.

**DESCRIPTION OF PRE-AWARD AUDIT:** A pre-award audit under this part includes— (a) A Buy America certification; (b) A purchaser's requirements certification; and (c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information.

**PRE-AWARD BUY AMERICA CERTIFICATION:** For purposes of this part, a pre-award Buy America certification is a certification that the recipient keeps on file that:

- a. There is a letter from FTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
- b. The recipient is satisfied that the rolling stock to be purchased meets the requirements of section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
  - 1. The Component and subcomponent parts of the rolling stock that are produced in the United States is more than sixty percent (60%) of the cost of all components and subcomponents of the vehicle identified by the manufacturer; and
  - 2. The location of the final assembly must take place in the United States (49 CFR 661.11), including a description of the activities that will take place at the final assembly point and the cost of final assembly.

**PRE-AWARD PURCHASERS REQUIREMENTS CERTIFICATION:** For purposes of this part, a pre-award purchaser's requirements certification is a certification a recipient keeps on file that:

- a. The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and
- b. The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation.

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirements in 49 CFR 661.13(b).

**PRE-AWARD FMVSS COMPLIANCE CERTIFICATION:** As required by Title 49 of the CFR, Part 663 – Subpart D, the recipient certifies that it received, at the pre-award stage, a copy of the manufacturers self-certification information stating that the buses will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 of the Code of Federal Regulations, Part 571.

**Bidder or Offeror Certificate of COMPLIANCE with Buy America and FMVSS Rolling Stock Requirements**

As required by 49 CFR Part 663, the bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 CFR 661.11.

Company \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

**Bidder or Offeror Certificate of NON-COMPLIANCE with Buy America and FMVSS Rolling Stock Requirements**

As required by 49 CFR Part 663, the bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Company \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

**Federal Certifications**

**CERTIFICATION AND RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_ hereby certify  
(Name and title of official)

On behalf of \_\_\_\_\_ that:  
(Name of Bidder/Company Name)

- 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 any agency, a Member of Congress, and 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.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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. 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.

Name of Bidder/Company Name

Type or print name

Signature of authorized representative:

**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION  
(NONPROCUREMENT)**

Recipients, contractors, and subcontractors that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person (found below); or (c) adding a clause or condition to the contract or subcontract.

**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,

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: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Name and Title of Contractor's Authorized Official: \_\_\_\_\_

**BUS TESTING CERTIFICATION**

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The undersigned bidder [Contractor/Manufacturer] certifies that the vehicle model or vehicle models offered in this bid submission complies with 49 U.S.C 5318(e) and FTA's implementing regulation at 49 CFR Part 665.

A copy of the test report (for each bid ITEM) prepared by the Federal Transit Administration's (FTA) Altoona, Pennsylvania Bus Testing Center is attached to this certification and is a true and correct copy of the test report as prepared by the facility.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the U.S. Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Name of Bidder/Company Name: \_\_\_\_\_

Type or print name: \_\_\_\_\_

Signature of authorized representative: \_\_\_\_\_

Date of Signature \_\_\_\_ / \_\_\_\_ / \_\_\_\_



**PRE-AWARD BUY AMERICA CERTIFICATION**

As required by 49 CFR part 663 – Subpart B, \_\_\_\_\_ (the recipient) is satisfied that the vehicles to be purchased, \_\_\_\_\_ (number and description of vehicles) from \_\_\_\_\_ (the manufacturer), meet the requirements of 49 U.S.C. 5323(j), as amended. The recipient, or its appointed auditor \_\_\_\_\_ (the auditor – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the vehicles identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the vehicles, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

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

Recipient Authorized Signature: \_\_\_\_\_

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

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

**PRE-AWARD BUY AMERICA CERTIFICATE OF NON-COMPLIANCE**

As required by 49 CFR part 663 – Subpart B, \_\_\_\_\_ (the recipient) keeps on file a certification that there is a letter from FTA which grants a waiver to the rolling stock to be purchased, \_\_\_\_\_ (number and description of rolling stock), from the Buy America requirements under 49 U.S.C. 5323(j)(2)(A),(2)(B), or (2)(D), as amended.

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

Recipient Authorized Signature: \_\_\_\_\_

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

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

**PRE-AWARD FMVSS COMPLIANCE CERTIFICATION**

As required by 49 CFR part 663 – Subpart D, \_\_\_\_\_ (the recipient)

certifies that it received, at the pre-award stage, a copy of

information \_\_\_\_\_ 's (the manufacturer) self-certification

stating that the vehicles, \_\_\_\_\_ (number and

description of vehicles), will comply with the relevant Federal Motor Vehicle Safety Standards

issued by the National Highway Traffic Safety Administration in 49 CFR part 571.

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

Recipient Authorized  
Signature: \_\_\_\_\_

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

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

**PRE-AWARD CERTIFICATION OF FMVSS INAPPLICABILITY**

As required by 49 CFR part 663 – Subpart  
D,; \_\_\_\_\_ (the

recipient) certifies that it received at the pre-award stage, a statement from

that \_\_\_\_\_ (the manufacturer) indicating

the vehicles, \_\_\_\_\_ (number  
and

description of vehicles), will not be subject to the Federal Motor Vehicle Safety Standards

issued by the National Highway Traffic Safety Administration in 49 CFR part 571.

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

Recipient Authorized  
Signature: \_\_\_\_\_

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

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

**PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION**

As required by 49 CFR part 663 – Subpart B, \_\_\_\_\_ (the recipient) certifies that the vehicles to be purchased, \_\_\_\_\_ (number and description of vehicles) from , \_\_\_\_\_ (the manufacturer), are the same product described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce vehicles that meet the specifications set forth in the solicitation.

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

Recipient Authorized Signature: \_\_\_\_\_

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

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

**CERTIFICATE OF COMPLIANCE WITH BUY AMERICA ROLLING STOCK REQUIREMENTS**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations in 49 CFR § 661.11

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

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

Company : \_\_\_\_\_

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

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

**CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA ROLLING STOCK REQUIREMENTS**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j) but may qualify for an exemption to the requirement consistent with 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.

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

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

Company: \_\_\_\_\_

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

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

**ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION**

(Post-Delivery purchaser's requirement, in compliance with the federal requirements of 49 U.S.C. Section 5323(m))

**ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION**

**(Rolling Stock Procurements for more than 10 vehicles for areas >200,000 in population)**

As required by 49 CFR Part 663-Subpart C, the

\_\_\_\_\_ (Recipient's name)

Certifies that a resident inspector,

\_\_\_\_\_ (Name of inspector)

Was at \_\_\_\_\_ (the manufacturer's)

manufacturing site during the period of manufacture of the buses,

\_\_\_\_\_ (description of buses).

The inspector visually inspecting the buses, the \_\_\_\_\_ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

**ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION**

**(Rolling Stock Procurements for more than 20 vehicles for areas < 200,000 in population)**

As required by 49 CFR Part 663-Subpart C, the

\_\_\_\_\_ (Recipient's name)

Certifies that a resident inspector,

\_\_\_\_\_ (Name of inspector)

Was at \_\_\_\_\_ (the manufacturer's)

manufacturing site during the period of manufacture of the buses,

\_\_\_\_\_ (description of buses).

The inspector visually inspecting the buses, the \_\_\_\_\_ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

Signature \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Title \_\_\_\_\_

**TRANSIT VEHICLE MANUFACTURER (TVM) DBE CERTIFICATION**

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Pursuant to the provisions of Section 105(f) of the Surface Transportation Assistance Act of 1982, each bidder for this contract must certify that it has complied with the requirements of 49 CFR Part 26.49, regarding the participation of Disadvantaged Business Enterprises (DBE) in FTA assisted procurements of transit vehicles. Absent this certification, properly completed and signed, a bid shall be deemed non-responsive.

**Certification:**

I hereby certify, for the bidder named below, that it has complied with the provisions of 49 CFR Part 26.49 and that I am duly authorized by said bidder to make this certification.

**BIDDER/COMPANY**

Name of Bidder/Company \_\_\_\_\_

Signature of Representative \_\_\_\_\_

Type or Print Name \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**POST DELIVERY CERTIFICATION FOR PROCUREMENT OF ROLLING STOCK (RECIPIENT)**

**POST DELIVERY AUDIT REQUIREMENTS:** A recipient purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit is complete before title to the rolling stock is transferred to the recipient.

**DESCRIPTION OF POST DELIVERY AUDIT:** A post-delivery audit under this part includes: (a) A post-delivery Buy America certification as described in 49 CFR 663.35; (b) A post-delivery purchaser's requirements certification as described in 49 CFR 663.37; and (c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in 49 CFR 663.41 or 49 CFR 663.43.

**POST DELIVERY BUY AMERICA CERTIFICATION:** For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that:

- a. There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
- b. The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
  - 1. Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and
  - 2. The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.

**POST DELIVERY PURCHASERS REQUIREMENTS CERTIFICATION**

For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—

- a. Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall:
  - 1. Provide accurate records of all vehicle construction activities; and
  - 2. Address how the construction and operation the vehicles fulfills the contract specifications.
- b. After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.
- c. For procurements of:
  - 1. Ten or fewer buses; or
  - 2. Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or
  - 3. Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.

**POST DELIVERY AUDIT REVIEW**

- a. If a recipient cannot complete a post-delivery audit because the recipient or its agent cannot certify Buy America compliance or that the rolling stock meets the purchaser's requirements specified in the contract, the rolling stock may be rejected and final acceptance by the recipient will not be required. The recipient may exercise any legal rights it has under the contract or at law.
- b. This provision does not preclude the recipient and manufacturer from agreeing to a conditional acceptance of rolling stock pending manufacturer's correction of deviations within a reasonable period of time.

**POST DELIVERY FMVSS COMPLIANCE CERTIFICATION**

If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.

**Certificate of COMPLIANCE with Buy America and FMVSS Rolling Stock Requirements**

The recipient hereby certifies that it has reviewed and ensures the bidder or offeror has complied with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 CFR 661.11.

Company \_\_\_\_\_  
 Name \_\_\_\_\_ Title \_\_\_\_\_  
 Signature \_\_\_\_\_ Date \_\_\_\_\_

**Certificate of NON-COMPLIANCE, Buy America and FMVSS Rolling Stock Requirements.**

The recipient hereby certifies that it has reviewed and determined the bidder or offeror cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 CFR 661.7.

Company \_\_\_\_\_  
 Name \_\_\_\_\_ Title \_\_\_\_\_  
 Signature \_\_\_\_\_ Date \_\_\_\_\_

**POST DELIVERY CERTIFICATION FOR PROCUREMENT OF ROLLING STOCK (VENDOR)**

**POST DELIVERY AUDIT REQUIREMENTS:** A recipient purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit is complete before title to the rolling stock is transferred to the recipient.

**DESCRIPTION OF POST DELIVERY AUDIT:** A post-delivery audit under this part includes: (a) A post-delivery Buy America certification as described in 49 CFR 663.35; (b) A post-delivery purchaser's requirements certification as described in 49 CFR 663.37; and (c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in 49 CFR 663.41 or 49 CFR 663.43.

**POST DELIVERY BUY AMERICA CERTIFICATION**

For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that:

- a. There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
- b. The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
  - 1. Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and
  - 2. The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.

**POST DELIVERY PURCHASERS REQUIREMENTS CERTIFICATION**

For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that

- a. Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall:
  - 1. Provide accurate records of all vehicle construction activities; and
  - 2. Address how the construction and operation of the vehicles fulfills the contract specifications.
- b. After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.
- c. For procurements of:
  - 1. Ten or fewer buses; or
  - 2. Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or
  - 3. Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.

**POST DELIVERY AUDIT REVIEW**

- a. If a recipient cannot complete a post-delivery audit because the recipient or its agent cannot certify Buy America compliance or that the rolling stock meets the purchaser's requirements specified in the contract, the rolling stock may be rejected and final acceptance by the recipient will not be required. The recipient may exercise any legal rights it has under the contract or at law.
- b. This provision does not preclude the recipient and manufacturer from agreeing to a conditional acceptance of rolling stock pending manufacturer's correction of deviations within a reasonable period of time.

**POST DELIVERY FMVSS COMPLIANCE CERTIFICATION**

If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.

**Certificate of COMPLIANCE with Buy America and FMVSS Rolling Stock Requirements**

The recipient hereby certifies that it has reviewed and ensures the bidder or offeror has complied with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 CFR 661.11.

Agency \_\_\_\_\_  
 Name \_\_\_\_\_ Title \_\_\_\_\_  
 Signature \_\_\_\_\_ Date \_\_\_\_\_

**Certificate of NON-COMPLIANCE, Buy America and FMVSS Rolling Stock Requirements.**

The recipient hereby certifies that it has reviewed and determined the bidder or offeror cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 CFR 661.7.

Agency \_\_\_\_\_  
 Name \_\_\_\_\_ Title \_\_\_\_\_  
 Signature \_\_\_\_\_ Date \_\_\_\_\_



**POST-DELIVERY BUY AMERICA CERTIFICATION**

As required by 49 CFR part 663 – Subpart C, \_\_\_\_\_ (the recipient) certifies that it is satisfied that the vehicles received, \_\_\_\_\_ (number and description of vehicles) from \_\_\_\_\_ (the manufacturer), meet the requirements of 49 U.S.C. 5323(j), as amended. The recipient, or its appointed auditor \_\_\_\_\_ (the auditor – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the actual component and subcomponent parts of the vehicles identified by the manufacturer, country of origin, and cost; and (2) the actual location of the final assembly point for the vehicles, including a description of the activities that took place at the final assembly point and the cost of final assembly.

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

Recipient Authorized Signature: \_\_\_\_\_

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

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

**POST-DELIVERY BUY AMERICA CERTIFICATE OF NON-COMPLIANCE**

As required by 49 CFR part 663 – Subpart C, \_\_\_\_\_ (the recipient) certifies that there is a letter from FTA which grants a waiver to the vehicles received, \_\_\_\_\_ (manufacturer, number and description of vehicles) from the Buy America requirements under 49 U.S.C. 5323(j), as amended.

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

Recipient Authorized Signature: \_\_\_\_\_

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

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

**POST-DELIVERY FMVSS COMPLIANCE CERTIFICATION**

As required by 49 CFR part 663 – Subpart D, \_\_\_\_\_ (the recipient) certifies that it received, at the post-delivery stage, a copy of \_\_\_\_\_'s the (manufacturer) self-certification information stating that the vehicles, \_\_\_\_\_ (number and description of vehicles), comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR part 571.

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

Recipient Authorized Signature: \_\_\_\_\_

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

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

**POST-DELIVERY CERTIFICATION OF FMVSS INAPPLICABILITY**

As required by 49 CFR part 663 – Subpart D, \_\_\_\_\_ (the recipient) certifies that it received at the pre-award stage, a statement from , \_\_\_\_\_'s (the manufacturer) indicating that the vehicles \_\_\_\_\_ (number and description of vehicles), are not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR part 571.

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

Recipient Authorized Signature: \_\_\_\_\_

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

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

**POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION**

As required by 49 CFR part 663 – Subpart C, \_\_\_\_\_ (the recipient) certifies that a resident inspector, \_\_\_\_\_ (the resident inspector – not an agent or employee of the manufacturer), was at \_\_\_\_\_'s (the manufacturer), manufacturing site during the period of manufacture of the vehicles, \_\_\_\_\_ (number and description of the vehicles). The inspector monitored manufacturing and completed a report on the manufacture of the vehicles and provided accurate records of all vehicle construction activities. The report addresses how the construction and operation of the vehicles fulfill the contract specifications. After reviewing the report, visually inspecting the vehicles, and performance testing the vehicles, the recipient certifies that the vehicles meet the contract specifications.

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

Recipient Authorized Signature: \_\_\_\_\_

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

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

**POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION**

As required by 49 CFR part 663 – Subpart C, after visually inspecting and road testing the contract vehicles, \_\_\_\_\_ (the recipient) certifies that the vehicles, \_\_\_\_\_ (number and description of vehicles) from \_\_\_\_\_ (the manufacturer), meet the contract specifications.

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

Recipient Authorized Signature: \_\_\_\_\_

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

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

### 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

NDDOT CONTRACT No. 38231169

Closeout Requirements – Section 5339 – Bus and Bus Facilities - Vehicle Purchase

1. Must follow your agencies Procurement Plan for all purchases.
2. Must complete the Checklist of Vehicle Reimbursement and exhibit documents.
3. NDDOT must be listed as lien holder on the vehicle title.
4. If a replacement vehicle, you must submit the Checklist for Vehicle Disposal or Transfer.
5. All records must be kept in accordance with the State of ND and FTA requirements.

### Risk Management Appendix

#### Transit Agreements with Private Individuals, Companies, Corporations, Etc.:

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.

Contractor 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 are **\$500,000 per person and \$2,000,000 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.

**Contractor shall furnish a certificate of insurance evidencing the requirements in 1 above to the undersigned State representative prior to commencement of this agreement.** The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

When a portion of a Contract is sublet, the Contractor shall require any subcontractors, prior to commencement of work set out under an agreement between the Contractor and the subcontractor, to:

Defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State 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. § 54-12-08. Subcontractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against 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 \$500,000 per person and \$2,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation.

The State shall be endorsed on the commercial general liability policy and automobile liability policy as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the State 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 representative of the State, 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 State. Any insurance, self-insurance or self-retention maintained by the State 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 State 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 Contractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

RM Consulted 2007  
Revised 07-23



**Certificate Of Completion**

Envelope Id: 22E439DADBCE45759CA6DF5C4AF837A4  
Subject: Contract #38231169: Please DocuSign: Section 5339 Transit Grant Agreement  
Contract Number: 38231169  
PCN:  
Source Envelope:  
Document Pages: 44  
Certificate Pages: 4  
AutoNav: Enabled  
EnvelopeId Stamping: Enabled  
Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:  
Sara Susie  
608 E Boulevard Ave  
Bismarck, ND 58505  
ssusie@nd.gov  
IP Address: 165.234.92.5

**Record Tracking**

Status: Original  
8/30/2023 2:53:30 PM  
Security Appliance Status: Connected  
Storage Appliance Status: Connected  
Holder: Sara Susie  
ssusie@nd.gov  
Pool: StateLocal  
Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD  
Location: DocuSign  
Location: DocuSign

**Signer Events**

Becky Hanson  
bhanson@nd.gov  
Carahsoft OBO North Dakota Department of Transportation CLOUD  
Security Level: Email, Account Authentication (None)

**Signature**

*Becky Hanson*

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.252.245

**Timestamp**

Sent: 8/30/2023 2:58:16 PM  
Viewed: 8/30/2023 3:54:13 PM  
Signed: 8/30/2023 3:54:39 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Stacey Hanson  
smhanson@nd.gov  
Assistant Local Government Engineer  
Carahsoft OBO North Dakota Department of Transportation CLOUD  
Security Level: Email, Account Authentication (None), Authentication

*St*

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.252.245

Sent: 8/30/2023 3:54:48 PM  
Viewed: 8/30/2023 4:24:12 PM  
Signed: 8/30/2023 4:24:23 PM

**Authentication Details**

SMS Auth:  
Transaction: 9cbe5ec1-414f-47d0-a858-0bb9c2fde3ad  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 8/30/2023 4:24:05 PM  
Phone: +1 701-527-8879

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Paul Benning  
pbenning@nd.gov  
Local Government Director  
Security Level: Email, Account Authentication (None), Authentication

*Paul Benning*

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.253.12

Sent: 8/30/2023 4:24:28 PM  
Viewed: 8/30/2023 4:34:58 PM  
Signed: 8/30/2023 4:35:04 PM

**Authentication Details**

**Signer Events**

**Signature**

**Timestamp**

**SMS Auth:**

Transaction: a8fae0a0-00da-499b-8df8-d6073ed9d611  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 8/30/2023 4:34:45 PM  
Phone: +1 701-214-2502

**SMS Auth:**

Transaction: b1d35654-bd54-41f6-b0ab-aab51424c330  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 8/30/2023 4:35:56 PM  
Phone: +1 701-214-2502

**SMS Auth:**

Transaction: bee982da-ef66-4dc6-a79c-acadaf8745f6  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 8/30/2023 4:36:33 PM  
Phone: +1 701-214-2502

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Shannon Sauer  
ssauer@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

SS

Sent: 8/30/2023 4:35:13 PM  
Viewed: 8/30/2023 4:35:47 PM  
Signed: 8/30/2023 4:35:54 PM

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.253.12

**Authentication Details**

**SMS Auth:**

Transaction: a7061cd2-6f67-452a-8006-464f8b81b936  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 8/30/2023 4:35:40 PM  
Phone: +1 701-426-9825

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Clint Morgenstern  
cdmorgenstern@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign



**Signer Events**

Chad Orn  
corn@nd.gov  
Security Level: Email, Account Authentication (None), Authentication  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Signature**

**Timestamp**

Laureen M. Martin  
lmartin@nd.gov  
Security Level: Email, Account Authentication (None), Authentication  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**In Person Signer Events**

**Signature**

**Timestamp**

**Editor Delivery Events**

Sara Susie  
ssusie@nd.gov  
Richland County Chairperson  
Carahsoft OBO North Dakota Department of Transportation CLOUD  
Security Level: Email, Account Authentication (None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Status**



Using IP Address: 165.234.253.12

**Timestamp**

Sent: 8/30/2023 2:54:06 PM  
Viewed: 8/30/2023 2:54:34 PM  
Completed: 8/30/2023 2:58:15 PM

**Agent Delivery Events**

Julie Bommelman  
jbommelman@cityoffargo.com  
Security Level: Email, Account Authentication (None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Status**

**Timestamp**

Sent: 8/30/2023 4:35:59 PM  
Resent: 9/6/2023 10:36:53 AM  
Viewed: 9/11/2023 10:24:23 AM

**Intermediary Delivery Events**

**Status**

**Timestamp**

**Certified Delivery Events**

**Status**

**Timestamp**

**Carbon Copy Events**

**Status**

**Timestamp**

Legal Admin  
dotlegaladmin@nd.gov  
Security Level: Email, Account Authentication (None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Legal Admin  
dotlegaladmin@nd.gov  
Security Level: Email, Account Authentication (None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Witness Events**

**Signature**

**Timestamp**

**Notary Events**

**Signature**

**Timestamp**

**Envelope Summary Events**

**Status**

**Timestamps**

**Envelope Summary Events**

Envelope Sent  
Envelope Updated  
Envelope Updated

**Status**

Hashed/Encrypted  
Security Checked  
Security Checked

**Timestamps**

8/30/2023 2:54:07 PM  
8/30/2023 2:58:15 PM  
8/30/2023 2:58:15 PM

**Payment Events**

**Status**

**Timestamps**

MEMORANDUM

TO: Chad Orn  
Deputy Director for Planning

FROM: Stacey Hanson  
Assistant Engineer for Local Government  
Becky Hanson  
Transit Program Manager

DATE: 8/30/2023

SUBJECT: Section 5339, Bus and Bus Facilities Program  
City of Fargo/Fargo Metro Area Transit  
SFY 2024

This is a contract to provide capital funding for bus terminal repairs under the regulations of Section 5339 Bus and Bus Facilities Grant Funds.

Federal Transit Administration Funds of \$800,000 are allocated for capital assistance to complete the bus terminal repairs. Twenty percent (20%) local match is required.

38/bh 328-2542

NORTH  
**Dakota** | Transportation  
Be Legendary.™

August 30, 2023

Julie Bommelman  
Fargo Metro Area Transit  
650 23<sup>rd</sup> St N  
Fargo, ND 58102

FY 2024 – Section 5339 Bus & Bus Facilities Grant, CFDA No. 20.526

Thank you for your 5339 grant application for capital needs. We are pleased to inform you we are able to provide funding for your transit agency. Your award amount is \$800,000 to complete bus terminal repairs.

The required Federal/State procurement process must be followed to bid and start any of the bus terminal renovations. The Transit Section must be contacted for approval prior to beginning the procurement process and throughout the project.

The NDDOT has made changes to this contract that you need to be aware of. The contract documents now include a detailed Scope of Work (Section 2) and updates to Closeout Requirements (Section 17). Also review Section 5. Risk Assessment, Section 6. Risk Based Monitoring and Section 14. Audit and Inspection for additional requirements that effect your agency.

In order to begin the funding process, please:

1. Complete the contractor and witness information in DocuSign (**the contractor and witness must be different people**).
2. Have your organization's president or chairman digitally sign and date the agreement (under Contractor)—this signature **must be an authorized signatory** for your project. Please also submit a proof of authorization to sign if it is not the president or chairperson of your agency.
3. Finish the DocuSign process to send to the witness for signature.

FY 2024 – Section 5339 Bus & Bus Facilities Grant  
August 30, 2023  
Page 2

4. Have a witness sign and date the agreement (under Witness) and upload current proof of insurance in the form of **Confirmation of Coverage OR Certificate of Insurance for automobiles and premises/commercial**, if it is required. This is required for all Non-Profit and For-Profit agencies. **Commercial general liability and automobile liability insurance minimum limits or liability required are \$500,000 per person and \$2,000,000 per occurrence.** Multiple pages can be uploaded as one attachment.
5. Upon completion of executing all documents, finish the DocuSign process and the contract documents will return to NDDOT for processing.

Thank you for your continuing efforts to improve transportation in North Dakota. If you have any questions or need assistance, please contact Sara Susie at (701) 328-2540 or [ssusie@nd.gov](mailto:ssusie@nd.gov).

With gratitude,

*Becky Hanson*

Becky Hanson  
Transit Program Manager

Cc: Kevin Hanson, Board Chair  
Dan Farnsworth, Fargo/Moorhead COG  
Enclosure

**North Dakota Department of Transportation  
SECTION 5339 TRANSIT GRANT AGREEMENT**

**Federal Award Information**

Assistance Listing No.: 20.526

Assistance Listing Title: Bus and Bus Facilities Formula & Discretionary Program

Awarding Federal Agency: Federal Transit Administration (FTA)

Pass-through entity: North Dakota Department of Transportation (NDDOT)

NDDOT Program Mgr.: Hanson, Becky R.

Telephone (701) 328-2542 Email: bhanson@nd.gov

Subrecipient/Contractor Name: City of Fargo DUNS No.: 070265871 Unique Entity ID: K2QJQZVH5PM6

Federal Award Project Description: FFY2021 5339 Statewide Formula funds for Capital

Federal Aid Identification No. (FAIN) and Award Date: ND2023-015, TBD

Period of Performance: TBD - TrAMS grant status - Final Concurrence

Subaward Period of Performance Start Date: July 1, 2023 End Date: June 30, 2024

Subaward Budget Period Start Date: July 1, 2023 End Date: June 30, 2024

Total Federal Award: \$800,000

Total Project Budget Including Local Match: \$1,000,000

Total Capital Budget: \$1,000,000      Federal Funds: \$800,000, 80%      Matching Funds: \$200,000, 20%

Research and Development Activities: This award does not include funds for Research and Development activities.

Indirect Cost Rate (ICAP): N/A

**Notice to Subrecipients: This agreement is subject to all the Certifications and Assurances required by the FTA. 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 Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.



WHEREAS, Section 5339 of the Fixing America's Surface Transportation (FAST) Act and the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (IIJA), makes federal resources available to States and designated recipients to replace, rehabilitate and purchase buses and related equipment and to contract bus-related facilities including technological changes or innovation to modify low or no emission vehicles or facilities. Funding is provided through formula allocations and competitive grants. The 5339 (b) sub-program provides competitive grants for buses and bus facilities that support low and zero emission vehicles.

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 in accordance with the guidelines of the State Management Plan for Public Transportation, the FTA Circular 5100.1 Bus and Bus Facilities Formula Program Guidance and Application Instructions, Federal Certifications and Assurances, and the Master Agreement with the FTA; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds to finance capital bus and bus related projects such as rolling stock, equipment, facility construction, and/or capital improvements which will support the continuation and expansion of public transportation in 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. Period of Performance.** For the period of July 1, 2023, through June 30, 2024, the Contractor shall undertake and provide the transportation services as described in the project description and budget (Attachment A) and the Contractor's grant application, on file with NDDOT. The term of the agreement shall begin upon execution of this agreement by both parties and terminate on June 30, 2024.

**Section 2. Scope of Work.**

The Contractor shall undertake and complete the Project in accordance with this agreement and as described in its application, which is incorporated into the agreement by this reference.

See attached Scope of Work

**Section 3. Cost.** NDDOT shall reimburse the Contractor for costs incurred while performing this service not to exceed \$800,000, providing these costs are incurred in accordance and within the rates of participation, as indicated in Attachment A, and are allowable costs as determined under 48 CFR 31.2 or 48 CFR 31.6, and 2 CFR Part 200, as applicable. Requests for reimbursements can be submitted to NDDOT at the end of the quarter being reported. NDDOT reserves the right to request supporting documentation for any and all submittals. NDDOT will reimburse those eligible costs based on the program guidelines for the item categories and its appropriate reimbursement ratio (Attachment A).

Eligible costs item categories may include:

Rehab/Renovate – Bus Terminal

**Section 4. Indirect Cost Rate Provision.** Federal agencies and NDDOT shall review and approve the negotiated indirect cost rate, unless there is a federal statute that states otherwise, or a federal



agency head has made other approved provisions. Any rate approved by a federal agency, or a cognizant agency must be approved by NDDOT.

If the contractor does not have a federally negotiated indirect cost rate, the NDDOT can either:

- negotiate an indirect rate with the contractor, or
- allow the de minimis 10% flat rate (the de minimis rate, is not applicable in certain cases (200.414(f); Appendix VII.D.1.B.)) This rate may be used indefinitely, until the contractor seeks to formally negotiate a rate. If the de minimis rate is used, the NDDOT does not need to review and approve.

**Section 5. Risk Assessments.** The NDDOT shall conduct pre-award risk assessments of applicants prior to issuing a contract. The contractor shall conduct risk assessments of their subawardees either before or after making the award to determine the appropriate level of monitoring. The contractor shall document its procedures for assessing risk and have them available upon NDDOT request.

**Section 6. Risk Based Monitoring.** The NDDOT shall conduct a risk assessment on the contractor and the following specific conditions shall be met and/or maintained throughout this agreement.

1. Compliance Review every three (3) years.
2. Submit Receipts one (1) Random Quarter each year.
3. Review audit reports and determine how material any audit findings are in the audit reports and where they pose an increased risk to subrecipients abilities to comply and carry out their Statements of Work.
4. Provide ongoing training and technical assistance on program related areas.

The NDDOT reserves the right to increase the monitoring during the agreement period based on periodical review of audit reports, audit findings, compliance review findings, federal reports, and reimbursement requests.

**Section 7. Property.** All purchases, property management, and property disposition shall be made in accordance with State and Federal requirements, copies of which will be provided by NDDOT on request. Such property shall be used for the duration of its useful life. If any project property 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. The NDDOT may choose to transfer any assets in good working condition to other eligible Contractors or approve the asset to be sold. If the NDDOT has approved the property to be sold, the Contractor may retain \$5,000 plus the percentage of its local share. Any remaining federal share must be returned to FTA.

**Section 8. Purchase of Project Assets.** The purchase of all project asset financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and Federal regulations.

**Section 9. Use of Project Assets.** The Contractor agrees that the project asset shall be used for providing transportation service in accordance with the project description in the grant application. Such asset shall be used for the duration of its useful life. If any project asset 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 10. Amendments & Contract Changes.** All modifications or changes in this agreement shall be in writing and agreed upon by both parties.





**Section 11. 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 12. Assignments.** Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or asset 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 13. 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 14. 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 assets 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. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

- All entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process.
- All entities must complete the Single Audit Certification form
- All entities must provide a schedule of expenditures.

**Section 15. 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 16. Action Upon Termination.** The Contractor agrees to dispose of the project assets in accordance with NDDOT's program policy, copies of which will be made available by NDDOT upon request.

**Section 17. Closeout.** The Federal awarding agency or pass-through entity and contractor will comply with CFR §200.344 closeout requirements. The NDDOT is responsible for closing out the agreement when it determines that all application administrative actions and all required work have been



completed and the agreement has reached its period of performance end date. The contractor shall submit, no later than 90 calendar days after the period of performance end date of this agreement, all financial, performance and other reports as required by the terms and conditions of this agreement. The NDDOT may, if necessary, offer extensions of this deadline as long as the request is in writing at least 30 days prior to the agreement period of performance end date.

Other Closeout requirements are attached.

**Section 18. 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 19. Other Federal Provisions.** The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them: See Attachment B and complete required forms.

**Section 20. 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 or for-profit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

**Section 21. Statement of Financial Assistance.** This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

**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. 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 FTA Master Agreement (from FTA MA (29) dated February 7, 2022) 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 24. Disputes.** FTA Cir. 4220.1. 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 25. 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 26. Conflicts of Interest.** No official or employee of a state or any other governmental instrumentality who is authorized in their official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a state or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than their employment or retention by a state or other governmental instrumentality, in a contract or subcontract in connection with such project. No officer or employee of such person retained by a state or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of NDDOT and of such other governmental instrumentality, and such officer, employee, or person has not participated in such acquisition for and in behalf of the state.

**Section 27. 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 28. Insurance.** The Contractor shall maintain insurance coverage on the project asset in an amount adequate to protect the fair market value of the asset throughout the duration of this agreement.

**Section 29. 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 4220.1, 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 30. 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 31. Risk Management.** The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

CONTRACTOR:

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

WITNESS:

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
DIRECTOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

SS

\_\_\_\_\_  
DATE

APPROVED as to substance by:

Paul Benning  
\_\_\_\_\_  
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

*Paul Benning*  
\_\_\_\_\_  
SIGNATURE

SH

08/30/23  
\_\_\_\_\_  
DATE

CLA 1073 (Div. 38)  
L.D. Approved 9-8-08; 8-23



**CERTIFICATION OF LOCAL MATCH**

It is hereby certified that \_\_\_\_\_ 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:**

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

Executed at \_\_\_\_\_, North Dakota, the last date below signed.

**WITNESS:**

**APPROVED:**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\*  
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\*Director or President of Transit Board

CLA 1073 (Div. 38)  
L.D. Approved 9-8-08; 8-23



**Attachment A**

**Project Name**                      City of Fargo  
 SFY 2024 (July 1, 2023 - June 30, 2024)

	Local Match Percentage	Funding Source	TOTAL Federal Share ND2023-TBD	Local Share	Total
<b>Funding Category</b>					
113401 Rehab/Renovate - Bus Terminal - Deck Repairs	20	5339	\$800,000	\$200,000	\$1,000,000
<b>TOTALS</b>			<b>\$800,000</b>	<b>\$200,000</b>	<b>\$1,000,000</b>

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 assisting them in providing mass transportation.			

NDDOT CONTRACT No. 38231161

Scope of Work – Section 5339 Bus and Bus Facilities Grant – Facility/Equipment

1. Provide public transportation services throughout the Contractors service area.
2. Must follow your agencies Procurement Plan for all purchases.
3. Must be Active on sam.gov and remain so for the duration of this contract.
4. Must have signed the current FTA Certifications and Assurances in the BlackCat system.
5. Must have NDDOT approval prior to contracting with the vendor/contractor/consultant.
6. Must have facility/equipment available for NDDOT inspection upon request.
7. Must track all maintenance into BlackCat or NDDOT approved software and be available to NDDOT upon request.
8. Must be in compliance with all federal and state requirements.

## Attachment B

**Construction Over \$250,000  
Federal Clauses**

**ACCESS TO RECORDS AND REPORTS**

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

**AMERICANS WITH DISABILITIES ACT(ADA)**

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with 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 persons with disabilities, including any subsequent amendments to that Act, and with 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 persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

**BOND REQUIREMENTS**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

It is also understood and agreed that if the bidder should withdraw any part or all of their bid within [90] days after the bid opening without the written consent of the Agency, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense Agency for the damages occasioned by default, then the bidder agrees to indemnify Agency and pay over to Agency the difference between the bid guarantee and Agency's total damages so as to make Agency whole.

The bidder understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

Performance Guarantee. A Performance Guarantee in the amount of 100% of the Contract value is required by the Agency to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Agency within ten (10) business days from Contract execution. The Agency requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. Agency may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Agency if:

1. A bank in good standing issues it. The Agency will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.



4. The Agency is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of the contract.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Agency and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

Payment Bonds. A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Agency as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Agency) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

## BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all 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 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

### Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Waivers:

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

- a. When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:
  1. applying the domestic content procurement preference would be inconsistent with the public interest;
  2. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
  3. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [link to awarding agency web site with information on currently applicable general applicability waivers].

Definitions:

"Construction materials" includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives 46—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

"Domestic content procurement preference" means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

"Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

"Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States.

## CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent 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 United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

**1 Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

- a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
- b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

**2 Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

**3 Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

**4 Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- 1. Nondiscrimination.** In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 2. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.
- 3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et

seq., 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, 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.

**4.Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**5.Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

### Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

### Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA."

## **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

## **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

### Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United

States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

### **CORONAVIRUS RELIEF AND CARES ACT CERTIFICATION**

The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Pub. L. 116-260, Div. M), requires that, to the maximum extent possible, funds made available under the Act and in title XII of division B of the CARES Act (Pub. L. 116-136) shall be directed to payroll and operations of public transit (including payroll and expenses of private providers of public transportation), unless the recipient certifies that it has not furloughed any employees.

### **DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT**

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

### **DEBARMENT AND SUSPENSION**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. 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 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

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 C.F.R. part 26 in the award and administration of DOT-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 Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

## **DISPUTES, BREACHES, DEFAULTS, AND LITIGATION**

(a) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

(b) Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. (3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a 95 criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

(c) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

(d) Enforcement. The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

## **DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre approval.

## **ENERGY CONSERVATION**

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 (42 U.S.C. § 6201).

## **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such

employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## FLY AMERICA

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

## INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a

violation of the FTA terms and conditions.

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Recipient 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 Recipient, 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 the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **NOTIFICATION TO FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

## **NOTICE TO THIRD PARTY PARTICIPANTS**

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

## **NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

The contractor shall report any current or prospective legal matter with potentially serious consequences, including a major dispute, default, breach, or litigation, or knowledge that the contractor has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance; suspension, debarment, or other similar administrative or enforcement action against OCTA or the contractor; or any matter or situation, including any other change or legal action that may adversely affect the Federal Government's interest in a Project or related activities.

## **PROCUREMENT OF RECOVERED MATERIALS.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. 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.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

- a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
  1. Procure or obtain;
  2. Extend or renew a contract to procure or obtain; or
  3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
    - iii. Telecommunications or video surveillance equipment or services procured or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c. See Public Law 115-232, section 889 for additional information.
- d. See also § 200.471.

## **PROMPT PAYMENT**

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. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, 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 Agency.

## **PUBLIC TRANSPORTATION AGENCY SAFETY PLANS (PTASP)**

For Fiscal Year 2020, FTA required this certification from each applicant under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), each rail operator that is subject to FTA's state safety oversight programs, and each State that is required to draft and certify a public transportation agency safety plan on behalf of a small public transportation provider pursuant to 49 CFR § 673.11(d) by July 20, 2020. This certification does not apply to any applicant that receives financial assistance from FTA exclusively under the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or combination of these two programs.

## **RESTRICTIONS ON LOBBYING**

Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence 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 any of the following covered Federal actions: 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.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.



(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence 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 that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence 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 that loan insurance or guarantee.

**Certification and disclosure.**

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

- (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

## **SAFE OPERATION OF MOTOR VEHICLES**

### **Seat Belt Use**

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.

### **Distracted Driving**

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 Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## SEISMIC SAFETY

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

## SEVERABILITY

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

## SIMPLIFIED ACQUISITION THRESHOLD

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

## SOLID WASTES

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## SPECIAL DOL EEO CLAUSE

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

## **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

## **TERMINATION**

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the 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 the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency 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 Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

### Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

### Termination for Default (Supplies and Service)

If the 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 Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will 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 the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

### Termination for Default (Transportation Services)

If the 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 the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will 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 the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete 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. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the 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 Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## **TRAFFICKING IN PERSONS**

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

## **VETERANS HIRING PREFERENCE**

Veterans Employment - Recipients and subrecipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would 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.

## **VIOLATION AND BREACH OF CONTRACT**

### **Disputes:**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or

otherwise furnishes a written appeal to the agencies authorized representative. 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 agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance during Dispute:**

Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.

**Claims for Damages:**

Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies:**

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

**Rights and Remedies:**

Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**Federal Certifications**

**CERTIFICATION AND RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_ hereby certify  
(Name and title of official)

On behalf of \_\_\_\_\_ that:  
(Name of Bidder/Company Name)

- 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 any agency, a Member of Congress, and 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.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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. 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.

Name of Bidder/Company Name \_\_\_\_\_

Type or print name \_\_\_\_\_

Signature of authorized representative: \_\_\_\_\_

**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION  
(NONPROCUREMENT)**

Recipients, contractors, and subcontractors that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person (found below); or (c) adding a clause or condition to the contract or subcontract.

**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,
  - 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: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Name and Title of Contractor's Authorized Official: \_\_\_\_\_

**BUY AMERICA CERTIFICATION  
STEEL OR MANUFACTURED PRODUCTS**

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If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

**Certificate of Compliance with Buy America Requirements**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Company \_\_\_\_\_  
Name \_\_\_\_\_ Title \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

**Certificate of Non-Compliance with Buy America Steel or Manufactured Products Requirements**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Company \_\_\_\_\_  
Name \_\_\_\_\_ Title \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_



### 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

NDDOT CONTRACT No. 38231161

Closeout Requirements – Section 5339 – Bus and Bus Facilities - Facility Purchase

1. Must follow your agencies Procurement Plan for all purchases.
2. Must submit final project paperwork such as drawings, walk-through checklists, owners manuals, and final invoices.
3. All records must be kept in accordance with the State of ND and FTA requirements.

## Risk Management Appendix

### Transit Agreements with Private Individuals, Companies, Corporations, Etc.:

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.

Contractor 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 are **\$500,000 per person and \$2,000,000 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.

**Contractor shall furnish a certificate of insurance evidencing the requirements in 1 above to the undersigned State representative prior to commencement of this agreement.** The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

When a portion of a Contract is sublet, the Contractor shall require any subcontractors, prior to commencement of work set out under an agreement between the Contractor and the subcontractor, to:

Defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State 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. § 54-12-08. Subcontractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against 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 \$500,000 per person and \$2,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation.

The State shall be endorsed on the commercial general liability policy and automobile liability policy as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the State 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 representative of the State, 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 State. Any insurance, self-insurance or self-retention maintained by the State 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 State 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 Contractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

RM Consulted 2007  
Revised 07-23



**Certificate Of Completion**

Envelope Id: 3B87A2CE110B488FA8EE12A1ADFBCCAB  
Subject: Contract #38231161: Please DocuSign: Section 5339 Transit Grant Agreement  
Contract Number: 38231161  
PCN:  
Source Envelope:  
Document Pages: 33  
Certificate Pages: 3  
AutoNav: Enabled  
Envelope Stamping: Enabled  
Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:  
Sara Susie  
608 E Boulevard Ave  
Bismarck, ND 58505  
ssusie@nd.gov  
IP Address: 165.234.92.5

**Record Tracking**

Status: Original  
8/30/2023 3:12:48 PM  
Security Appliance Status: Connected  
Storage Appliance Status: Connected  
Holder: Sara Susie  
ssusie@nd.gov  
Pool: StateLocal  
Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD  
Location: DocuSign  
Location: DocuSign

**Signer Events**

Becky Hanson  
bhanson@nd.gov  
Carahsoft OBO North Dakota Department of Transportation CLOUD  
Security Level: Email, Account Authentication (None)

**Signature**

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.252.245

**Timestamp**

Sent: 8/30/2023 3:22:41 PM  
Viewed: 8/30/2023 3:53:07 PM  
Signed: 8/30/2023 3:53:31 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Stacey Hanson  
smhanson@nd.gov  
Assistant Local Government Engineer  
Carahsoft OBO North Dakota Department of Transportation CLOUD  
Security Level: Email, Account Authentication (None), Authentication

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.252.245

Sent: 8/30/2023 3:53:42 PM  
Viewed: 8/30/2023 4:23:13 PM  
Signed: 8/30/2023 4:23:29 PM

**Authentication Details**

SMS Auth:  
Transaction: 627bcdaf-6909-4ad7-b35f-84f92dbd79b1  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 8/30/2023 4:23:07 PM  
Phone: +1 701-527-8879

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Paul Benning  
pbenning@nd.gov  
Local Government Director  
Security Level: Email, Account Authentication (None), Authentication

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.253.12

Sent: 8/30/2023 4:23:36 PM  
Viewed: 8/30/2023 4:37:31 PM  
Signed: 8/30/2023 4:37:51 PM

**Authentication Details**

**Signer Events**

**Signature**

**Timestamp**

**SMS Auth:**

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Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 8/30/2023 4:37:14 PM  
Phone: +1 701-214-2502

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Shannon Sauer

ssauer@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

SS

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.253.12

Sent: 8/30/2023 4:38:00 PM

Viewed: 8/30/2023 4:38:54 PM

Signed: 8/30/2023 4:39:01 PM

**Authentication Details**

**SMS Auth:**

Transaction: 7b6516e7-4efc-4282-9205-c4831cb3eab0  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 8/30/2023 4:38:47 PM  
Phone: +1 701-426-9825

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Clint Morgenstern

cdmorgenstern@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Chad Orn

corn@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Laureen M. Martin

lmartin@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

**In Person Signer Events**

**Editor Delivery Events**

Sara Susie  
ssusie@nd.gov  
Richland County Chairperson  
Carahsoft OBO North Dakota Department of  
Transportation CLOUD  
Security Level: Email, Account Authentication  
(None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Signature**

**Status**

**VIEWED**

Using IP Address: 165.234.253.12

**Timestamp**

**Timestamp**

Sent: 8/30/2023 3:13:18 PM  
Viewed: 8/30/2023 3:13:53 PM  
Completed: 8/30/2023 3:22:40 PM

**Agent Delivery Events**

Julie Bommelman  
jbommelman@cityoffargo.com  
Security Level: Email, Account Authentication  
(None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Status**

**Timestamp**

Sent: 8/30/2023 4:39:07 PM  
Resent: 9/6/2023 10:36:49 AM  
Viewed: 9/11/2023 10:05:09 AM

**Intermediary Delivery Events**

**Status**

**Timestamp**

**Certified Delivery Events**

**Status**

**Timestamp**

**Carbon Copy Events**

**Status**

**Timestamp**

Legal Admin  
dotlegaladmin@nd.gov  
Security Level: Email, Account Authentication  
(None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Legal Admin  
dotlegaladmin@nd.gov  
Security Level: Email, Account Authentication  
(None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Witness Events**

**Signature**

**Timestamp**

**Notary Events**

**Signature**

**Timestamp**

**Envelope Summary Events**

**Status**

**Timestamps**

Envelope Sent Hashed/Encrypted  
Envelope Updated Security Checked  
Envelope Updated Security Checked

8/30/2023 3:13:18 PM  
8/30/2023 3:22:40 PM  
8/30/2023 3:22:40 PM

**Payment Events**

**Status**

**Timestamps**

MEMORANDUM

TO: Chad Orn  
Deputy Director for Planning

FROM: Stacey Hanson  
Assistant Engineer for Local Government  
Becky Hanson  
Transit Program Manager

DATE: 8/30/2023

SUBJECT: Section 5339, Bus and Bus Facilities Program  
City of Fargo/Fargo Metro Area Transit  
SFY 2024

This is a contract to provide capital funding to purchase a scheduling and dispatching system under the regulations of Section 5339 Bus and Bus Facilities Grant Funds.

Federal Transit Administration Funds of \$560,000 are allocated for capital assistance for the purchase a scheduling and dispatch system. Twenty percent (20%) local match is required.

38/bh 328-2542

NORTH  
**Dakota** | Transportation  
Be Legendary.™

August 30, 2023

Julie Bommelman  
 Fargo Metro Area Transit  
 650 23<sup>rd</sup> St N  
 Fargo, ND 58102

FY 2024 – Section 5339 Bus & Bus Facilities Grant, CFDA No. 20.526

Thank you for your 5339 grant application for capital needs. We are pleased to inform you we are able to provide funding for your transit agency. Your award amount is \$560,000 to purchase a new scheduling and dispatch system.

Once the contract is signed, you may begin demos and discussions with the Vendors on the State Bid contract. Contact the NDDOT with any questions on the State Bid.

The NDDOT has made changes to this contract that you need to be aware of. The contract documents now include a detailed Scope of Work (Section 2) and updates to Closeout Requirements (Section 17). Also review Section 5. Risk Assessment, Section 6. Risk Based Monitoring and Section 14. Audit and Inspection for additional requirements that effect your agency.

In order to begin the funding process, please:

1. Complete the contractor and witness information in DocuSign (**the contractor and witness must be different people**).
2. Have your organization's president or chairman digitally sign and date the agreement (under Contractor)—this signature **must be an authorized signatory** for your project. Please also submit a proof of authorization to sign if it is not the president or chairperson of your agency.
3. Finish the DocuSign process to send to the witness for signature.



FY 2024 – Section 5339 Bus & Bus Facilities Grant

August 30, 2023

Page 2

4. Have a witness sign and date the agreement (under Witness) and upload current proof of insurance in the form of **Confirmation of Coverage OR Certificate of Insurance for automobiles and premises/commercial**, if it is required. This is required for all Non-Profit and For-Profit agencies. **Commercial general liability and automobile liability insurance minimum limits or liability required are \$500,000 per person and \$2,000,000 per occurrence.** Multiple pages can be uploaded as one attachment.
5. Upon completion of executing all documents, finish the DocuSign process and the contract documents will return to NDDOT for processing.

Thank you for your continuing efforts to improve transportation in North Dakota. If you have any questions or need assistance, please contact Sara Susie at (701) 328-2540 or [ssusie@nd.gov](mailto:ssusie@nd.gov).

With gratitude,

*Becky Hanson*

Becky Hanson  
Transit Program Manager

Cc: Kevin Hanson, Board Chair  
Dan Farnsworth, Fargo/Moorhead COG  
Enclosure

**North Dakota Department of Transportation  
SECTION 5339 TRANSIT GRANT AGREEMENT**

**Federal Award Information**

Assistance Listing No.: 20.526

Assistance Listing Title: Bus and Bus Facilities Formula & Discretionary Program

Awarding Federal Agency: Federal Transit Administration (FTA)

Pass-through entity: North Dakota Department of Transportation (NDDOT)

NDDOT Program Mgr.: Hanson, Becky R.

Telephone (701) 328-2542 Email: bhanson@nd.gov

Subrecipient/Contractor Name: City of Fargo DUNS No.: 070265871 Unique Entity ID: K2QJQZVH5PM6

Federal Award Project Description: FFY2021 5339 Statewide Formula funds for Capital

Federal Aid Identification No. (FAIN) and Award Date: ND2023-015, TBD

Period of Performance: TBD - TrAMS grant status - Final Concurrence

Subaward Period of Performance Start Date: July 1, 2023 End Date: December 31, 2024

Subaward Budget Period Start Date: July 1, 2023 End Date: December 31, 2024

Total Federal Award: \$560,000

Total Project Budget Including Local Match: \$700,000

Total Capital Budget: \$700,000 Federal Funds: \$560,000, 80% Matching Funds: \$140,000, 20%

Research and Development Activities: This award does not include funds for Research and Development activities.

Indirect Cost Rate (ICAP): N/A

**Notice to Subrecipients: This agreement is subject to all the Certifications and Assurances required by the FTA. 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/Fargo Metro Area Transit, a Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.



WHEREAS, Section 5339 of the Fixing America's Surface Transportation (FAST) Act and the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (IIJA), makes federal resources available to States and designated recipients to replace, rehabilitate and purchase buses and related equipment and to contract bus-related facilities including technological changes or innovation to modify low or no emission vehicles or facilities. Funding is provided through formula allocations and competitive grants. The 5339 (b) sub-program provides competitive grants for buses and bus facilities that support low and zero emission vehicles.

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 in accordance with the guidelines of the State Management Plan for Public Transportation, the FTA Circular 5100.1 Bus and Bus Facilities Formula Program Guidance and Application Instructions, Federal Certifications and Assurances, and the Master Agreement with the FTA; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds to finance capital bus and bus related projects such as rolling stock, equipment, facility construction, and/or capital improvements which will support the continuation and expansion of public transportation in 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. Period of Performance.** For the period of July 1, 2023, through December 31, 2024, the Contractor shall undertake and provide the transportation services as described in the project description and budget (Attachment A) and the Contractor's grant application, on file with NDDOT. The term of the agreement shall begin upon execution of this agreement by both parties and terminate on December 31, 2024.

**Section 2. Scope of Work.**

The Contractor shall undertake and complete the Project in accordance with this agreement and as described in its application, which is incorporated into the agreement by this reference.

See attached Scope of Work

**Section 3. Cost.** NDDOT shall reimburse the Contractor for costs incurred while performing this service not to exceed \$560,000, providing these costs are incurred in accordance and within the rates of participation, as indicated in Attachment A, and are allowable costs as determined under 48 CFR 31.2 or 48 CFR 31.6, and 2 CFR Part 200, as applicable. Requests for reimbursements can be submitted to NDDOT at the end of the quarter being reported. NDDOT reserves the right to request supporting documentation for any and all submittals. NDDOT will reimburse those eligible costs based on the program guidelines for the item categories and its appropriate reimbursement ratio (Attachment A).

Eligible costs item categories may include:

Purchase Misc Equipment



**Section 4. Indirect Cost Rate Provision.** Federal agencies and NDDOT shall review and approve the negotiated indirect cost rate, unless there is a federal statute that states otherwise, or a federal agency head has made other approved provisions. Any rate approved by a federal agency, or a cognizant agency must be approved by NDDOT.

If the contractor does not have a federally negotiated indirect cost rate, the NDDOT can either:

- negotiate an indirect rate with the contractor, or
- allow the de minimis 10% flat rate (the de minimis rate, is not applicable in certain cases (200.414(f); Appendix VII.D.1.B).) This rate may be used indefinitely, until the contractor seeks to formally negotiate a rate. If the de minimis rate is used, the NDDOT does not need to review and approve.

**Section 5. Risk Assessments.** The NDDOT shall conduct pre-award risk assessments of applicants prior to issuing a contract. The contractor shall conduct risk assessments of their subawardees either before or after making the award to determine the appropriate level of monitoring. The contractor shall document its procedures for assessing risk and have them available upon NDDOT request.

**Section 6. Risk Based Monitoring.** The NDDOT shall conduct a risk assessment on the contractor and the following specific conditions shall be met and/or maintained throughout this agreement.

1. Compliance Review every three (3) years.
2. Submit Receipts one (1) Random Quarter each year.
3. Review audit reports and determine how material any audit findings are in the audit reports and where they pose an increased risk to subrecipients abilities to comply and carry out their Statements of Work.
4. Provide ongoing training and technical assistance on program related areas.

The NDDOT reserves the right to increase the monitoring during the agreement period based on periodical review of audit reports, audit findings, compliance review findings, federal reports, and reimbursement requests.

**Section 7. Property.** All purchases, property management, and property disposition shall be made in accordance with State and Federal requirements, copies of which will be provided by NDDOT on request. Such property shall be used for the duration of its useful life. If any project property 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. The NDDOT may choose to transfer any assets in good working condition to other eligible Contractors or approve the asset to be sold. If the NDDOT has approved the property to be sold, the Contractor may retain \$5,000 plus the percentage of its local share. Any remaining federal share must be returned to FTA.

**Section 8. Purchase of Project Assets.** The purchase of all project asset financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and Federal regulations.

**Section 9. Use of Project Assets.** The Contractor agrees that the project asset shall be used for providing transportation service in accordance with the project description in the grant application. Such asset shall be used for the duration of its useful life. If any project asset 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 10. Amendments & Contract Changes.** All modifications or changes in this agreement shall be in writing and agreed upon by both parties.

**Section 11. 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 12. Assignments.** Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or asset 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 13. 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 14. 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 assets 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. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

- All entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process.
- All entities must complete the Single Audit Certification form
- All entities must provide a schedule of expenditures.

**Section 15. 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 16. Action Upon Termination.** The Contractor agrees to dispose of the project assets in accordance with NDDOT's program policy, copies of which will be made available by NDDOT upon request.



**Section 17. Closeout.** The Federal awarding agency or pass-through entity and contractor will comply with CFR §200.344 closeout requirements. The NDDOT is responsible for closing out the agreement when it determines that all application administrative actions and all required work have been completed and the agreement has reached its period of performance end date. The contractor shall submit, no later than 90 calendar days after the period of performance end date of this agreement, all financial, performance and other reports as required by the terms and conditions of this agreement. The NDDOT may, if necessary, offer extensions of this deadline as long as the request is in writing at least 30 days prior to the agreement period of performance end date.

Other Closeout requirements are attached.

**Section 18. 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 19. Other Federal Provisions.** The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them: See Attachment B and complete required forms.

**Section 20. 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 or for-profit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

**Section 21. Statement of Financial Assistance.** This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

**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. 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 FTA Master Agreement (from FTA MA (29) dated February 7, 2022) 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 24. Disputes.** FTA Cir. 4220.1. 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 25. 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 26. Conflicts of Interest.** No official or employee of a state or any other governmental instrumentality who is authorized in their official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a state or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than their employment or retention by a state or other governmental instrumentality, in a contract or subcontract in connection with such project. No officer or employee of such person retained by a state or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of NDDOT and of such other governmental instrumentality, and such officer, employee, or person has not participated in such acquisition for and in behalf of the state.

**Section 27. 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 28. Insurance.** The Contractor shall maintain insurance coverage on the project asset in an amount adequate to protect the fair market value of the asset throughout the duration of this agreement.

**Section 29. 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 4220.1, 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 30. 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 31. 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

WITNESS:

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

CONTRACTOR:

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

**NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
DIRECTOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

SS

APPROVED as to substance by:

Paul Benning  
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

Paul Benning  
SIGNATURE

08/31/23  
DATE

SH

CLA 1073 (Div. 38)  
L.D. Approved 9-8-08; 8-23





**CERTIFICATION OF LOCAL MATCH**

It is hereby certified that \_\_\_\_\_ 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:**

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

Executed at \_\_\_\_\_, North Dakota, the last date below signed.

WITNESS:

APPROVED:

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\*  
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\*Director or President of Transit Board

CLA 1073 (Div. 38)  
L.D. Approved 9-8-08; 8-23



**Attachment A**

**Project Name**

**City of Fargo -- Fargo Metro Area Transit  
SFY 2024 (July 1, 2023 - December 31, 2024)**

	<b>Local Match Percentage</b>	<b>Funding Source</b>	<b>TOTAL Federal Share ND2023-015</b>	<b>Local Share</b>	<b>Total</b>
<b>Funding Category</b>					
<b>116220 Purchase - Miscellaneous Equipment - Dispatch Software</b>	<b>20</b>	<b>5339</b>	<b>\$560,000</b>	<b>\$140,000</b>	<b>\$700,000</b>
<b>TOTALS</b>			<b>\$560,000</b>	<b>\$140,000</b>	<b>\$700,000</b>

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.

<b>CFDA Title</b>	<b>CFDA No.</b>	<b>Title 49 USC Chapter 53 Section</b>	<b>Award Name</b>
<b>Capital Assistance Program</b>	<b>CFDA No 20.526</b>	<b>5339</b>	<b>Bus and Bus Facilities Program Funds</b>

Section 5339 provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing mass transportation.

NDDOT CONTRACT No. 38231162

Scope of Work – Section 5339 Bus and Bus Facilities Grant – Facility/Equipment

1. Provide public transportation services throughout the Contractors service area.
2. Must follow your agencies Procurement Plan for all purchases.
3. Must be Active on sam.gov and remain so for the duration of this contract.
4. Must have signed the current FTA Certifications and Assurances in the BlackCat system.
5. Must have NDDOT approval prior to contracting with the vendor/contractor/consultant.
6. Must have facility/equipment available for NDDOT inspection upon request.
7. Must track all maintenance into BlackCat or NDDOT approved software and be available to NDDOT upon request.
8. Must be in compliance with all federal and state requirements.

## Attachment B

**Materials and Supplies Over \$250,000  
Federal Clauses**

**ACCESS TO RECORDS AND REPORTS**

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

**AMERICANS WITH DISABILITIES ACT(ADA)**

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with 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 persons with disabilities, including any subsequent amendments to that Act, and with 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 persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

**BUY AMERICA REQUIREMENTS**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all 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 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials 44 are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

## Waivers:

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

- a. When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:
  1. applying the domestic content procurement preference would be inconsistent with the public interest;
  2. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
  3. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at [link to awarding agency web site with information on currently applicable general applicability waivers].

#### Definitions:

"Construction materials" includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives 46—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

"Domestic content procurement preference" means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

"Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

"Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States.

## CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent 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 United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

### 1 Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

- a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
- b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

**2 Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

**3 Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

**4 Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

**1. Nondiscrimination.** In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., 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, 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.

**4. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**5. Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

### Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

### Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA."

## **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

## **CORONAVIRUS RELIEF AND CARES ACT CERTIFICATION**

The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Pub. L. 116–260, Div. M), requires that, to the maximum extent possible, funds made available under the Act and in title XII of division B of the CARES Act (Pub. L. 116–136) shall be directed to payroll and operations of public transit (including payroll and expenses of private providers of public transportation), unless the recipient certifies that it has not furloughed any employees.

## **DEBARMENT AND SUSPENSION**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. 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 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract

amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

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 C.F.R. part 26 in the award and administration of DOT-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 Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

## **DISPUTES, BREACHES, DEFAULTS, AND LITIGATION**

(a) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

(b) Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. (3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a 95 criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

(c) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

(d) Enforcement. The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

## **DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre approval.

## **ENERGY CONSERVATION**

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 (42 U.S.C. § 6201).

## **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **FLY AMERICA**

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established



for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

**FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

**NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Recipient 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 Recipient, 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 the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**NOTIFICATION TO FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

**NOTICE TO THIRD PARTY PARTICIPANTS**

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to

changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

## **NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

The contractor shall report any current or prospective legal matter with potentially serious consequences, including a major dispute, default, breach, or litigation, or knowledge that the contractor has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance; suspension, debarment, or other similar administrative or enforcement action against OCTA or the contractor; or any matter or situation, including any other change or legal action that may adversely affect the Federal Government's interest in a Project or related activities.

## **PROCUREMENT OF RECOVERED MATERIALS**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. 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.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

- a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
  1. Procure or obtain;
  2. Extend or renew a contract to procure or obtain; or
  3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
    - iii. Telecommunications or video surveillance equipment or services procured or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c. See Public Law 115-232, section 889 for additional information.

d. See also § 200.471.

## PROMPT PAYMENT

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. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, 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 Agency.

## PUBLIC TRANSPORTATION AGENCY SAFETY PLANS (PTASP)

For Fiscal Year 2020, FTA required this certification from each applicant under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), each rail operator that is subject to FTA's state safety oversight programs, and each State that is required to draft and certify a public transportation agency safety plan on behalf of a small public transportation provider pursuant to 49 CFR § 673.11(d) by July 20, 2020. This certification does not apply to any applicant that receives financial assistance from FTA exclusively under the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or combination of these two programs.

## RESTRICTIONS ON LOBBYING

Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence 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 any of the following covered Federal actions: 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.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence 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 that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence 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 that loan insurance or guarantee.

Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

- (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;

- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

## **SAFE OPERATION OF MOTOR VEHICLES**

### **Seat Belt Use**

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.

### **Distracted Driving**

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 Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## **SEVERABILITY**

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

## **SIMPLIFIED ACQUISITION THRESHOLD**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

## **SOLID WASTES**

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

## TERMINATION

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the 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 the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency 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 Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

### Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

### Termination for Default (Supplies and Service)

If the 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 Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will 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 the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

### Termination for Default (Transportation Services)

If the 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 the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will 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 the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete 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. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the

termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency

#### Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the 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 Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## **TRAFFICKING IN PERSONS**

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

## **VETERANS HIRING PREFERENCE**

Veterans Employment - Recipients and subrecipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would 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.

## **VIOLATION AND BREACH OF CONTRACT**

### **Disputes:**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the agencies authorized representative. 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 agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

### **Performance during Dispute:**

Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.

### **Claims for Damages:**

Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

### **Remedies:**

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

### **Rights and Remedies:**

Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**Federal Certifications**

**CERTIFICATION AND RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_ hereby certify  
(Name and title of official)

On behalf of \_\_\_\_\_ that:  
(Name of Bidder/Company Name)

- 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 any agency, a Member of Congress, and 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.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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. 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.

Name of Bidder/Company Name \_\_\_\_\_

Type or print name \_\_\_\_\_

Signature of authorized representative: \_\_\_\_\_

**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION  
(NONPROCUREMENT)**

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Recipients, contractors, and subcontractors that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person (found below); or (c) adding a clause or condition to the contract or subcontract.

**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,
- 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: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Name and Title of Contractor's Authorized Official: \_\_\_\_\_



**BUY AMERICA CERTIFICATION  
STEEL OR MANUFACTURED PRODUCTS**

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If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

**Certificate of Compliance with Buy America Requirements**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Company \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Certificate of Non-Compliance with Buy America Steel or Manufactured Products Requirements**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Company \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

### 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

NDDOT CONTRACT No. 38231162

Closeout Requirements – Section 5339 – Bus and Bus Facilities - Equipment Purchase

1. Must follow your agencies Procurement Plan for all purchases.
2. Must complete the Checklist of Equipment Reimbursement and exhibit documents.
3. All records must be kept in accordance with the State of ND and FTA requirements.

### Risk Management Appendix

#### Transit Agreements with Private Individuals, Companies, Corporations, Etc.:

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.

Contractor 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 are **\$500,000 per person and \$2,000,000 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.

**Contractor shall furnish a certificate of insurance evidencing the requirements in 1 above to the undersigned State representative prior to commencement of this agreement.** The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

When a portion of a Contract is sublet, the Contractor shall require any subcontractors, prior to commencement of work set out under an agreement between the Contractor and the subcontractor, to:

Defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State 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. § 54-12-08. Subcontractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against 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 \$500,000 per person and \$2,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation.

The State shall be endorsed on the commercial general liability policy and automobile liability policy as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the State 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 representative of the State, 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 State. Any insurance, self-insurance or self-retention maintained by the State 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 State 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 Contractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

RM Consulted 2007  
Revised 07-23



**Certificate Of Completion**

Envelope Id: 41ADC69D57FE4725B7447B2E87773840  
Subject: Contract #38231162: Please DocuSign: Section 5339 Transit Grant Agreement  
Contract Number: 38231162  
PCN:  
Source Envelope:  
Document Pages: 30  
Certificate Pages: 3  
AutoNav: Enabled  
Enveloped Stamping: Enabled  
Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:  
Sara Susie  
608 E Boulevard Ave  
Bismarck, ND 58505  
ssusie@nd.gov  
IP Address: 165.234.92.5

**Record Tracking**

Status: Original  
8/30/2023 4:25:15 PM  
Security Appliance Status: Connected  
Storage Appliance Status: Connected  
Holder: Sara Susie  
ssusie@nd.gov  
Pool: StateLocal  
Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD  
Location: DocuSign  
Location: DocuSign

**Signer Events**

Becky Hanson  
bhanson@nd.gov  
Carahsoft OBO North Dakota Department of Transportation CLOUD  
Security Level: Email, Account Authentication (None)

**Signature**

*Becky Hanson*

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.252.245

**Timestamp**

Sent: 8/30/2023 4:30:26 PM  
Viewed: 8/30/2023 4:55:16 PM  
Signed: 8/30/2023 4:55:43 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Stacey Hanson  
smhanson@nd.gov  
Assistant Local Government Engineer  
Carahsoft OBO North Dakota Department of Transportation CLOUD  
Security Level: Email, Account Authentication (None), Authentication

*St*

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.253.12

Sent: 8/30/2023 4:55:48 PM  
Viewed: 8/31/2023 9:03:28 AM  
Signed: 8/31/2023 9:03:40 AM

**Authentication Details**

SMS Auth:  
Transaction: 4532f4fa-86ca-45e8-ad7e-4e257e108d78  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 8/31/2023 9:03:20 AM  
Phone: +1 701-527-8879

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Paul Benning  
pbenning@nd.gov  
Local Government Director  
Security Level: Email, Account Authentication (None), Authentication

*Paul Benning*

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.252.245

Sent: 8/31/2023 9:03:46 AM  
Viewed: 8/31/2023 11:01:46 AM  
Signed: 8/31/2023 11:01:56 AM

**Authentication Details**

**Signer Events**

**Signature**

**Timestamp**

**SMS Auth:**

Transaction: 1e9205b0-007b-4de7-9c50-002e920a0c2b  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 8/31/2023 11:01:38 AM  
Phone: +1 701-214-2502

**SMS Auth:**

Transaction: 354b05c7-31b7-4bb6-bcbc-ab26cf2dec66  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 8/31/2023 11:03:25 AM  
Phone: +1 701-214-2502

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Shannon Sauer

ssauer@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

SS

Signature Adoption: Pre-selected Style

Using IP Address: 165.234.253.12

Sent: 8/31/2023 11:02:04 AM

Viewed: 8/31/2023 3:09:02 PM

Signed: 8/31/2023 3:09:13 PM

**Authentication Details**

**SMS Auth:**

Transaction: 608a644d-da14-4539-86ae-7324bec88631  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 8/31/2023 3:08:56 PM  
Phone: +1 701-426-9825

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Clint Morgenstern

cdmorgenstern@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Chad Orn

corn@nd.gov

Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

**Signer Events**

Laureen M. Martin  
lmartin@nd.gov

Security Level: Email, Account Authentication (None), Authentication

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Signature**

**Timestamp**

**In Person Signer Events**

**Signature**

**Timestamp**

**Editor Delivery Events**

Sara Susie  
ssusie@nd.gov

Richland County Chairperson  
Carahsoft OBO North Dakota Department of Transportation CLOUD

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Status**

**VIEWED**  
Using IP Address: 165.234.253.12

**Timestamp**

Sent: 8/30/2023 4:25:47 PM  
Viewed: 8/30/2023 4:26:42 PM  
Completed: 8/30/2023 4:30:25 PM

**Agent Delivery Events**

Julie Bommelman  
jbommelman@cityoffargo.com

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Status**

**Timestamp**

Sent: 8/31/2023 3:09:19 PM  
Resent: 9/6/2023 10:36:00 AM  
Viewed: 9/11/2023 10:26:13 AM

**Intermediary Delivery Events**

**Status**

**Timestamp**

**Certified Delivery Events**

**Status**

**Timestamp**

**Carbon Copy Events**

**Status**

**Timestamp**

Legal Admin  
dotlegaladmin@nd.gov

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Legal Admin  
dotlegaladmin@nd.gov

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Witness Events**

**Signature**

**Timestamp**

**Notary Events**

**Signature**

**Timestamp**

**Envelope Summary Events**

**Status**

**Timestamps**

Envelope Sent  
Envelope Updated  
Envelope Updated

Hashed/Encrypted  
Security Checked  
Security Checked

8/30/2023 4:25:47 PM  
8/30/2023 4:30:26 PM  
8/30/2023 4:30:26 PM

**Payment Events**

**Status**

**Timestamps**

41

September 18, 2023

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

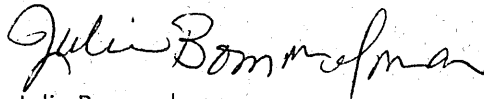
Dear Commissioners:

Attached is the 2024 grant award for State Aid from the North Dakota Department of Transportation.

The State Aid agreement is effective July 1, 2023 – June 30, 2024 and is for \$548,535. Funds can be utilized as local match for other grants or simply utilized for eligible Transit expenditures.

***The requested motion is to approve the attached contract with NDDOT.***

Thank you.



Julie Bommelman  
Transit Director  
City of Fargo  
701.476.6737

/enc



MEMORANDUM

TO: Chad Orn  
Deputy Director for Planning

FROM: Stacey Hanson  
Assistant Engineer for Local Government  
Becky Hanson  
Transit Program Manager

DATE: 9/8/2023

SUBJECT: State Aid for Public Transit  
Fargo Metro Area Transit  
SFY 2024 (July 1, 2023 - June 30, 2024)

This is a contract to provide transit funding under the regulations of State Aid for Public Transit. Standard methodology was used in distribution of \$548,535 of state funds. No local match is required.

38/bh 328-2542

NORTH  
**Dakota** | Transportation  
Be Legendary.™

September 8, 2023

Julie Bommelman  
Fargo Metro Area Transit  
650 23<sup>rd</sup> Street North  
Fargo, ND 58102

Congratulations. Fargo Metro Area Transit will be receiving State Aid funding to provide transit services. Enclosed is the Contract Agreement and funding breakdown per county for your agency.

Cass County	\$548,535
-------------	-----------

In order to begin the funding process, please:

1. Complete the contractor and witness information in DocuSign (**the contractor and witness must be different people**).
2. Have your organization's president or chairman digitally sign and date the agreement (under Contractor)—this signature **must be an authorized signatory** for your project. Please also submit a proof of authorization to sign if it is not the president or chairperson of your agency.
3. Finish the DocuSign process to send to the witness for signature.
4. Have a witness sign and date the agreement (under Witness).
5. Upon completion of executing all documents, finish the DocuSign process and the contract documents will return to NDDOT for processing.

Thank you for your continuing efforts to improve transportation in North Dakota. If you have any questions or need assistance, please contact Sara Susie at (701) 328-2540 or [ssusie@nd.gov](mailto:ssusie@nd.gov).

With gratitude,

*Becky Hanson*

Becky Hanson  
Transit Program Manager

Cc: Dan Farnsworth, Transportation Planner, Fargo/Moorhead COG  
Kevin Hanson, Chairman, Metro Area Transit Board

**North Dakota Department of Transportation  
STATE AID FOR PUBLIC TRANSIT AGREEMENT**

This agreement 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 Fargo Metro Area Transit, a Government Entity, hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.

WHEREAS, House Bill 1337 (NDCC 39-04.2) of the 1989 State Legislature established a Public Transportation Fund to provide state aid funds to political subdivisions and nonprofit corporations for the purpose of assisting in establishing and operating public transit systems and service in the state; and

WHEREAS, the Director of NDDOT has the responsibility of developing the transit program guidelines and administering the Public Transportation Fund; and

WHEREAS, the Contractor desires to receive the available state aid funds to assist in providing needed public transit services in the service area;

NOW, THEREFORE, IT IS AGREED:

**I.**

For the period of July 1, 2023, through June 30, 2024, the Contractor shall undertake and provide the transit services as described in the Contractor's application for state aid transit funds, which is on file with the NDDOT.

**II.**

**Costs.** NDDOT shall reimburse the Contractor for providing the transportation services, not to exceed \$548,535, provided costs are incurred in accordance with NDDOT program guidelines. (Copy of which will be provided upon request.) Requests for reimbursements will be allowed to be submitted to NDDOT quarterly. The final request for reimbursement must be submitted by close of business on the fifth (5<sup>th</sup>) business day following the termination date of this agreement.

**III.**

**Purchase and Disposal of Project Equipment.** The purchase and disposition of all project vehicles or equipment financed in whole or in part with state aid transit funds shall be undertaken by the Contractor in accordance with the state Office of Management and Budget regulations and NDDOT purchasing manual, copies of which will be provided upon request.

**IV.**

**Assignments.** The Contractor shall not assign nor transfer the Contractor's interests or duties under this agreement without the express written consent of the state.

**V.**

**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.

## VI.

**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. The 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.

## VII.

**Records and Reports.** The Contractor shall complete and submit all forms and reports as required by NDDOT. The Contractor shall also maintain supporting documentation for all costs charged to the project. All accounting documents shall be clearly identified, readily accessible, and where possible, kept separate and apart from all other such documents. All project records and documents shall be kept by the Contractor for three years after the termination date of this agreement.

## VIII.

**Audit.** 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.

## IX.

**Amendments.** The terms of this agreement shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever, except by written instrument signed by both parties.

## X.

**Equipment Use.** The Contractor agrees that the project vehicles or equipment funded with state aid transit funds shall be used solely for providing public transit services in accordance with NDDOT program guidelines. Such vehicles or equipment shall be used for the duration of useful life. If any project vehicles or equipment are not used in this manner or are withdrawn from service before the end of useful life, the Contractor shall immediately notify NDDOT. The Contractor agrees that the vehicles or equipment shall not be used for charter service or exclusively for school busing.

## XI.

**Insurance.** The Contractor shall maintain insurance coverage on the project vehicle(s) in an amount adequate to protect the fair market value of the vehicles throughout the duration of this agreement.

## XII.



**Termination.** The contract may be terminated by mutual consent of both parties, or by either party upon 30 days notice, in writing and delivered by certified mail or in person.

**XIII.**

**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.

**XIV.**

**Risk Management.** The Risk Management Appendix, attached, is hereby incorporated into and made a part of this agreement.



EXECUTED the date last below signed.

WITNESS:

CONTRACTOR:

\_\_\_\_\_  
NAME (TYPE OR PRINT)  
  
\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (TYPE OR PRINT)  
  
\_\_\_\_\_  
SIGNATURE  
  
\_\_\_\_\_  
TITLE  
  
\_\_\_\_\_  
DATE

APPROVED as to substance by:

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

Paul Benning  
\_\_\_\_\_  
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)  
  
*Paul Benning* *BA*  
\_\_\_\_\_  
SIGNATURE  
  
09/11/23 *SA*  
\_\_\_\_\_  
DATE

For the Chad Orn  
\_\_\_\_\_  
DIRECTOR (TYPE OR PRINT)  
  
\_\_\_\_\_  
SIGNATURE  
  
\_\_\_\_\_  
DATE

SS

ATTORNEY GENERAL  
APPROVED as to

CLA 3338 (Div. 38)  
L.D. Approved 5-3-90; 8-15

Special Asst Attorney General



### 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

### 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 **\$500,000 per person** and **\$2,000,000 per occurrence**. The minimum limits of liability required of the State are **\$500,000 per person** and **\$2,000,000 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, the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State 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 \$500,000 per person and \$2,000,000 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. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. 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 07-23



**Certificate Of Completion**

Envelope Id: 035CAAAD05394C6099A0F9B4F0202A81  
Subject: Contract #38231219: Please DocuSign: State Aid for Public Transit Agreement  
Contract Number: 38231219  
PCN:  
Source Envelope:  
Document Pages: 7  
Certificate Pages: 3  
AutoNav: Enabled  
Envelope Stamping: Enabled  
Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:  
Sara Susie  
608 E Boulevard Ave  
Bismarck, ND 58505  
ssusie@nd.gov  
IP Address: 165.234.92.5

**Record Tracking**

Status: Original  
9/8/2023 12:02:38 PM  
Security Appliance Status: Connected  
Storage Appliance Status: Connected  
Holder: Sara Susie  
ssusie@nd.gov  
Pool: StateLocal  
Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD

Location: DocuSign

Location: DocuSign

**Signer Events**

Becky Hanson  
bhanson@nd.gov  
Carahsoft OBO North Dakota Department of Transportation CLOUD  
Security Level: Email, Account Authentication (None), Authentication

**Signature**

*Becky Hanson*

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.252.245

**Timestamp**

Sent: 9/8/2023 12:05:53 PM  
Viewed: 9/11/2023 10:03:29 AM  
Signed: 9/11/2023 10:03:53 AM

**Authentication Details**

SMS Auth:  
Transaction: cf825eaa-c431-435a-ae1c-7c65b02c48a9  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 9/11/2023 10:03:02 AM  
Phone: +1 701-391-3378

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Paul Benning  
pbenning@nd.gov  
Local Government Director  
Security Level: Email, Account Authentication (None), Authentication

*Paul Benning*

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.253.12

Sent: 9/11/2023 10:04:01 AM  
Viewed: 9/11/2023 10:16:25 AM  
Signed: 9/11/2023 10:17:28 AM

**Authentication Details**

SMS Auth:  
Transaction: decd5fd7-9d92-48f8-a39a-a4b75bfaf2a4  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 9/11/2023 10:16:18 AM  
Phone: +1 701-214-2502

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign



**Signer Events**

Stacey Hanson  
smhanson@nd.gov  
Assistant Local Government Engineer  
Carahsoft OBO North Dakota Department of  
Transportation CLOUD  
Security Level: Email, Account Authentication  
(None), Authentication

**Authentication Details**

SMS Auth:  
Transaction: 1a176e42-6a0e-4093-8f2e-3d4a0a7ca552  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 9/11/2023 10:48:57 AM  
Phone: +1 701-527-8879

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Shannon Sauer  
ssauer@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

**Authentication Details**

SMS Auth:  
Transaction: 6144564e-6fe8-4534-b1bb-f84fdb52e348  
Result: passed  
Vendor ID: TeleSign  
Type: SMSAuth  
Performed: 9/11/2023 10:52:57 AM  
Phone: +1 701-426-9825

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Clint Morgentstern  
cdmorgentstern@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Chad Orn  
corn@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Signature**

St

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.252.245

SS

Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.253.12

**Timestamp**

Sent: 9/11/2023 10:04:01 AM  
Viewed: 9/11/2023 10:49:03 AM  
Signed: 9/11/2023 10:49:25 AM

Sent: 9/11/2023 10:49:30 AM  
Viewed: 9/11/2023 10:53:03 AM  
Signed: 9/11/2023 10:53:09 AM

**In Person Signer Events**

**Signature**

**Timestamp**

**Editor Delivery Events**

**Status**

**Timestamp**

Sara Susie  
ssusie@nd.gov  
Richland County Chairperson  
Carahsoft OBO North Dakota Department of  
Transportation CLOUD  
Security Level: Email, Account Authentication  
(None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**VIEWED**

Sent: 9/8/2023 12:02:57 PM  
Viewed: 9/8/2023 12:03:45 PM  
Completed: 9/8/2023 12:05:52 PM

Using IP Address: 165.234.253.12

**Agent Delivery Events**

**Status**

**Timestamp**

Julie Bommelman  
jbommelman@cityoffargo.com  
Security Level: Email, Account Authentication  
(None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Sent: 9/11/2023 10:53:15 AM  
Viewed: 9/11/2023 10:58:44 AM

**Intermediary Delivery Events**

**Status**

**Timestamp**

**Certified Delivery Events**

**Status**

**Timestamp**

**Carbon Copy Events**

**Status**

**Timestamp**

Legal Admin  
dotlegaladmin@nd.gov  
Security Level: Email, Account Authentication  
(None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Legal Admin  
dotlegaladmin@nd.gov  
Security Level: Email, Account Authentication  
(None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Witness Events**

**Signature**

**Timestamp**

**Notary Events**

**Signature**

**Timestamp**

**Envelope Summary Events**

**Status**

**Timestamps**

Envelope Sent Hashed/Encrypted  
Envelope Updated Security Checked  
Envelope Updated Security Checked  
Envelope Updated Security Checked  
Envelope Updated Security Checked  
Envelope Updated Security Checked  
Envelope Updated Security Checked  
Envelope Updated Security Checked  
Envelope Updated Security Checked  
Envelope Updated Security Checked

9/8/2023 12:02:57 PM  
9/8/2023 12:05:52 PM  
9/8/2023 12:05:52 PM  
9/8/2023 12:05:52 PM  
9/8/2023 12:05:52 PM  
9/8/2023 12:05:52 PM  
9/8/2023 12:05:52 PM  
9/8/2023 12:05:52 PM  
9/8/2023 12:05:52 PM  
9/8/2023 12:05:52 PM

**Payment Events**

**Status**

**Timestamps**