



Bid Instructions
Forward Fuel Purchase Contracts
City of Fargo
December 18, 2017

City of Fargo is seeking price quotations for fuel purchases and delivery of product to Fargo facilities (multiple locations within city) from qualified vendors for the Third and Fourth quarter of 2018. These fuel contracts are for #2 Diesel and No-Lead 10% Ethanol 87 octane gasoline to be delivered in 2018.

The Fuel Price quoted shall include;

Any local freight charges.

The Federal LUST (Leaking Underground Storage Tank) fee. (one tenth of one cent per gallon)

North Dakota State Inspection fee. (one-fortieth of one cent per gallon)

Federal Oil Spill Recovery fee (fee based on type of fuel)

When there is a shortage of product at the pipeline and long wait times, a demurrage charge may be added after the first hour. A demurrage charge per hour must be included on the bid sheet commencing with a second hour of wait time shall be with the submitted quotation.

Contract awarded to the vendor with the lowest total price.

The City of Fargo may elect not to make an award.

The City of Fargo uses various mixtures of fuel depending on the time of year. For winter use, diesel is a blend of #1 and #2 with a cold weather additive. Bio diesel may also be used during the summer months. Additional products purchased outside of the contracted amount will be current rack price at the time of purchase. Splash blending for products like bio-diesel will be acceptable.

Delivery of fuel at City of Fargo's new fueling site requires a vent hose to be hooked up between the tanker and tank.

Payment to vendors will be honored within 10 days of receiving both product and invoice.

Approved vendors must E-mail or Fax quotations to the City of Fargo as indicated below. Verbal quotes will not be accepted.

When an award is made the successful bidder will be notified by 9:30 AM CT (on the same date as day bids are due).

Quotations are Due by January 10, 2018 by 9:00 AM Central Time.

Submit quotations by e-mail or fax to: **(Note updated e-mail addresses)**

Fax 701-298-6971 Att. Harold Pedersen

(Staff will document the time when quotations arrive by fax)

E-mail Address the email to the following group:

kcstin@FargoND.gov bdow@FargoND.gov hpetersen@FargoND.gov

If an award is not made the next scheduled time will be determined by City of Fargo and sent to the registered vendors.

Additional information

The day before a bid is due

A trial will be scheduled the day previous to the bid date to ensure e-mails with a PDF attachment are not stripped or held up by any security or firewalls.

Submissions by e-mail

Send e-mail from same source (computer) as verified by the trial submission.
Attach a PDF of the Bid Submission Sheet.
Request a read receipt. If you do not receive a read receipt, call 701-241-1460.

Protests related to this solicitation must be submitted in writing and will only be accepted from prospective Bidder or Offering Party whose direct economic interest would be affected by the award of a Contract or failure to award a Contract.

Copies of the detailed protest procedure are available upon request; contact Harold Pedersen or Ben Dow at 402 23 St N, Fargo ND 58102, for a copy, if desired.

As this procurement is Federal funded, the provisions of FTA Circular 4220.1(as amended) apply. An appeal to FTA must be received by the cognizant FTA Regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation. FTA will review bid protests only in the following circumstances:

- a. A protestor has exhausted all administrative remedies with the City of Fargo.
- b. FTA will only review protests regarding the alleged failure of the grantee to have or follow its written protest procedures or its failure to review a complaint or protest.

Alleged violations on other grounds are under the jurisdiction of the appropriate State or local authorities. Alleged violations of Federal law or regulation that provide an applicable complaint procedure shall be submitted and processed in accordance with the Federal law or regulation. Contractors who have exhausted all administrative remedies with the City of Fargo and FTA can pursue the matter further in the ND state courts as applicable.

The City of Fargo reserves the right to reject all quotations and request quotations to be submitted at a later date or the City of Fargo may elect to make a partial award (either diesel or unleaded).

Contact for Questions

Harold Pedersen
Fleet Services Manager
Public Works Building
402 23 Street North
701-241-1460
hpetersen@FargoND.gov

Ben Dow
Director of Public Works
Public Works Building
402 23 Street North
701-241-1463
bdow@FargoND.gov

City of Fargo Fuel Bid for 3rd and 4th Quarter of 2018
Due by 9:00 AM Central Time, January 10, 2018
Please list below your prices on a quarterly basis.

\$ Per Gallon will **INCLUDE:**

Any local freight/delivery charges.

The Federal LUST (Leaking Underground Storage Tank) fee. (one tenth of one cent per gallon)

North Dakota State Inspection fee. (one-fortieth of one cent per gallon)

Federal Oil Spill Recovery Fee

<u>3rd Quarter (July 1 – September 30)</u>	<u>Gallons</u>	<u>Cost/Gallon</u>
#2 Diesel Fuel	120,000	
No-Lead Ethanol 87 Octane	55,000	

4th Quarter (October 1 – December 31)

#2 Diesel Fuel	120,000	
No-Lead Ethanol 87 Octane	55,000	

Total Gallons #2	240,000	\$
Total Gallons No-Lead	<u>110,000</u>	\$
	350,000	
	TOTAL	\$

Demurrage Charge per hour after the first hour _____

Vendor: _____

Signature: _____

Title: _____

Date: _____

Time: _____

City of Fargo

(SAMPLE) FORWARD CONTRACT

Seller: _____

Buyer: City of Fargo
200 3RD ST. N
Fargo, ND 58102

	Delivery Period	Quantity	Product	Price/Gallon
	2018			
	3rd Quarter			
1	July 1 - September 30	120,000	#2 Diesel Fuel	
2	July 1 - September 30	55,000	No-lead Ethanol 87 Octane	
	4th Quarter			
3	October 1 - December 31	120,000	#2 Diesel Fuel	
4	October 1 - December 31	55,000	No-lead Ethanol 87 Octane	

Price: Quoted price is per gallon and inclusive of:

- Any local freight/delivery charges.
- The Federal LUST (Leaking Underground Storage Tank) fee.(one-tenth of one cent per gallon)
- North Dakota State Inspection fee.(one-fortieth of one cent per gallon)
- Federal Oil Spill Recovery Fee

Demurrage Charge: \$_____ per hour commencing with the second (2nd) hour.

Measurement: Terminal Meter Tickets (Gross Gallons)

Terms: Net 10 Days from Invoice Date

Sales Representative: _____

Buyer Representative: Harold Pedersen
City of Fargo

Credit: Credit shall be approved and within the established line.

Definitions:

The terms City of Fargo, Buyer, Purchaser and Grantee are synonymous and mean the City of Fargo

The terms "Bidder, Contractor, Offerer, Proposer, Vendor, Firm, Company" are synonymous and mean the offerer or vendor.

Efficiency Payments:

In the event Buyer does not take delivery of the contracted quantity for the delivery period, Seller can sell the volume not lifted in the open market the last 2 days of the quarter contract or the first 5 days of the following quarter contract.

If the open market price is less than the fixed forward pricing above, the City of Fargo will pay Seller the amount equal to the volume not lifted times the difference between the open market price and the fixed forward price.

If the open market price is more than the fixed forward pricing above, the Seller will pay City of Fargo the amount equal to the volume not lifted times the difference between the open market price and the fixed forward price.

Delivery of Fuel

Delivery of fuel will be to all City of Fargo's three (3) fueling sites located at:

402 23rd Street North	Public Works (3 Underground tanks)
650 23rd Street North	Metro Transit Garage (2 underground tanks)
4501 7th Avenue North	Landfill (1 above ground tank)

Delivery of fuel to the fueling site at Public Works will require a vent hose to be connected between tanker and tank.

Additional Products and Fuel Additives

The City of Fargo uses various mixtures of fuel depending on the time of year. For winter use, diesel is a blend of #1 and #2 with a cold weather additive. Bio diesel may also be used during the summer months. Additional products purchased outside of the contracted amount will be current rack price at the time of purchase. Splash blending for products like bio-diesel will be acceptable.

Failure to Perform:

If, during any month of the delivery period, Seller fails to deliver the contracted for volume, and such failure is not excused as provided herein, and the Replacement Price (cost incurred by Buyer to secure the contracted for volume) is greater than the Contract

Price, then Seller shall be liable for and shall pay Buyer the amount equal to the volume not delivered times the difference between the Replacement Price and the Contract Price.

Excused Performance:

Except with regard to a Party's obligation to make payments due under this Contract, in the event either Buyer or Seller is rendered unable, wholly or in part, by unforeseeable causes to carry out its obligations, then upon notification by telephone with a subsequent written notice setting forth the specifics within a reasonable time, but not in excess of six (6) days after the commencement of the failure to perform due to unforeseeable causes, the obligations of the Party giving such notice, insofar as they are affected by such causes, from its inception, shall be excused during the entire period of any inability so caused but for no longer period.

Excused performance, as employed in this Contract will mean any event that prevents delivery or receipt of Product, including acts of God, strikes, lockouts, or industrial disputes or disturbances, civil disturbances, interruptions by government or court orders, necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction, acts of the public enemy, events affecting facilities or services of non-affiliated third parties, or any other cause of like kind not reasonably within the control of the non-performing Party and which by the exercise of due diligence such Party could not have prevented or is unable to overcome.

Seller Warrants:

Seller warrants that all royalties, taxes and other sums due on production and transportation of the Fuel to the Delivery Point(s) are paid, and that it will have the right to convey and will transfer good and merchantable title to all Fuel sold hereunder and delivered by it to Buyer, free and clear of any and all liens, encumbrances and claims. All Fuel delivered will meet the ASTM standard for that product.

Seller shall pay all taxes lawfully levied on Seller applicable to the Fuel delivered to Buyer. Buyer shall pay all taxes lawfully levied on Buyer after delivery to Buyer. If Buyer is exempt from any taxes, Buyer shall furnish Seller with proper documentation.

If in the event of a product shortage at the local pipeline and a tanker must be sent to another pipeline outside of the metro area, the additional freight charge must be agreed upon between buyer and seller at the time of order.

Notices:

All billings, payments, statements, notices and communications made pursuant to this Contract shall be made as follows:

Seller: _____

Buyer: City of Fargo
200 3RD ST. N
Fargo, ND 58102

Transfer or Assignment:

This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective Parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this contract, in whole or in part, will be made without the prior written consent of the non-assigning party, which consent will not be unreasonably withhold or delayed provided, Upon any transfer and assumption, the transferor shall not be relieved of or discharged from any obligations hereunder unless such assumption is made in the transfer/assumption agreement.

Severability:

If any term, provision, covenant, or condition of this Contract or the application thereof, to any party or circumstance, shall be held to be invalid or unenforceable (in whole or in part) for any reason, the remaining terms, provisions, covenants, and conditions hereof shall continue in full force and effect as if this Contract had been executed with the invalid or unenforceable portion eliminated.

Applicable Law:

The Contract shall be governed in accordance with the laws of the State of North Dakota.

Consequential and Incidental Damages:

In no event will either party be liable under this Contract, whether in contract, tort (including negligence and strict liability) or otherwise, for incidental, consequential, special or punitive damages.

Termination of the Agreement:

This Agreement may be terminated by non-performance of the contractual obligations as set forth herein, and only by written notice. The Seller will be compensated for the Fuel delivered up to the date of termination based upon the payment terms of this Agreement. This Contract may be terminated for cause by either party upon seven (7) days' written notice in the event of substantial failure to perform through no fault of the terminating party.

Entire Agreement:

THE TERMS CONTAINED IN THIS CONTRACT CONSTITUTE THE ENTIRE CONTRACT OF THE PARTIES, AND THERE ARE NO CONTRACTS, UNDERSTANDINGS, OBLIGATIONS, PROMISES, ASSURANCES OR CONDITIONS, PRECEDENT OR OTHERWISE, EXCEPT THOSE EXPRESSLY SET OUT HEREIN.

DESTINATION IS CITY OF FARGO FUELING STATIONS

Dated this ____ day of _____, _____.

SELLER

BUYER

Title

Title

(Both Parties are Signatories)

Applicable Federal Clauses:

Only to the extent any of the following sections are applicable to a contract of the nature herein contemplated, the following shall apply:

1. No Government Obligation to Third Parties

- a) 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.
- b) 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.

2. Program Fraud & False or Fraudulent Statements & Related Acts

- a) 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 cause 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.

- b) 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. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c) 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.

3. Access To Records

- a) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(I), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- c) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

- d) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purpose of conducting an audit and inspection.
- e) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- f) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of the litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(I)(11).

4. Federal Changes

- a) 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 Master Agreement between Purchaser and FTA, and 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.

5. Civil Rights Requirements (EEO, Title VI & ADA)

The following requirements apply to the underlying contract:

- a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit law at 49 U.S.C. 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the Contractor agrees to comply with all applicable

equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of labor, 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, Equal Employment Opportunity, as amended by Executive Order No. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are

employed, and that employees are treated during employment, without regard to race, color, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementation requirements FTA may issue.

Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal transit law at 49 U.S.C. 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. Incorporation of FTA Terms

- a) The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 (as amended), 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 City of Fargo requests which would cause City of Fargo to be in violation of the FTA terms and conditions.

7. Energy Conservation

- a) Contractor shall recognize 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 USC Section 6321 et seq).

8. Termination Provisions

- a) The City reserves the right to terminate this agreement for cause by written notices to the Contractor. Cause for termination will be documented failure(s) of the Contractor to provide services in the quantity and/or quality required by the agreement. Contractor will, within ten (10) days, correct the failure or present the City with a plan to correct the failure. In the event Contractor does not correct failure or complete its plan to correct failure, then the City may terminate this agreement by notifying Contractor of date of termination. Said termination shall not diminish the City of Fargo's rights under law or equity.
- b) This Contract may be terminated for cause by either party upon seven (7) days' written notice in the event of substantial failure to perform through no fault of the terminating party.
- c) In the event of any termination, City of Fargo shall pay the agreed rate only for services delivered up to the date of termination. City of Fargo has no obligation to Contractor, of any kind, after the date of termination.

9. Government Wide Debarred, Suspended, or Ineligible Contractors

- a) The contractor certifies that his/her firm is not included on the U.S. Comptroller General's or General Services Administration's Consolidated List of Persons or Firms Currently Debarred or Suspended for Violations of Various Public Contracts Incorporating Labor Standards.

10. Breach of Contract and Dispute Resolution

- a) Disputes
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 the City, the City Administrator. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Fargo City Commission, 200 N 3rd Street, Fargo, ND 58102. A hearing will be scheduled with the Fargo City Commission at the next regularly scheduled meeting. 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 at said

hearing. The decision of the Fargo City Commission shall be binding upon the Contractor and the Contractor shall abide by the decision.

b) Performance During Dispute

Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

c) Claims of 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 of damage.

d) Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the 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 of North Dakota.

e) Rights and Remedies

The duties and obligations imposed by this Agreement/Contract 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 City 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.

11. Lobbying Restrictions

The Proposer certifies that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, 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 into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than Federal appropriated 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, the undersigned shall complete and submit

Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c) 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 agreement) and that all sub-recipients shall certify and disclose accordingly.

12. Clean Air

- a) 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. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13. Clean Water

- a) 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. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

14. Contract Work Hours & Safety Standards Act

- a) 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 no less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and

actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractor's employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- c) All practices, materials, supplies, and equipment shall comply with the Federal Occupational Safety and Health Act, as well as any pertinent Federal, State and/or local safety or environmental codes.

15. Disadvantaged and Small Business Enterprise

- a) In connection with the performance of this service, the Contractor will cooperate with City of Fargo in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services are placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.
- b) The Contractor agrees to meet any goals established by City of Fargo for purchases pertaining to this Contract to the best of the Contractor's ability and will provide City of Fargo with the necessary certification and records for reporting purposes.
- c) The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- d) The contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- e) The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the CITY. 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.
- f) The contractor must promptly notify City of Fargo 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 City of Fargo.
- g) **Fostering Small Business Participation**
City of Fargo has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with City of Fargo. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.