

FARGO CITY COMMISSION AGENDA
Monday, August 10, 2020 - 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, July 27, 2020).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 2nd reading and final adoption of the following Ordinances; 1st reading:
 - a. Rezoning Certain Parcels of Land Lying in the Proposed Edition Third Addition.
 - b. Rezoning Certain Parcels of Land Lying in Boulger First Addition.
- 2. Applications for Games of Chance:
 - a. Legacy Children's Foundation for a raffle on 8/17/20.
 - b. Sts. Anne & Joachim Catholic Church for a raffle on 11/8/20.
- 3. Granting of the Downtown Community Partnership with sole authority to place and manage pedestrian benches in Downtown Fargo.
- 4. Amended Engineer's Report for Project No. FM-16-A.
- 5. Cost Sharing for Underground Building Encroachment Removal Policy 2020.
- 6. Amended Easement (Amends Document #320762) with Fargo Public Schools.
- 7. Memorandum of Offer to Landowner for Permanent and Temporary Easements with the Municipal Airport Authority of the City of Fargo (Project No. FM-16-A).
- 8. Purchase Agreement with Beverly Pearson for property located at 12 North Terrace North.
- 9. Right of Way and Land Use Agreement with Epic Gateway North Real Estate Holdings, LLC.
- 10. Encroachment and Use Agreement with Great Plains 1001 Holdings, LLC.
- 11. Contracts and bonds for the remodeling of the entertainer dressing rooms/catering room/hallway at the FARGODOME.
- 12. Fargo Cass Public Health Mobile/Concessions Food License Application and Agreement.
- 13. Notice of Grant Award with the ND Department of Health for increasing influenza vaccination in high risk adults (CFDA #93.268).

14. Amend the existing Agreement with United Way and Afro American Development Association (on behalf of ESHARA Partners) to increase funding by \$17,870.00.
15. Change Order No. 1 for an increase of \$20,494.60 for the Ground Transportation Center Remodel Project for the general construction contract.
16. Amendment No. 1 to Prime Agreement with Lisa Wise Consulting, Inc.
17. Recipient Agreement with the YWCA, subject to technical review by the Public Health Director and City Attorney.
18. City of Fargo COVID-19 Temporary Employment Policy – Annual Leave (vacation) Maximum Accrual.
19. Change in Transit operating hours to end service at 9:45 p.m. Monday thru Saturday through the end of 2020 and resume normal operating hours beginning on 1/1/21.
20. Transit staff to finalize the draft RFP for transit management, drivers and dispatch services and release it on 8/17/20.
21. Bills.
22. Negative Final Balancing Change Order No. 4 in the amount of -\$15,436.13 for Improvement District No. PN-18-C1.
23. Negative Final Balancing Change Order No. 5 in the amount of -\$43,679.69 for Improvement District No. BN-18-F2.
24. Change Order No. 3 for an increase of \$10,350.00 for Improvement District No. PN-18-C1.
25. First Amendment to Joint Powers Agreement with Southeast Cass Water Resource District (Drain 53 Improvement Project 2019-01) (Improvement District No. BN-20-C1).
26. Bid award for Improvement District No. AN-20-A1.
27. Contract and bond for Improvement District No. AN-19-J1 and AN-20-B1.

REGULAR AGENDA:

28. Recommendation to approve the Mayor's 2021 Preliminary Budget and set the Public Hearing date for Tuesday, September 8, 2020 at 5:15 p.m.
29. Receive and file the summary of a meeting to discuss the 2020 election.
30. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
 - a. Zoning Change to repeal and reestablish a C-O, Conditional Overlay on Lots 1-7, Block 1, Timber Parkway Fourth Addition; Lot 3, Block 1, Timber Parkway Third Addition; and Lot 1, Block 1, Timber Parkway Second Addition (4935 and 5081 Timber Parkway South; 3439, 3375 and 3400 James Way South; and 3360, 3401, 3430 and 3485 Jacks Way South); approval recommended by the Planning Commission on 7/7/20:
 1. 1st reading of rezoning Ordinance.

- b. Zoning Change from SR-2, Single-Dwelling Residential to SR-3, Single-Dwelling Residential on Lots 25-32, South Haven Subdivision (2505-2617 65th Avenue South); approval recommended by the Planning Commission on 7/7/20:
 - 1. 1st reading of rezoning Ordinance.
 - c. Sanford South Campus Addition (1720 University Drive South and 1701, 1719, 1723, 1727, 1731, 1735, 1739, 1743 and 1747 11th Street South); approval recommend by the Planning Commission on 6/2/20:
 - 1. Zoning Change from SR-2, Single-Dwelling Residential and GC, General Commercial with a C-O, Conditional Overlay to GC, General Commercial with a C-O, Conditional Overlay.
 - 2. 1st reading of rezoning Ordinance.
 - 3. Plat of Sanford South Campus Addition.
 - d. Annexation of property located on the East Half of Section 15, Township 140 North, Range 49 West, of the Fifth Principal Meridian, Cass County, North Dakota:
 - 1. 1st reading of annexation Ordinance.
 - e. North Fargo Industrial Addition (3701 40th Avenue North and 4201 and 3261 County Road 81 North):
 - 1. Zoning Change from AG, Agricultural to LI, Limited Industrial.
 - 2. 1st reading of rezoning Ordinance.
 - 3. Plat of North Fargo Industrial Addition.
 - f. Application filed by PRx Performance for a payment in lieu of tax exemption (PILOT) for a project located at 4125 24th Avenue North, which the applicant will use in the primary operation of an e-commerce business with fitness related products; continued from the 7/27/20 Regular Meeting.
31. Application for Abatement or Refund of Taxes #4487 submitted by Stephanie Nyhus of Ducharme, McMillan & Associates on behalf of Scheels All Sports Inc. requesting the valuation for 2018 be reduced from \$28,286,000.00 to \$25,397,000.00 for property located at 1551 45th Street South.
32. Application for a property tax exemption for improvements made to a building filed by Tabitha Meyer, 1405 15th Street South (5 year).
33. Recommendations for appointments and reappointments to the following Boards and Commissions:
 - a. Planning Commission.
 - b. Fargo Youth Initiative.
34. ***Public Input Opportunity*** - Mask Directives:
 - a. Mask Directive for the City of Fargo effective 8/17/20.
 - b. Temporary Employment Policy on Mask Usage and Continuing Operations Guidance regarding COVID-19 for City of Fargo employees effective 8/17/20.
35. Receive and file the Attorney General's letter declining the request for an Attorney General opinion regarding "Firearm Sales" as a prohibited home occupation.
 - a. Commissioner Gehrig would request that this item be placed on the 8/24/20 Regular Agenda as a Public Input Opportunity.

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36. Commissioner Gehrig would like to have a discussion about body cameras.

37. Commissioner Gehrig would like to address the Tax Review Policy.

38. **RESIDENT COMMENTS (each Fargo resident will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments).**

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

Minutes are available on the City of Fargo website at www.FargoND.gov/citycommission.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

(12)

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

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

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
9 request on June 2, 2020; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on July 27,
11 2020,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 All of the Edition Third Addition to the City of Fargo, Cass County, North Dakota;

16 is hereby rezoned from "MR-3", Multi-Dwelling Residential, District to "LC", Limited
17 Commercial, District.

18 Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his
19 office so as to conform with and carry out the provisions of this ordinance.
20
21
22
23

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

3
4
5
6 (SEAL)

Timothy J. Mahoney, M.D., Mayor

7 Attest:

8
9
10 _____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

16

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

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

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on June 2, 2020; and,

WHEREAS, the rezoning changes were approved by the City Commission on July 27, 2020,

NOW, THEREFORE,

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

Section 1. The following described property:

All of Boulger First Addition to the City of Fargo, Cass County, North Dakota;
is hereby rezoned from "MR-3", Multi-Dwelling Residential, District and "GC", General Commercial, District to "GC", General Commercial, District.

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

3
4
5
6 (SEAL)

Timothy J. Mahoney, M.D., Mayor

7 Attest:

8
9
10 _____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

\$25.00
✓3340
7-27-20

Application for: ☒ Local Permit ☐ Restricted Event Permit (one event per year)

Name of Nonprofit Organization or group of people permit is issued to Legacy Children's Foundation		Date(s) of Activity 8/17/20		For a raffle, provide drawing date(s): 8/17/20	
Person Responsible for the Gaming Operation and Disbursement of Net Income Mary Jean Dehne		Title Ex. Director		Business Phone Number 701 793 7600	
Business Address 725 28th St N		City Fargo		State ND	Zip Code 58102
Mailing Address (if different)		City		State	Zip Code
Name of Site Where Game(s) will be Conducted Edgewood Golf Course		Site Address 19 Golf Course Rd.			
City Fargo		State ND	Zip Code 58102	County Cass	
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit. <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *					

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffle	50/50	1000			
Raffle	Cooler	400			
Raffle	Speciality Fan	110			
Jersey Raffle	Jersey	300			

(Limit \$40,000 per year)
Total: \$ **1,810**

Intended uses of gaming proceeds: to provide after-school resources for at-risk youth & community service

Does the organization presently have a state gaming license? ☒ No ☐ Yes - 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.

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? ☒ No ☐ Yes-If "Yes," the organization or group does not qualify for a local permit or restricted event permit.

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? ☒ No ☐ Yes-If "Yes," indicate the total value of all prizes previously awarded: \$ _____. This amount is part of the total prize limit of \$40,000 per year.

Signature of Organization or Group's Top Official Mary Jean Dehne	Date 7/24/20	Title Executive Director	Business Phone Number 701 793 7600
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APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 OFFICE OF ATTORNEY GENERAL
 SFN 9338 (08/2019)

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

Name of Nonprofit Organization or group of people permit is issued to Sts. Anne & Joachim Catholic Church	Date(s) of Activity 11/8/2020 to 11/8/2020	For a raffle, provide drawing date(s): 11-8-2020	
Person Responsible for the Gaming Operation and Disbursement of Net Income Rob Asheim	Title Bus. Manager	Business Phone Number (701) 235-5757	
Business Address 5202 25th Street South	City Fargo	State ND	Zip Code 58104-7119
Mailing Address (if different)	City	State	Zip Code
Name of Site Where Game(s) will be Conducted Sts. Anne & Joachim Catholic Church	Site Address 5202 25th Street South		
City Fargo	State ND	Zip Code 58104-7119	County Cass
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit. <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffle	Cash	\$8,000.00	Raffle	Cash	\$500.00
Raffle	Cash	\$6,000.00			
Raffle	Cash	\$4,000.00			
Raffle	Cash	\$1,000.00			
Raffle	Cash	\$1,000.00			
Raffle	Cash	\$500.00			
Raffle	Cash	\$500.00			
Raffle	Cash	\$500.00			
Raffle	Cash	\$500.00			
			Total:		(Limit \$40,000 per year) \$ 22,500.00

Intended uses of gaming proceeds: Roof repair

Does the organization presently have a state gaming license? ☒ No ☐ Yes - 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.

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? ☒ No ☐ Yes-If "Yes," the organization or group does not qualify for a local permit or restricted event permit.

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? ☒ No ☐ Yes-If "Yes," indicate the total value of all prizes previously awarded: \$ _____. This amount is part of the total prize limit of \$40,000 per year.

Signature of Organization or Group's Top Official 	Date 7/27/2020	Title Business Manager	Business Phone Number (701) 235-5757
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③

Mike Erickson, Board Chair
Downtown Community Partnership
207 4th St N, Suite B – Fargo, ND

City of Fargo Commission,

The Downtown Community Partnership has established itself as a trusted organization within the Downtown community. By building relationships through ongoing conversations and surveys with business and property owners, Downtown residents, the Fargo Police Department, Business Improvement District, and the Homeless Coalition, the DCP has it's thumb on the pulse for both requests and expectations of the Downtown Community.

It is for this reason that the DCP is requesting autonomy in placement of the Downtown pedestrian benches. These benches should be placed in locations that make sense for the Downtown Fargo community. With your approval, we can make this a reality and ensure these benches are placed in areas that will best serve Downtown Fargo.

Thank you for your consideration of this request.

Downtown Community Partnership
Melissa Brandt
President/CEO

A handwritten signature in black ink, appearing to read "Melissa Brandt", written over a horizontal line.

0.6.20

ENGINEER'S REPORT

NORTH SIDE FLOOD RISK MANAGEMENT LEVEE

PROJECT NO. FM-16-A
AMEDNED 8-3-2020

4

Nature & Scope

This project consists of constructing an earthen levee along the northern edge of Fargo's City limits. Once completed, there will be a continuous line of protection from Cass County Highway 81 (near 64th Avenue North) to University Drive North (near 46th Avenue North). The line of protection utilizes existing levees along the project alignment, which are located at Fargo's wastewater lagoons. The project also includes relocating existing storm sewer lift station #53, within Southeast Cass Water Resource District's Drain 10, from 40th Avenue North to 52nd Avenue North. Additional storm sewer improvements include construction of three gate wells within the line of protection to prevent floodwaters from entering into the protected area.

Purpose

This project has been identified as being necessary to allow the proposed 1% annual chance flood level (37-foot river gage height) to pass through Fargo, without any emergency measures, once the Fargo-Moorhead Diversion Project (Diversion) is completed. Prior to the Diversion being completed, this project will also reduce the need for emergency levees during spring flood events.

Feasibility

The estimated construction cost is approximately \$8,659,724.50. This project will be funded 100% from the Infrastructure (Flood) Sales Tax Fund 460. The project's cost breakout is as follows:

Estimated Construction Cost:	\$ 8,659,724.50
plus fees:	
Contingency 10%:	\$ 865,972.45
Consulting Engineering Services:	\$ 1,104,000.00
Engineering 4%:	\$ 346,388.98
Admin 4%:	\$ 346,388.98
ROW, Utility Relocations:	\$ 425,000.00
Total Estimated Cost	\$11,747,474.91

Project Funding Summary

Infrastructure Sales Tax Fund 460	100.00%	\$11,747,474.91
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We believe this project to be cost effective.



B. E. Derrig
Brenda E. Derrig, P.E.
City Engineer

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(5)

Type: Cost Sharing for Underground Building
Encroachment Removal Policy Update

Location: Citywide

Date of Hearing: 8/3/2020

RoutingDate

City Commission

8/10/2020

PWPEC File

X

Project File

Kristy Schmidt

The Committee reviewed a communication from Civil Engineer, Kristy Schmidt, regarding updating the Cost Share Underground Building Encroachment Removal Policy.

The City developed a cost participation policy during the 2004 Broadway reconstruction project to help property owners defray some of the costs for the elimination of encroachments. The 2004 policy is a 50/50 cost share of City and property owner money with a \$5,000 cap on the City share. During the Main Avenue project, several encroachments needed removing and/or abandoning to facilitate the Main Avenue project. It was proposed and approved for this project in April 2019 to have an 80/20 cost share split with the City share being 80% with a cap of \$10,000.

With the City's desire to eliminate underground structures in the City's right of way, staff is proposing to increase the City's cost participation due to escalating construction costs. Staff is recommending the City's cost participation be an 80/20 (80% City cost) split with a maximum of \$10,000 for City share for the removal of the building encroachments.

Staff is recommending review and approval of the Cost Sharing for Underground Building Encroachment Removal Policy-2020.

On a motion by Brenda Derrig, seconded by Steve Sprague, the Committee voted to recommend approval of the Cost Sharing for Underground Building Encroachment Removal Policy-2020.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Cost Sharing for Underground Building Encroachment Removal Policy-2020.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: None

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

Tim Mahoney, Mayor
Nicole Crutchfield, Director of Planning
Steve Dirksen, Fire Chief
Bruce Grubb, City Administrator
Ben Dow, Director of Operations
Steve Sprague, City Auditor
Brenda Derrig, City Engineer
Kent Costin, Finance Director

Present	Yes	No	Unanimous
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:


Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Kristy Schmidt, CE II
Date: July 28, 2020
Re: Updated Cost Share Underground Building Encroachment Removal Policy - 2020

Background:

During street or sidewalk reconstruction projects, we discover underground building encroachments in the DMU. These encroachments are extremely challenging to work around and are normally in hazardous conditions. It is beneficial to the City and the property owner to have these underground building encroachment eliminated or abandoned. The encroachments have a risk of collapse and are a liability for the property owner.

The City developed a cost participation policy during the 2004 Broadway reconstruction project to help property owners defray some of the costs for this elimination of encroachments. The 2004 policy is a 50/50 cost share of City and property owner money with a \$5,000.00 cap on the City share.

During the Main Avenue project, several encroachments needed removing and/or abandoning to facilitate the Main Avenue project. It was proposed and approved for this project in April 2019 to have an 80/20 cost share split with the City share being 80% with a cap \$10,000.00.

With the City's desire to eliminate underground structures in the City's right of way, staff is proposing to increase the City's cost participation due to escalating construction costs. Staff is recommending the City's cost participation be an 80/20 (80% City cost) split with a maximum of \$10,000.00 for City share for the removal of the building encroachments (see attached Cost Share policy 2020 for full details).

Staff is recommending to review and approve the Cost Sharing for Underground Building Encroachment Removal Policy-2020 and forward to Commission for final approval.

Recommended Motion:

Approve Cost Share Underground Building Encroachment Policy Removal Policy.

KLS/klb
Attachment

C: Tom Knakmuhs
Kevin Gorder

Cost Sharing for Underground Building Encroachment Removal Policy **2020**

Introduction

The City has completed a few reconstruction projects in the downtown area and many of these projects uncover underground building encroachments. Examples include underground rooms, window wells, staircases, coal shoots, etc. Engineering staff recommends the encroachments be removed or abandoned by the property owners and completed concurrently with the project.

Benefits of removing the encroachment on future projects include:

- Property Owners are responsible for the maintenance of the sidewalk in front of their property. There is a certain amount of liability associated with the encroachment since the sidewalk is acting as a structure. If this sidewalk failed, the property owner would be exposed to insurance and liability risk.
- If the underground utilities in the right of way need repair, the property owner would be responsible for the additional cost necessary to protect the encroachment in the right of way.
- City is at risk removing and replacing encroachment "tops" in the ROW during City projects.

Cost Participation

The City has developed a cost participation program to assist these affected owners. Eligible costs listed below. This policy provisions are as follows:

- 1) City cost participation on an 80/20 split to a maximum \$10,000 for City share for removal of the building encroachment.
- 2) Property owner to arrange for completion of the necessary work to eliminate the building encroachment to include sidewalk replacement.
- 3) Property owner may have the remainder of the costs assessed to the property.
- 4) If a property has received City cost participation for removal of an encroachment, this property will not be eligible to obtain a future encroachment agreement.
- 5) City Participation is limited to one cost share agreement per side of the building that shares a right of way line with public right of way.

Eligible Costs

- Foundation work
- Moisture protection
- Gravel backfill in encroachment
- Sidewalk installation
- Removal of concrete walls associated with window wells and stair cases in the ROW
- Mechanical removal

Encroachment Agreement

If the property owner elects not to remove underground building encroachments they will be required to enter into a formal encroachment agreement which includes:

- Insurance indemnifying the City of Fargo
- \$500 application/filing fee
- Property Owner shall hire a structural engineer to provide plans to build a structural sidewalk. These plans shall be provided to the City of Fargo to include with record drawings of the project.
- An annual fee of \$500
- Be responsible for all costs to build the encroachment structural top by making direct payment to their contractor or petitioning to include costs in an assessment to their property

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Amended Easement

Location: Lewis and Clark School

Date of Hearing: 5/26/2020

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/10/20</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding an amendment to an old right of way easement for 18th Avenue South between 16th Street and 17th Street.

Fargo Public Schools has requested an amendment to the easement to allow placement of water service lines, sanitary sewer lines, and additional storm sewer in the easement area. In addition, they would like to build a parking lot and place playground equipment on this easement area. Permanent buildings will not be placed in the easement. The amended easement allows for these improvements however, they would be responsible for removal and replacement of the improvements in the event the existing sanitary sewer would need to be excavated for maintenance or replacement. The City of Fargo would be responsible for any work on the Sanitary Sewer.

Staff is recommending approval of the amended easement contingent on Fargo Public Schools approval.

On a motion by Tim Mahoney, seconded by Steve Dirksen, the Committee voted to recommend approval of the Amended Easement.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Amended Easement.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>

COMMITTEE

Tim Mahoney, Mayor
 Nicole Crutchfield, Director of Planning
 Steve Dirksen, Fire Chief
 Bruce Grubb, City Administrator
 Ben Dow, Director of Operations
 Steve Sprague, City Auditor
 Brenda Derrig, City Engineer
 Kent Costin, Finance Director

Present	Yes	No	Unanimous
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

Brenda E. Derrig, P.E.
 City Engineer

Memorandum

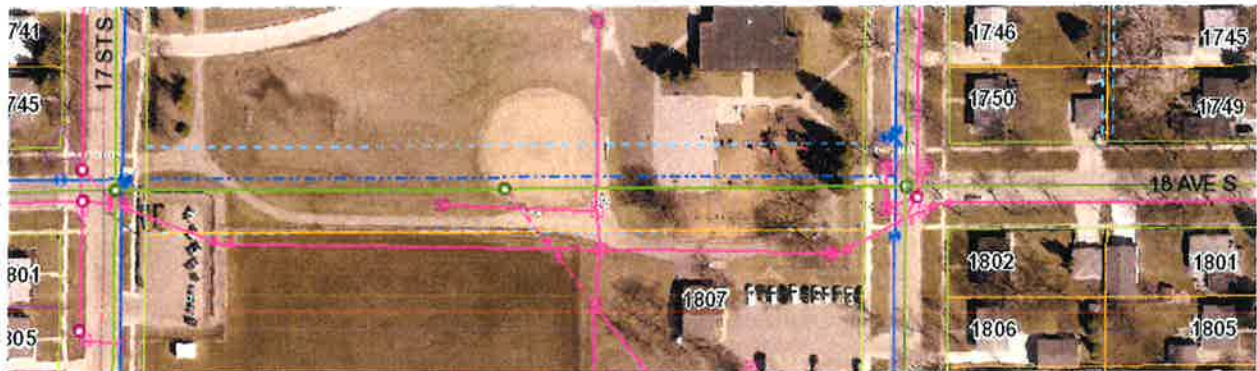
To: Members of PWPEC

From: Kevin Gorder
Division Engineer

Date: May 26, 2020

Subject: Amended Easement – Lewis and Clark School Property

In 1955, the City of Fargo acquired an easement across the Lewis and Clark School property to install water main and sanitary sewer. The easement appears to be old right of way for 18th Avenue South between 16th Street and 17th Street. The easement area is shown below.



The water main across this easement has been abandoned leaving sanitary sewer as the only service in the easement area. A storm sewer that conveys water from west of 25th Street to the river does cross south of the easement area.

Fargo Public Schools is working on an approximate 45,000 SF expansion of Lewis and Clark School and would like to break ground as soon as possible with completion prior to school starting in the fall of 2021. Fargo Public Schools would like to place water service lines, sanitary sewer lines, and additional storm sewer in the easement area. In addition, they would like to build a parking lot and place playground equipment on this easement area. Permanent buildings will not be placed in the easement. The amended easement would allow Fargo Public Schools to place these improvements in the easement but they would be responsible for removal and replacement of the improvements in the event the sanitary sewer would need to be excavated for maintenance or replacement. The City of Fargo would be responsible for any work on the sanitary sewer. Engineering has reviewed the latest video inspection and the sanitary sewer appears to be in good shape.

Items remaining to allow Fargo Public Schools to proceed would be a Right of Way Use Agreement describing responsibilities in the unlikely event the sanitary sewer is damaged during their construction project and an agreement to relocate the recycle center on this school site that is under a separate agreement between the City of Fargo and Fargo Public Schools.

Recommended Motion:

Approve this amended easement contingent on Fargo Public Schools approval.

AMENDED EASEMENT (Amends Document # 320762)

By Easement dated March 8, 1955, The Board of Education of the City of Fargo (hereinafter "Fargo Public Schools" or "Grantor") granted to the City of Fargo (hereinafter "City" or "Grantee") an Easement, described as follows, situated within the City of Fargo, County of Cass and State of North Dakota:

The South Eighty (80) Feet of Block Six (6) of Bohnsack's First Addition to the City of Fargo, according to the certified plat thereof on file and of record in the office of the Register of Deed of said Cass County, North Dakota (hereinafter "Easement Area").

Fargo Public Schools desires to use the Easement Area in a manner inconsistent to the grant. City agrees to amend the easement for such use, under certain terms and conditions stated in this Amended Easement. Namely, Fargo Public Schools intends to install a parking lot, sidewalks, and a playground (hereinafter "Surface Improvements") and underground service connections for sanitary, storm, and water (hereinafter "Services") in the Easement Area.

For good and valuable consideration, hereby acknowledged, the parties hereto agree to amend the Easement (Document # 320762) as follows:

1. Fargo Public Schools shall be permitted to construct the Surface Improvements and Services provided herein, approved by City in advance of such installation. Fargo Public Schools shall use due care in its construction in the Easement Area so as not to damage City Infrastructure in the Easement Area for which the original grant was made.


2. Fargo Public Schools shall be responsible for the cost of any repairs, removal or relocation to the City Infrastructure for which the grant was given, which may be damaged as a result of construction of the Surface Improvement and Services permitted herein.
3. City shall not be responsible for any damage or repairs to the Surface Improvements and Service permitted herein in the Easement Area.
4. City shall provide Fargo Public Schools' Ninety (90) days' Notice of any scheduled or necessary work in the Easement Area, except in the event of an emergency.
 - a. Fargo Public Schools shall remove or protect the Surface Improvements and Services. City shall fill the excavation site, if necessary, and return the Easement Area to level surface. City shall have no responsibility for damage or destruction of the Surface Improvements and Services permitted herein.
 - b. City shall have no responsibility for any delay costs or expenses due to a change in the construction methods of the permitted Surface Improvements or Services.

(Signatures on following pages)

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this 30th day of July, 2020.

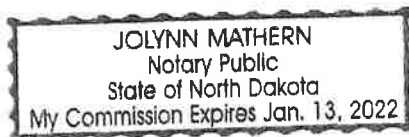
Fargo School Board of Education
North Dakota Political Corporation

Dated: 7/30/20



Rebecca Knutson, School Board
President

STATE OF North Dakota
COUNTY OF Cass) ss.

On this 30th day of July, 2020, before me, a notary public in and for said county and state, personally appeared REBECCA KNUTSON, President of Board of Education, the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.



(SEAL)


Notary Public
Cass County, North Dakota
My Commission expires: 1/13/22

IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this _____ day of _____, 2020.

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

Dated: _____

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

ATTEST

Steve Sprague, City Auditor

[illegible]

On this ____ day of _____, 2020, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, 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.

(SEAL)

Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:
City of Fargo Engineering
225 4th Street North
Fargo, ND 58102

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 North Broadway, Suite 206
Fargo, ND 58102
701-280-1901
NMorris@lawfargo.com

⑦

August 5, 2020

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

**Re: Memorandum of Offer to Landowner
Permanent & Temporary Easements
Project #FM-16-A**

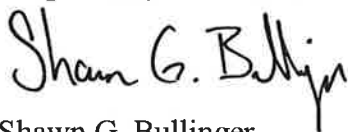
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of (4) permanent & (3) temporary easements in association with Project #FM-16-A. 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 purchase of a (4) permanent & (3) temporary easements from **The Municipal Airport Authority of the City of Fargo** in association with Project #FM-16-A and that the Mayor is instructed to execute the Memorandum of Offer to Landowner on behalf of the City of Fargo.

Please return a copy of the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Nancy J. Morris
Roger Kluck

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project FM-16-A	County Cass	Parcel(s) 1-7
Landowner The Municipal Airport Authority of the City of Fargo		
Mailing Address PO Box 2845 Fargo, ND 58108		

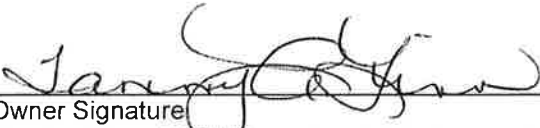
The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See enclosed easement(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 166,981.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	
Easement and Access Control	\$	166,981.00
Improvements on Right of Way*	\$	
Damages to Remainder	\$	
Total Offer	\$	166,981.00

*Description of Damages to Remainder are as follows:


 Owner Signature
 Signature hereby constitutes acceptance of offer as presented above.


 Shawn G. Bullinger
 Land Acquisition Specialist, City of Fargo

Fargo City Commission has considered the offer and approves the same:

CITY OF
Fargo

Timothy J. Mahoney

MAYOR

SIGNATURE

DATE

PERMANENT EASEMENT
(Levee)

KNOW ALL MEN BY THESE PRESENTS that **THE MUNICIPAL AIRPORT AUTHORITY OF THE CITY OF FARGO**, hereinafter referred to as "Grantor", whether one or more, 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 permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of constructing, operating, maintaining and repairing a levee, together with the customary appurtenances, said tract being more particularly described as follows:

That part of the Southeast Quarter of Section 11, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southeast corner of said Southeast Quarter; thence North 02 degrees 48 minutes 39 seconds West on an assumed bearing along the east line of said Southeast Quarter for a distance of 33.00 feet to a point on a line parallel with and 33.00 feet northerly of the south line of said Southeast Quarter, said point is the point of beginning; thence continuing North 02 degrees 48 minutes 39 seconds West along said east line for a distance of 215.00 feet; thence South 88 degrees 01 minute 47 seconds West for a distance of 188.00 feet; thence South 02 degrees 57 minutes 34 seconds East for a distance of 100.00 feet; thence South 88 degrees 01 minute 53 seconds West for a distance of 2445.56 feet to the west line of said Southeast Quarter; thence South 02 degrees 51 minutes 29 seconds East along said west line for a distance of 115.00 feet to a point on a line parallel with and 33.00 feet northerly of the south line of said Southeast Quarter; thence North 88 degrees 01 minute 53 seconds East along said

parallel line for a distance of 2633.21 feet to the point of beginning.

Containing 7.38 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

Said property is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

Grantor, its 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, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said levee 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 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 levee 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 levee and customary appurtenances was begun.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed
this 20th day of July, 2020.

GRANTOR:
THE MUNICIPAL AIRPORT AUTHORITY
OF THE CITY OF FARGO, NORTH DAKOTA

By: Tammy A. Linn
Tammy A. Linn, Chairman

By: Shawn A. Dobberstein, AAE
Shawn A. Dobberstein,
A.A.E., Executive Director

STATE OF NORTH DAKOTA)
) ss
COUNTY OF CASS)

On this 20th day of July, 2020, before me, a notary public in and for said county and state, personally appeared TAMMY A. LINN and SHAWN A. DOBBERSTEIN, to me known to be the Chairman and Executive Director, respectively, of THE MUNICIPAL AIRPORT AUTHORITY OF THE CITY OF FARGO, NORTH DAKOTA, that is described herein and acknowledged to me that they executed the within and foregoing instrument and acknowledged to me that such public body executed the same.

Joan Stading

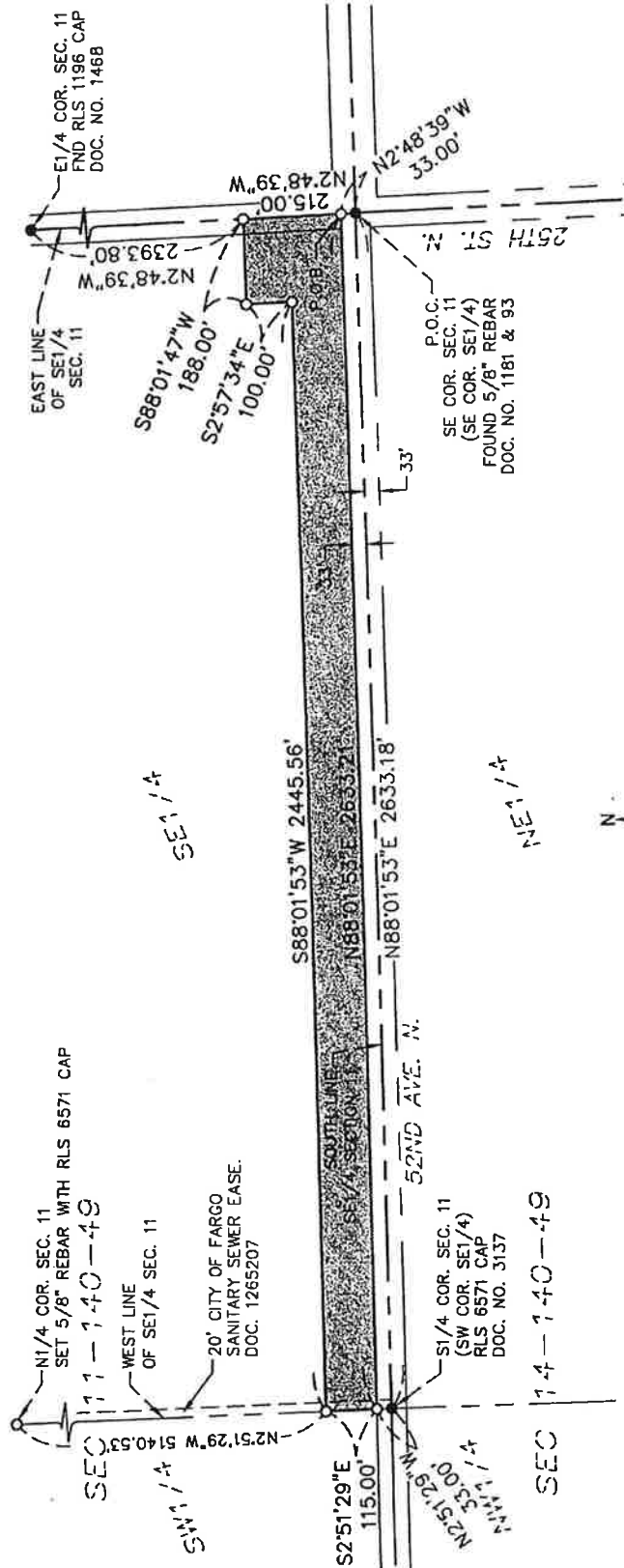
The legal description was prepared by:
Steven W. Holm
Moore Engineering
925 10th Ave East
West Fargo, ND 58078
(701) 282-4692

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
701-280-1901
nmorris@lawfargo.com



EASEMENT EXHIBIT

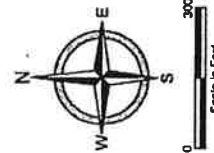
IN THE SE1/4 OF SECTION 11, TOWNSHIP 140 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA



LEGEND

●	IRON MONUMENT
○	SET 5/8"x18" YELLOW PLASTIC
P.O.C.	POINT OF COMPLETION
P.O.B.	POINT OF BEGINNING

BASIS OF BEARINGS: THE EAST
LINE OF THE SE1/4 OF
SECTION 11 HAS AN ASSUMED
BEARING OF N02°48'39"W.



NOTE: MOORE ENGINEERING INC., HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

PROJECT No.	19169A-213
DATE:	3.10.20
REVISED:	-
DRAWN BY:	SWK
CHECKED BY:	CDH

Levee Easement Exhibit
SE1/4 Sec. 11-140-49
Cass County, North Dakota

moore
engineering, inc.

FILE LOCATION: R:\NCMI JD Projects\11916\1SURVEY\DRAWINGS\SEC 11 EASEMENTS\119189A SEC 11 PERM 3-10-20.dwg

EASEMENT EXHIBIT

IN THE SE1/4 OF SECTION 11, TOWNSHIP 140 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA

PERMANENT EASEMENT DESCRIPTION

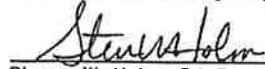
That part of the Southeast Quarter of Section 11, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southeast corner of said Southeast Quarter; thence North 02 degrees 48 minutes 39 seconds West on an assumed bearing along the east line of said Southeast Quarter for a distance of 33.00 feet to a point on a line parallel with and 33.00 feet northerly of the south line of said Southeast Quarter, said point is the point of beginning; thence continuing North 02 degrees 48 minutes 39 seconds West along said east line for a distance of 215.00 feet; thence South 88 degrees 01 minute 47 seconds West for a distance of 188.00 feet; thence South 02 degrees 57 minutes 34 seconds East for a distance of 100.00 feet; thence South 88 degrees 01 minute 53 seconds West for a distance of 2445.56 feet to the west line of said Southeast Quarter; thence South 02 degrees 51 minutes 29 seconds East along said west line for a distance of 115.00 feet to a point on a line parallel with and 33.00 feet northerly of the south line of said Southeast Quarter; thence North 88 degrees 01 minute 53 seconds East along said parallel line for a distance of 2633.21 feet to the point of beginning.

Containing 7.38 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.



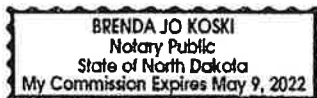
Steven W. Holm, R.L.S.
N.D. License No. LS-6571

Date: 3-10-2020



State of North Dakota)
County of Cass)

On this 10th day of March, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.




Notary Public, Cass County, North Dakota

PAGE 2 OF 2

Levee Easement Exhibit

SE1/4 Sec. 11-140-49
Cass County, North Dakota

PROJECT No. 10186A-213
DATE: 3.10.20
REVISED: -
DRAWN BY: SWH
CHECKED BY: CDH



EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **THE MUNICIPAL AIRPORT AUTHORITY OF THE CITY OF FARGO**, 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 construction easement over, upon and in land hereinafter described for the purpose of structure demolition and levee construction and activities appurtenant thereto, said land being more fully described, to-wit:

That part of the Southeast Quarter of Section 11, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being a strip 50.00 feet wide, the left sideline of said strip is described as follows:

Commencing at a found iron monument which designates the southeast corner of said Southeast Quarter; thence North 02 degrees 48 minutes 39 seconds West on an assumed bearing along the east line of said Southeast Quarter for a distance of 248.00 feet; thence South 88 degrees 01 minute 47 seconds West for a distance of 33.00 feet to a point on a line parallel with and 33.00 feet westerly of the east line of said Southeast Quarter, said point is the point of beginning of said left sideline; thence continuing South 88 degrees 01 minute 47 seconds West for a distance of 155.00 feet; thence South 02 degrees 57 minutes 34 seconds East for a distance of 100.00 feet; thence South 88 degrees 01 minute 53 seconds West for a distance of

2445.56 feet to the west line of said Southeast Quarter and said left sideline there terminates. The right sideline of said strip is to be lengthened or shortened to terminate on the west line of said Southeast Quarter and on said line parallel with and 33.00 feet westerly of the east line of said Southeast Quarter.

Containing 3.10 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

Said property is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

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 agrees that they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt 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 to be used for the storage of dirt and all other construction activities during the construction phase of said project. 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 storage of dirt and all other construction activities was begun.

This easement shall terminate on August 1, 2022 or at the completion of the project, whichever is later.

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed
this 26th day of July, 2020.

GRANTOR:

THE MUNICIPAL AIRPORT AUTHORITY
OF THE CITY OF FARGO, NORTH DAKOTA

By: Tammy A. Linn
Tammy A. Linn, Chairman

By: Shawn A. Dobberstein, AAE
Shawn A. Dobberstein,
A.A.E., Executive Director

STATE OF NORTH DAKOTA)
) ss
COUNTY OF CASS)

On this 2nd day of July, 2020, before me, a notary public in and for said county and state, personally appeared TAMMY A. LINN and SHAWN A. DOBBERSTEIN, to me known to be the Chairman and Executive Director, respectively, of THE MUNICIPAL AIRPORT AUTHORITY OF THE CITY OF FARGO, NORTH DAKOTA, that is described herein and acknowledged to me that they executed the within and foregoing instrument and acknowledged to me that such public body executed the same.

me that such public body executed the same.

Joan Steding

JOAN STADING
Notary Public
State of North Dakota
My Commission Expires May 10, 2022

The legal description was prepared by:

Steven W. Holm
Moore Engineering
925 10th Ave East
West Fargo, ND 58078
(701) 282-4692

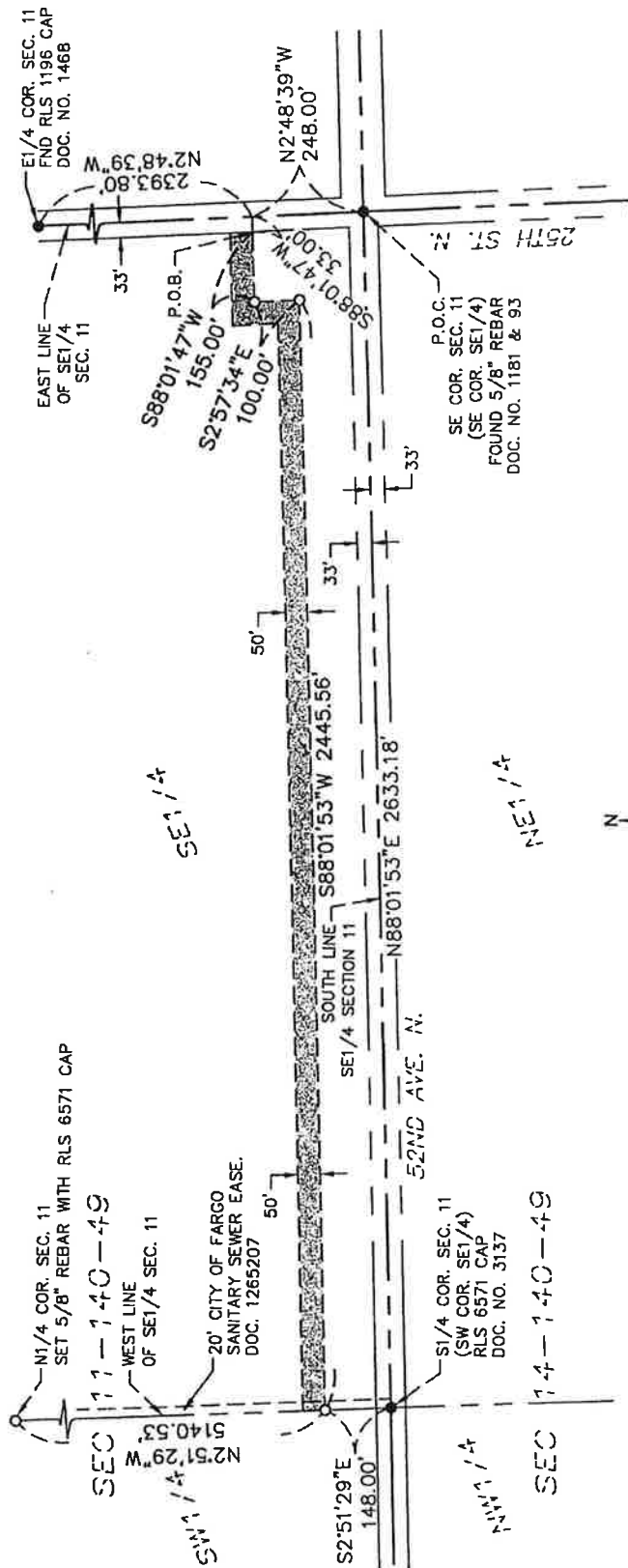
This document was prepared by:

Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
701-280-1901
nmorris@lawfargo.com

Exhibit A

EASEMENT EXHIBIT

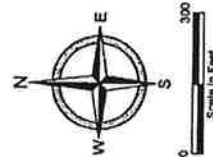
IN THE SE1/4 OF SECTION 11, TOWNSHIP 140 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA



LEGEND

- IRON MONUMENT FOUND
- SET 5/8" X 18" REBAR WITH YELLOW PLASTIC CAP #6571
- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING

BASIS OF BEARINGS: THE EAST
LINE OF THE SE1/4 OF
SECTION 11 HAS AN ASSUMED
BEARING OF N02°48'39"W.



NOTE: MOORE ENGINEERING INC., HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

Construction Easement Exhibit

SE1/4 Sec. 11-140-49
Cass County, North Dakota

PROJECT No. 19189A-213
DATE: 3.10.20
REVISED: ---
DRAWN BY: SWH
CHECKED BY: CDH



moore
engineering, inc.

FILE LOCATION: R:\CHG 30 Projects\19189A\SURVEY\DRAWING\5 SEC 11 EASEMENT\5119189A SEC 11 TEMP 3-10-20.dwg

EASEMENT EXHIBIT

IN THE SE1/4 OF SECTION 11, TOWNSHIP 140 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA

TEMPORARY EASEMENT DESCRIPTION

That part of the Southeast Quarter of Section 11, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being a strip 50.00 feet wide, the left sideline of said strip is described as follows:

Commencing at a found iron monument which designates the southeast corner of said Southeast Quarter; thence North 02 degrees 48 minutes 39 seconds West on an assumed bearing along the east line of said Southeast Quarter for a distance of 248.00 feet; thence South 88 degrees 01 minute 47 seconds West for a distance of 33.00 feet to a point on a line parallel with and 33.00 feet westerly of the east line of said Southeast Quarter, said point is the point of beginning of said left sideline; thence continuing South 88 degrees 01 minute 47 seconds West for a distance of 155.00 feet; thence South 02 degrees 57 minutes 34 seconds East for a distance of 100.00 feet; thence South 88 degrees 01 minute 53 seconds West for a distance of 2445.56 feet to the west line of said Southeast Quarter and said left sideline there terminates. The right sideline of said strip is to be lengthened or shortened to terminate on the west line of said Southeast Quarter and on said line parallel with and 33.00 feet westerly of the east line of said Southeast Quarter.

Containing 3.10 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

Steven W. Holm
Steven W. Holm, R.L.S.
N.D. License No. LS-6571

Date: 3-10-2020



State of North Dakota)
County of Cass)

On this 10th day of March, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.

BRENDA JO KOSKI
Notary Public
State of North Dakota
My Commission Expires May 9, 2022

Brenda Jo Koski
Notary Public, Cass County, North Dakota

PAGE 2 OF 2

Construction Easement Exhibit

SE1/4 Sec. 11-140-49
Cass County, North Dakota

PROJECT No. 19189A-213
DATE: 3.10.20
REVISED: -
DRAWN BY: SWH
CHECKED BY: CDH



moore
engineering, inc.

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **THE MUNICIPAL AIRPORT AUTHORITY OF THE CITY OF FARGO**, 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 construction easement over, upon and in land hereinafter described for the purpose of structure demolition and levee construction and activities appurtenant thereto, said land being more fully described, to-wit:

That part of the Southwest Quarter of Section 12, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being a strip 50.00 feet wide, the left sideline of said strip is described as follows:

Commencing at an iron monument which designates the southeast corner of said Southwest Quarter; thence South 88 degrees 18 minutes 57 seconds West on an assumed bearing along the south line of said Southwest Quarter for a distance of 219.68 feet; thence North 02 degrees 00 minutes 56 seconds West for a distance of 50.00 feet to a point on a line parallel with and 50.00 feet northerly of the south line of said Southwest Quarter, said point is the point of beginning of said left sideline; thence continuing North 02 degrees 00 minutes 56 seconds West for a distance of 98.00 feet; thence South 88 degrees 18 minutes 57 seconds West for a distance of 1189.00 feet to a point on the easterly line of Cass County Drain No.

10 as described in Quit Claim Deed Document No. 1288036, recorded February 16, 2010, on file and of record in the office of the Recorder, said Cass County, said point hereinafter referred to as Point "A" and said left sideline there terminates. The right sideline of said strip is to be lengthened or shortened to terminate on said line parallel with and 50.00 feet northerly of the south line of said Southwest Quarter and on the easterly line of said Cass County Drain No. 10 as described in Document No. 1288036.

AND

That part of said Southwest Quarter, being a strip 50.00 feet wide, the left sideline of said strip is described as follows:

Commencing at the aforementioned Point "A"; thence South 32 degrees 58 minutes 24 seconds West along the easterly line of said Cass County Drain No. 10 as described in Document No. 1288036 for a distance of 119.14 feet to a point on a line parallel with and 50.00 feet northerly of the south line of said Southwest Quarter; thence South 88 degrees 18 minutes 57 seconds West along said parallel line for a distance of 194.51 feet to the westerly line of said Cass County Drain No. 10 as described in Document No. 1288036; thence North 32 degrees 58 minutes 24 seconds East along said westerly line for a distance of 119.14 feet to the point of beginning of said left sideline; thence South 88 degrees 18 minutes 57 seconds West for a distance of 880.96 feet; thence North 02 degrees 48 minutes 39 seconds West for a distance of 100.00 feet; thence South 88 degrees 18 minutes 20 seconds West for a distance of 124.99 feet to a point on a line 33.00 feet easterly of and parallel with the west line of said Southwest Quarter and said left sideline there terminates. The right sideline of said strip is to be lengthened or shortened to terminate on the westerly line of said Cass County Drain No. 10 as described in Document No. 1288036 and on said line 33.00 feet easterly of and parallel with the west line of said Southwest Quarter.

Containing 2.80 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

Said property is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

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 agrees that they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt 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 to be used for the storage of dirt and all other construction activities during the construction phase of said project. 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 storage of dirt and all other construction activities was begun.

This easement shall terminate on August 1, 2022 or at the completion of the project, whichever is later.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed
this 28th day of July, 2020.

GRANTOR:

THE MUNICIPAL AIRPORT AUTHORITY
OF THE CITY OF FARGO, NORTH DAKOTA

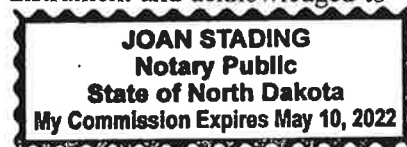
By: Tammy A. Linn
Tammy A. Linn, Chairman

By: Shawn A. Dobberstein, AAE
Shawn A. Dobberstein,
A.A.E., Executive Director

STATE OF NORTH DAKOTA)
) ss
COUNTY OF CASS)

On this 28th day of July, 2020, before me, a notary public in and for said county and state, personally appeared TAMMY A. LINN and SHAWN A. DOBBERSTEIN, to me known to be the Chairman and Executive Director, respectively, of THE MUNICIPAL AIRPORT AUTHORITY OF THE CITY OF FARGO, NORTH DAKOTA, that is described herein and acknowledged to me that they executed the within and foregoing instrument and acknowledged to me that such public body executed the same.

Joan Stading



The legal description was prepared by:

Steven W. Holm
Moore Engineering
925 10th Ave East
West Fargo, ND 58078
(701) 282-4692

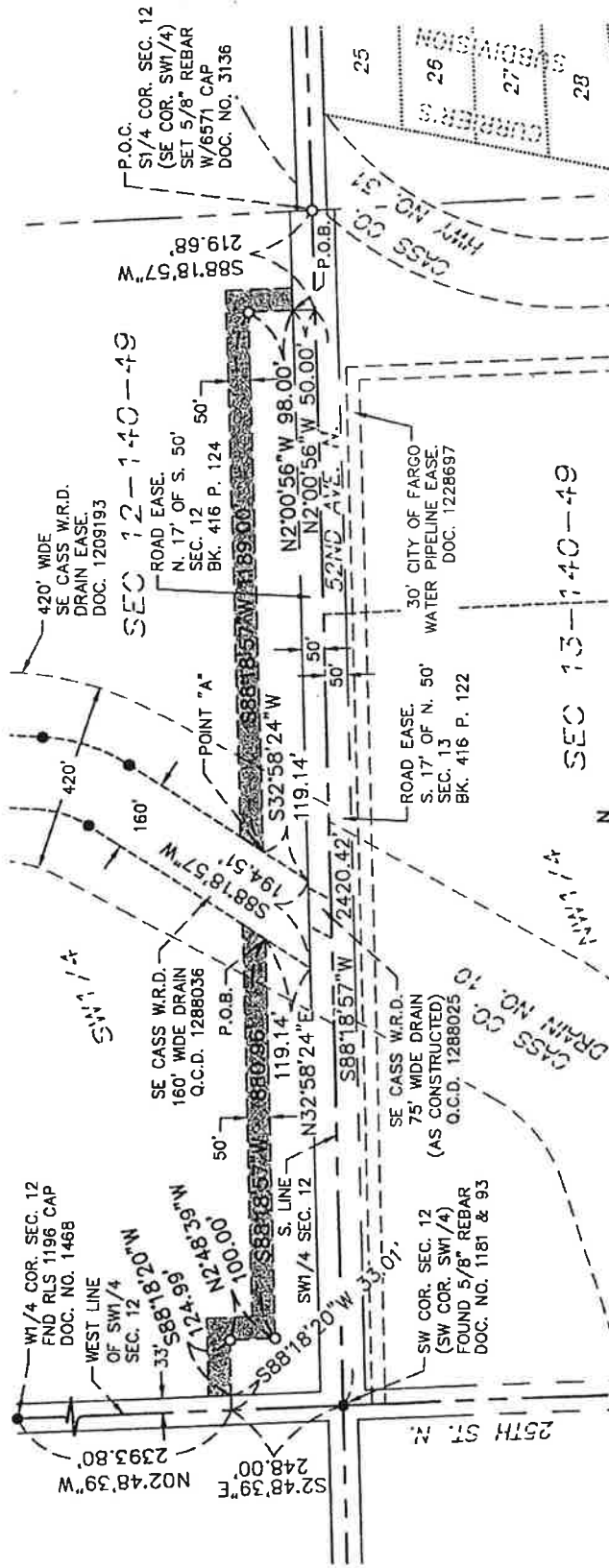
This document was prepared by:

Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
701-280-1901
nmorris@lawfargo.com

Exhibit A

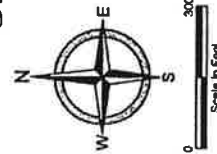
EASEMENT EXHIBIT

IN THE SW1/4 OF SECTION 12, TOWNSHIP 140 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA



- LEGEND**
- IRON MONUMENT FOUND
 - SET 5/8"X18" REBAR WITH YELLOW PLASTIC CAP #6571
 - P.O.C. POINT OF COMMENCEMENT
 - P.O.B. POINT OF BEGINNING

BASIS OF BEARINGS: THE SOUTH LINE OF THE SW1/4 OF SECTION 12 HAS AN ASSUMED BEARING OF S85°18'57"W.



NOTE: MOORE ENGINEERING INC., HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, OWNERSHIP, TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

Construction Easement Exhibit

SW1/4 Sec. 12-140-49
Cass County, North Dakota

PROJECT No.	19188A-213
DATE:	3.10.20
REVISED:	
DRAWN BY:	SWH
CHECKED BY:	CDH



PAGE 1 OF 2

FILE LOCATION: R:\COW 3D Projects\19188A\SURVEY\DRAWINGS\SEC 12 EASEMENTS\19188A SEC 12 TEMP 3-10-20.dwg

EASEMENT EXHIBIT

IN THE SW1/4 OF SECTION 12, TOWNSHIP 140 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA

TEMPORARY EASEMENT DESCRIPTION

That part of the Southwest Quarter of Section 12, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being a strip 50.00 feet wide, the left sideline of said strip is described as follows:

Commencing at an iron monument which designates the southeast corner of said Southwest Quarter; thence South 88 degrees 18 minutes 57 seconds West on an assumed bearing along the south line of said Southwest Quarter for a distance of 219.68 feet; thence North 02 degrees 00 minutes 56 seconds West for a distance of 50.00 feet to a point on a line parallel with and 50.00 feet northerly of the south line of said Southwest Quarter, said point is the point of beginning of said left sideline; thence continuing North 02 degrees 00 minutes 56 seconds West for a distance of 98.00 feet; thence South 88 degrees 18 minutes 57 seconds West for a distance of 1189.00 feet to a point on the easterly line of Cass County Drain No. 10 as described in Quit Claim Deed Document No. 1288036, recorded February 16, 2010, on file and of record in the office of the Recorder, said Cass County, said point hereinafter referred to as Point "A" and said left sideline there terminates. The right sideline of said strip is to be lengthened or shortened to terminate on said line parallel with and 50.00 feet northerly of the south line of said Southwest Quarter and on the easterly line of said Cass County Drain No. 10 as described in Document No. 1288036.

AND


That part of said Southwest Quarter, being a strip 50.00 feet wide, the left sideline of said strip is described as follows:

Commencing at the aforementioned Point "A"; thence South 32 degrees 58 minutes 24 seconds West along the easterly line of said Cass County Drain No. 10 as described in Document No. 1288036 for a distance of 119.14 feet to a point on a line parallel with and 50.00 feet northerly of the south line of said Southwest Quarter; thence South 88 degrees 18 minutes 57 seconds West along said parallel line for a distance of 194.51 feet to the westerly line of said Cass County Drain No. 10 as described in Document No. 1288036; thence North 32 degrees 58 minutes 24 seconds East along said westerly line for a distance of 119.14 feet to the point of beginning of said left sideline; thence South 88 degrees 18 minutes 57 seconds West for a distance of 880.96 feet; thence North 02 degrees 48 minutes 39 seconds West for a distance of 100.00 feet; thence South 88 degrees 18 minutes 20 seconds West for a distance of 124.99 feet to a point on a line 33.00 feet easterly of and parallel with the west line of said Southwest Quarter and said left sideline there terminates. The right sideline of said strip is to be lengthened or shortened to terminate on the westerly line of said Cass County Drain No. 10 as described in Document No. 1288036 and on said line 33.00 feet easterly of and parallel with the west line of said Southwest Quarter.

Containing 2.80 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

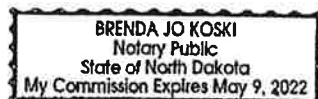

Steven W. Holm, R.L.S.
N.D. License No. LS-6571

Date: 3-10-2020



State of North Dakota)
County of Cass)

On this 10th day of March, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.




Notary Public, Cass County, North Dakota

PAGE 2 OF 2

Construction Easement Exhibit
SW1/4 Sec. 12-140-49
Cass County, North Dakota

PROJECT No. 19186A-213
DATE: 3.10.20
REVISED:
DRAWN BY: SWH
CHECKED BY: CDH



PERMANENT EASEMENT
(Levee)

KNOW ALL MEN BY THESE PRESENTS that THE MUNICIPAL AIRPORT AUTHORITY OF THE CITY OF FARGO, hereinafter referred to as "Grantor", whether one or more, 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 permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of constructing, operating, maintaining and repairing a levee, together with the customary appurtenances, said tract being more particularly described as follows:

That part of the Southwest Quarter of Section 12, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at an iron monument which designates the southeast corner of said Southwest Quarter; thence South 88 degrees 18 minutes 57 seconds West on an assumed bearing along the south line of said Southwest Quarter for a distance of 219.68 feet to the point of beginning; thence North 02 degrees 00 minutes 56 seconds West for a distance of 148.00 feet; thence South 88 degrees 18 minutes 57 seconds West for a distance of 1189.00 feet to the easterly line of Cass County Drain No. 10 as described in Quit Claim Deed Document No. 1288036, recorded February 16, 2010, on file and of record in the office of the Recorder, said Cass County; thence South 32 degrees 58 minutes 24 seconds West along said easterly line for a distance of 119.14 feet to a point on a line parallel with and 50.00 feet northerly of the south line of said Southwest Quarter, said hereinafter referred to as Point "A"; thence North 88 degrees 18 minutes 57 seconds East on said parallel line for a distance of 1099.32 feet; thence South 02 degrees 00 minutes 56 seconds East for a distance of 50.00 feet to the south line of said Southwest Quarter;

thence North 88 degrees 18 minutes 57 seconds East along said south line for a distance of 158.00 feet to the point of beginning.

AND

That part of the Southwest Quarter of said Section 12, described as follows:

Commencing at the aforementioned Point "A"; thence South 88 degrees 18 minutes 57 seconds West on a line parallel with and 50.00 feet northerly of the south line of said Southwest Quarter for a distance of 194.51 feet to the westerly line of said Cass County Drain No. 10 according to Quit Claim Deed Document No. 1288036, the point of beginning; thence North 32 degrees 58 minutes 24 seconds East along said westerly line for a distance of 119.14 feet; thence South 88 degrees 18 minutes 57 seconds West for a distance of 880.96 feet; thence North 02 degrees 48 minutes 39 seconds West for a distance of 100.00 feet; thence South 88 degrees 18 minutes 20 seconds West for a distance of 158.00 feet to the west line of said Southwest Quarter; thence South 02 degrees 48 minutes 39 seconds East along the west line of said Southwest Quarter for a distance of 197.99 feet to a point on said line parallel with and 50.00 feet northerly of the south line of said Southwest Quarter; thence North 88 degrees 18 minutes 57 seconds East on said parallel line for a distance of 969.29 feet to the point of beginning.

Containing 5.55 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

Said property is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

Grantor, its 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, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said levee 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 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 levee 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 levee and customary appurtenances was begun.

this 20th day of July, 2020.

THE MUNICIPAL AIRPORT AUTHORITY
OF THE CITY OF FARGO, NORTH DAKOTA

By: Tammy A. Linn
Tammy A. Linn, Chairman

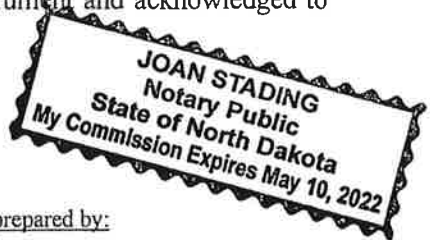
By: Shawn A. Dobberstein, AAE
Shawn A. Dobberstein,
A.A.E., Executive Director

STATE OF NORTH DAKOTA)
) ss
COUNTY OF CASS)

On this 28 day of July, 2020, before me, a notary public in and for said county and state, personally appeared TAMMY A. LINN and SHAWN A. DOBBERSTEIN, to me known to be the Chairman and Executive Director, respectively, of THE MUNICIPAL AIRPORT AUTHORITY OF THE CITY OF FARGO, NORTH DAKOTA, that is described herein and acknowledged to me that they executed the within and foregoing instrument and acknowledged to me that such public body executed the same.

The legal description was prepared by:
Steven W. Holm
Moore Engineering
925 10th Ave East
West Fargo, ND 58078
(701) 282-4692

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
701-280-1901
nmorris@lawfargo.com



EASEMENT EXHIBIT

IN THE SW1/4 OF SECTION 12, TOWNSHIP 140 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA

PERMANENT EASEMENT DESCRIPTION

That part of the Southwest Quarter of Section 12, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at an iron monument which designates the southeast corner of said Southwest Quarter; thence South 88 degrees 18 minutes 57 seconds West on an assumed bearing along the south line of said Southwest Quarter for a distance of 219.68 feet to the point of beginning; thence North 02 degrees 00 minutes 56 seconds West for a distance of 148.00 feet; thence South 88 degrees 18 minutes 57 seconds West for a distance of 1189.00 feet to the easterly line of Cass County Drain No. 10 as described in Quit Claim Deed Document No. 1288036, recorded February 16, 2010, on file and of record in the office of the Recorder, said Cass County; thence South 32 degrees 58 minutes 24 seconds West along said easterly line for a distance of 119.14 feet to a point on a line parallel with and 50.00 feet northerly of the south line of said Southwest Quarter, said hereinafter referred to as Point "A"; thence North 88 degrees 18 minutes 57 seconds East on said parallel line for a distance of 1099.32 feet; thence South 02 degrees 00 minutes 56 seconds East for a distance of 50.00 feet to the south line of said Southwest Quarter; thence North 88 degrees 18 minutes 57 seconds East along said south line for a distance of 158.00 feet to the point of beginning.

AND

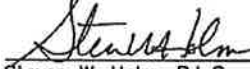
That part of the Southwest Quarter of said Section 12, described as follows:

Commencing at the aforementioned Point "A"; thence South 88 degrees 18 minutes 57 seconds West on a line parallel with and 50.00 feet northerly of the south line of said Southwest Quarter for a distance of 194.51 feet to the westerly line of said Cass County Drain No. 10 according to Quit Claim Deed Document No. 1288036, the point of beginning; thence North 32 degrees 58 minutes 24 seconds East along said westerly line for a distance of 119.14 feet; thence South 88 degrees 18 minutes 57 seconds West for a distance of 880.96 feet; thence North 02 degrees 48 minutes 39 seconds West for a distance of 100.00 feet; thence South 88 degrees 18 minutes 20 seconds West for a distance of 158.00 feet to the west line of said Southwest Quarter; thence South 02 degrees 48 minutes 39 seconds East along the west line of said Southwest Quarter for a distance of 197.99 feet to a point on said line parallel with and 50.00 feet northerly of the south line of said Southwest Quarter; thence North 88 degrees 18 minutes 57 seconds East on said parallel line for a distance of 969.29 feet to the point of beginning.

Containing 5.55 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

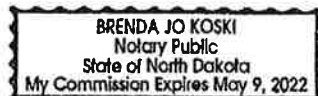

Steven W. Holm, R.L.S.
N.D. License No. LS-6571

Date: 3-10-2020



State of North Dakota)
County of Cass)

On this 10th day of March, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.




Notary Public, Cass County, North Dakota

PAGE 2 OF 2

Levee Easement Exhibit
SW1/4 Sec. 12-140-49
Cass County, North Dakota

PROJECT No. 19189A-213
DATE: 3 10 20
REVISED:
DRAWN BY: SWH
CHECKED BY: CDH


moore
engineering, inc.

PERMANENT EASEMENT
(Levee)

KNOW ALL MEN BY THESE PRESENTS that THE MUNICIPAL AIRPORT AUTHORITY OF THE CITY OF FARGO, hereinafter referred to as "Grantor", whether one or more, 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 permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of constructing, operating, maintaining and repairing a levee, together with the customary appurtenances, said tract being more particularly described as follows:

That part of the North Half of Section 13, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at an iron monument which designates the north quarter corner of said Section 13; thence South 88 degrees 18 minutes 57 seconds West on an assumed bearing along the north line of said Section 13 for a distance of 219.68 feet to the point of beginning; thence South 02 degrees 00 minutes 56 seconds East for a distance of 554.51 feet; thence 405.94 feet southerly on a tangential curve concave to the east having a radius of 782.00 feet and a central angle of 29 degrees 44 minutes 33 seconds; thence South 31 degrees 45 minutes 29 seconds East for a distance of 1671.80 feet; thence North 88 degrees 10 minutes 43 seconds East for a distance of 1979.32 feet to the east line of said Section 13; thence South 02 degrees 31 minutes 38 seconds East along said east line for a distance of 130.01 feet; thence South 88 degrees 10 minutes 43 seconds West for a distance of 2088.38 feet; thence North 31 degrees 45 minutes 29 seconds West for a distance of 1980.44 feet; thence North 02 degrees 00 minutes 56 seconds West for a

distance of 805.03 feet to the north line of said Section 13; thence North 88 degrees 18 minutes 57 seconds East along said north line for a distance of 158.00 feet to the point of beginning.

Containing 16.00 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

Said property is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

Grantor, its 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, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said levee 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 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 levee 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 levee and customary appurtenances was begun.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed
this 28th day of July, 2020.

GRANTOR:
THE MUNICIPAL AIRPORT AUTHORITY
OF THE CITY OF FARGO, NORTH DAKOTA

By: Tammy A. Linn
Tammy A. Linn, Chairman

By: Shawn A. Dobberstein, AAE
Shawn A. Dobberstein,
A.A.E., Executive Director

STATE OF NORTH DAKOTA)
) ss
COUNTY OF CASS)

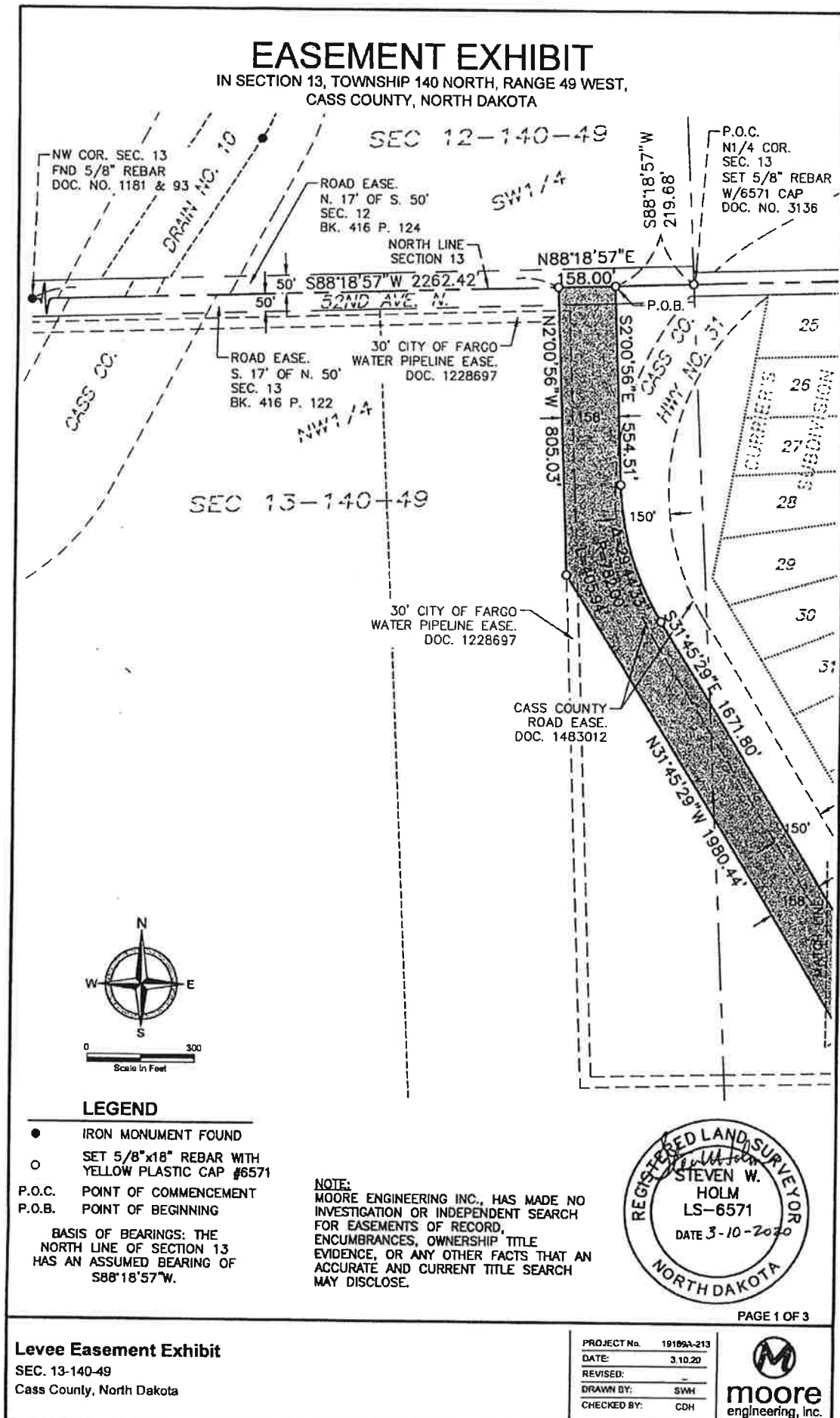
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Joan Stading

The legal description was prepared by:
Steven W. Holm
Moore Engineering
925 10th Ave East
West Fargo, ND 58078
(701) 282-4692

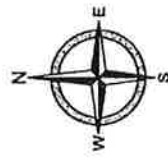
This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
701-280-1901
nmorris@lawfargo.com





EASEMENT EXHIBIT

IN SECTION 13, TOWNSHIP 140 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA



Scale in Feet

0 300

BASIS OF BEARINGS: THE
NORTH LINE OF THE NW1/4
OF SECTION 13 HAS AN
ASSUMED BEARING OF
S88°18'57"W.



PAGE 2 OF 3

moore
engineering, inc.

PROJECT No.	19189A-213
DATE	3.10.20
REVISED	-
DRAWN BY:	SVH
CHECKED BY:	CDH

FILE LOCATION: R:\CNG 3D Project\1018\PA\SURVEY\DRAWING\SEC 13 EASEMENT\ST19180A SEC 13 PERM 3-10-20.dwg

Levee Easement Exhibit

SEC. 13-140-49

Cass County, North Dakota

LEGEND

- | | |
|--------|---|
| ● | IRON MONUMENT FOUND |
| ○ | SET 5/8"x18" REBAR WITH
YELLOW PLASTIC CAP #6571 |
| P.O.C. | POINT OF COMMENCEMENT |
| P.O.B. | POINT OF BEGINNING |

NOTE: MOORE ENGINEERING INC., HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, TITLE ENCUMBRANCES, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

EASEMENT EXHIBIT

IN SECTION 13, TOWNSHIP 140 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA

PERMANENT EASEMENT DESCRIPTION

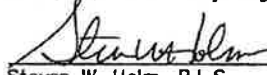
That part of the North Half of Section 13, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at an iron monument which designates the north quarter corner of said Section 13; thence South 88 degrees 18 minutes 57 seconds West on an assumed bearing along the north line of said Section 13 for a distance of 219.68 feet to the point of beginning; thence South 02 degrees 00 minutes 56 seconds East for a distance of 554.51 feet; thence 405.94 feet southerly on a tangential curve concave to the east having a radius of 782.00 feet and a central angle of 29 degrees 44 minutes 33 seconds; thence South 31 degrees 45 minutes 29 seconds East for a distance of 1671.80 feet; thence North 88 degrees 10 minutes 43 seconds East for a distance of 1979.32 feet to the east line of said Section 13; thence South 02 degrees 31 minutes 38 seconds East along said east line for a distance of 130.01 feet; thence South 88 degrees 10 minutes 43 seconds West for a distance of 2088.38 feet; thence North 31 degrees 45 minutes 29 seconds West for a distance of 1980.44 feet; thence North 02 degrees 00 minutes 56 seconds West for a distance of 805.03 feet to the north line of said Section 13; thence North 88 degrees 18 minutes 57 seconds East along said north line for a distance of 158.00 feet to the point of beginning.

Containing 16.00 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

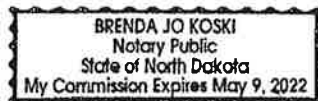

Steven W. Holm, R.L.S.
N.D. License No. LS-6571

Date: 3-10-2020



State of North Dakota)
County of Cass)

On this 10th day of March, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.




Brenda Jo Koski
Notary Public, Cass County, North Dakota

PAGE 3 OF 3

Levee Easement Exhibit
SEC. 13-140-49
Cass County, North Dakota

PROJECT No. 19189A-213
DATE: 3.10.20
REVISED: -
DRAWN BY: SWH
CHECKED BY: CDH


moore
engineering, inc.

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **THE MUNICIPAL AIRPORT AUTHORITY OF THE CITY OF FARGO**, 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 construction easement over, upon and in land hereinafter described for the purpose of structure demolition and levee construction and activities appurtenant thereto, said land being more fully described, to-wit:

That part of the North Half of Section 13, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being a strip 50.00 feet wide, the right sideline of said strip is described as follows:

Commencing at an iron monument which designates the north quarter corner of said Section 13; thence South 88 degrees 18 minutes 57 seconds West on an assumed bearing along the north line of said Section 13 for a distance of 219.68 feet; thence South 02 degrees 00 minutes 56 seconds East for a distance of 50.00 feet to a point on a line parallel with and 50.00 feet southerly of the north line of said Section 13, said point is the point of beginning of said right sideline; thence continuing South 02 degrees 00 minutes 56 seconds East for a distance of 504.51 feet; thence 405.94 feet southerly on a tangential curve concave to the east having a radius of 782.00 feet and a central angle of 29 degrees 44 minutes 33 seconds;

thence South 31 degrees 45 minutes 29 seconds East for a distance of 1671.80 feet; thence North 88 degrees 10 minutes 43 seconds East for a distance of 1946.32 feet to a point on a line parallel with and 33.00 feet westerly of the east line of said Section 13, said point hereinafter referred to as Point "A" and said right sideline there terminates. The left sideline of said strip is to be lengthened or shortened to terminate on said line parallel with and 50.00 feet southerly of the north line of said Section 13 and said line parallel with and 33.00 feet westerly of the east line of said Section 13.

AND

That part of said North Half of Section 13, being a strip 50.00 feet wide, the right sideline of said strip is described as follows:

Commencing at the aforementioned Point "A"; thence South 02 degrees 31 minutes 38 seconds East on a line parallel with and 33.00 feet westerly of the east line of said Section 13 for a distance of 130.01 feet to the point of beginning of said right sideline; thence South 88 degrees 10 minutes 43 seconds West for a distance of 2055.38 feet; thence North 31 degrees 45 minutes 29 seconds West for a distance of 1980.44 feet; thence North 02 degrees 00 minutes 56 seconds West for a distance of 755.03 feet to a point on a line parallel with and 50.00 feet southerly of the north line of said Section 13 and said right sideline there terminates. The left sideline of said strip is to be lengthened or shortened to terminate on said line parallel with and 50.00 feet southerly of the north line of said Section 13 and said line parallel with and 33.00 feet westerly of the east line of said Section 13.

Containing 10.70 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

Said property is pictorially represented on an Easement Plat attached hereto and incorporated herein by reference as Exhibit "A".

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 agrees that they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt 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 to be used for the storage of dirt and all other construction activities during the construction phase of said project. 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 storage of dirt and all other construction activities was begun.

This easement shall terminate on August 1, 2022 or at the completion of the project, whichever is later.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed
this 28th day of July, 2020.

GRANTOR:
THE MUNICIPAL AIRPORT AUTHORITY
OF THE CITY OF FARGO, NORTH DAKOTA

By: Tammy A. Linn
Tammy A. Linn, Chairman

By: Shawn A. Dobberstein, AAE
Shawn A. Dobberstein,
A.A.E., Executive Director

STATE OF NORTH DAKOTA)
) ss
COUNTY OF CASS)

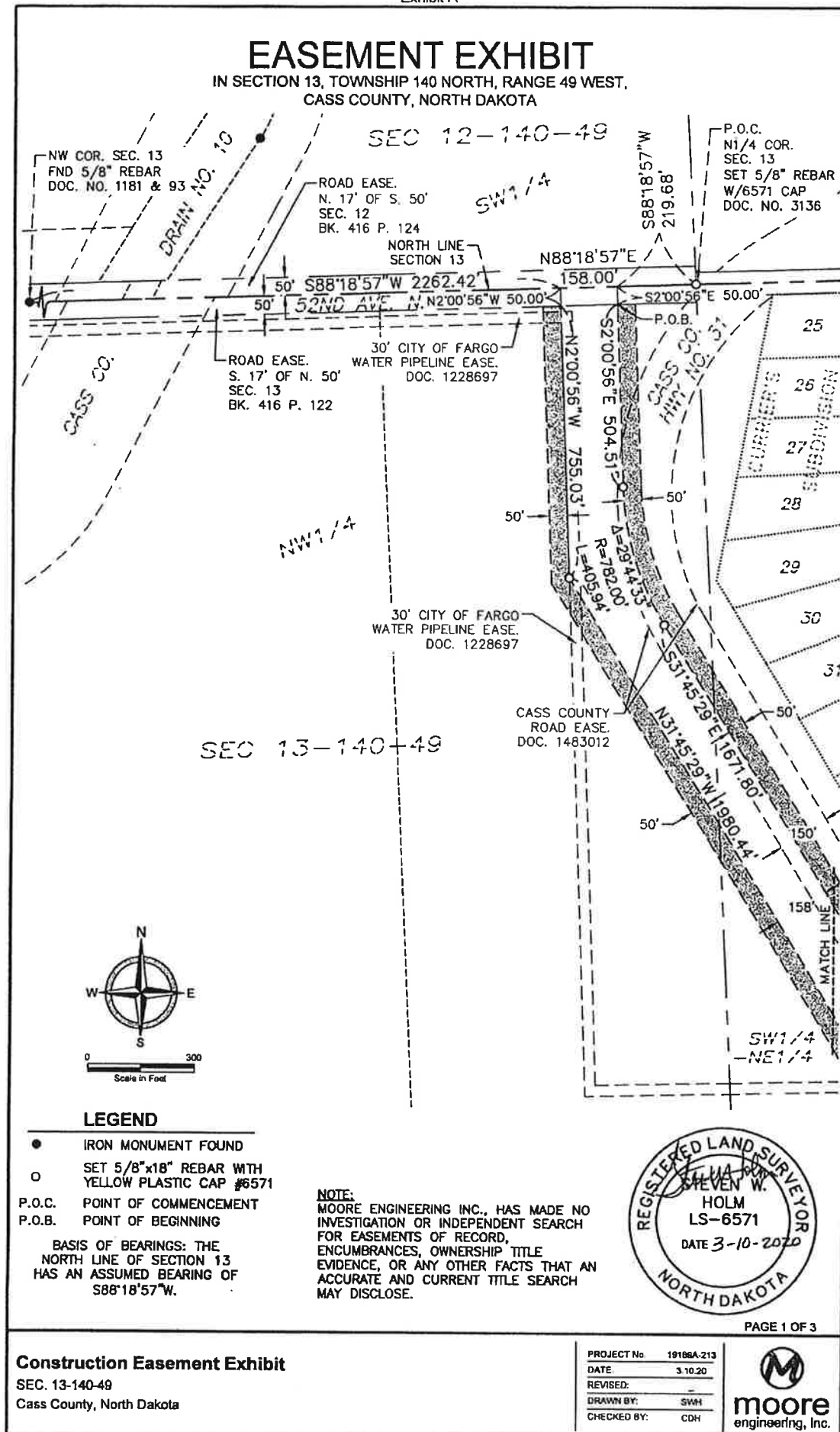
On this 28th day of July, 2020, before me, a notary public in and for said county and state, personally appeared TAMMY A. LINN and SHAWN A. DOBBERSTEIN, to me known to be the Chairman and Executive Director, respectively, of THE MUNICIPAL AIRPORT AUTHORITY OF THE CITY OF FARGO, NORTH DAKOTA, that is described herein and acknowledged to me that they executed the within and foregoing instrument and acknowledged to me that such public body executed the same.

Joan Stading

The legal description was prepared by:
Steven W. Holm
Moore Engineering
925 10th Ave East
West Fargo, ND 58078
(701) 282-4692

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
701-280-1901
nmorris@lawfargo.com





EASEMENT EXHIBIT

IN SECTION 13, TOWNSHIP 140 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA

TEMPORARY EASEMENT DESCRIPTION

That part of the North Half of Section 13, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being a strip 50.00 feet wide, the right sideline of said strip is described as follows:

Commencing at an iron monument which designates the north quarter corner of said Section 13; thence South 88 degrees 18 minutes 57 seconds West on an assumed bearing along the north line of said Section 13 for a distance of 219.68 feet; thence South 02 degrees 00 minutes 56 seconds East for a distance of 50.00 feet to a point on a line parallel with and 50.00 feet southerly of the north line of said Section 13, said point is the point of beginning of said right sideline; thence continuing South 02 degrees 00 minutes 56 seconds East for a distance of 504.51 feet; thence 405.94 feet southerly on a tangential curve concave to the east having a radius of 782.00 feet and a central angle of 29 degrees 44 minutes 33 seconds; thence South 31 degrees 45 minutes 29 seconds East for a distance of 1671.80 feet; thence North 88 degrees 10 minutes 43 seconds East for a distance of 1946.32 feet to a point on a line parallel with and 33.00 feet westerly of the east line of said Section 13, said point hereinafter referred to as Point "A" and said right sideline there terminates. The left sideline of said strip is to be lengthened or shortened to terminate on said line parallel with and 50.00 feet southerly of the north line of said Section 13 and said line parallel with and 33.00 feet westerly of the east line of said Section 13.

AND

That part of said North Half of Section 13, being a strip 50.00 feet wide, the right sideline of said strip is described as follows:

Commencing at the aforementioned Point "A"; thence South 02 degrees 31 minutes 38 seconds East on a line parallel with and 33.00 feet westerly of the east line of said Section 13 for a distance of 130.01 feet to the point of beginning of said right sideline; thence South 88 degrees 10 minutes 43 seconds West for a distance of 2055.38 feet; thence North 31 degrees 45 minutes 29 seconds West for a distance of 1980.44 feet; thence North 02 degrees 00 minutes 56 seconds West for a distance of 755.03 feet to a point on a line parallel with and 50.00 feet southerly of the north line of said Section 13 and said right sideline there terminates. The left sideline of said strip is to be lengthened or shortened to terminate on said line parallel with and 50.00 feet southerly of the north line of said Section 13 and said line parallel with and 33.00 feet westerly of the east line of said Section 13.

Containing 10.70 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

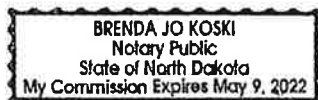

Steven W. Holm, R.L.S.
N.D. License No. LS-6571

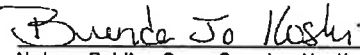
Date: 3-10-2020



State of North Dakota)
County of Cass)

On this 10th day of March, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.




Notary Public, Cass County, North Dakota

PAGE 3 OF 3

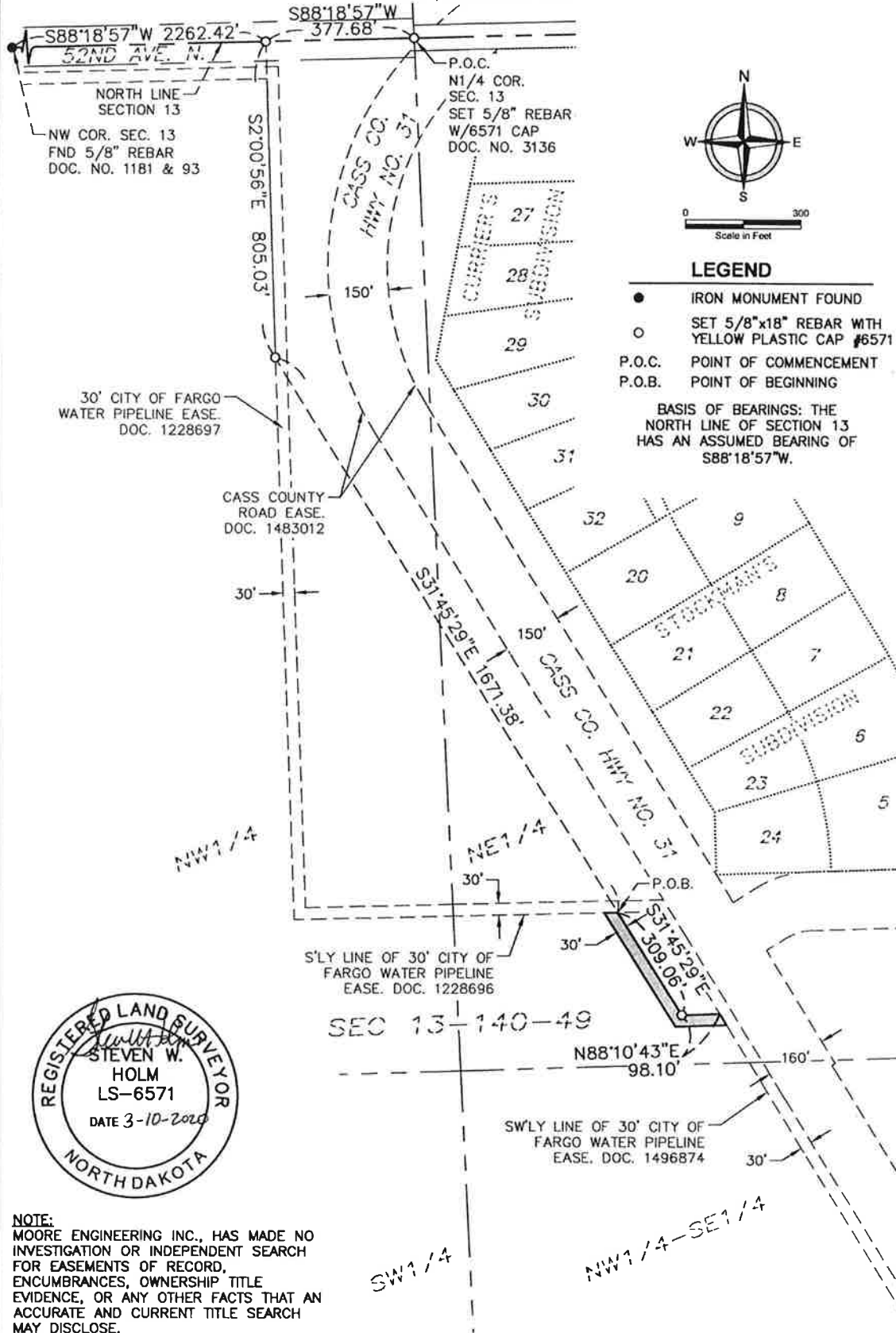
Construction Easement Exhibit
SEC. 13-140-49
Cass County, North Dakota

PROJECT No. 19186A-213
DATE: 3.10.20
REVISED: -
DRAWN BY: SWH
CHECKED BY: CDH



EASEMENT EXHIBIT

IN THE NE1/4 OF SECTION 13, TOWNSHIP 140 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA



Water Pipeline Easement Exhibit

NE1/4 Sec. 13-140-49

Cass County, North Dakota

PROJECT No 19189A-213
DATE: 3.10.20
REVISED: -
DRAWN BY: SWH
CHECKED BY: CDH



PAGE 1 OF 2

EASEMENT EXHIBIT

IN THE NE1/4 OF SECTION 13, TOWNSHIP 140 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA

PERMANENT EASEMENT DESCRIPTION

That part of the Northeast Quarter of Section 13, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being a strip 30.00 feet wide, the left sideline of said strip is described as follows:

Commencing at an iron monument which designates the north quarter corner of said Section 13; thence South 88 degrees 18 minutes 57 seconds West on an assumed bearing along the north line of said Section 13 for a distance of 377.68 feet; thence South 02 degrees 00 minutes 56 seconds East for a distance of 805.03 feet; thence South 31 degrees 45 minutes 29 seconds East for a distance of 1671.38 feet to a point on the southerly line of an existing water pipeline easement according to Document No. 1228696, recorded March 18, 2008, on file and of record in the office of the Recorder, said County, said point is the point of beginning of said left sideline; thence continuing South 31 degrees 45 minutes 29 seconds East for a distance of 309.06 feet; thence North 88 degrees 10 minutes 43 seconds East for a distance of 98.10 feet to the southwesterly line of an existing water pipeline easement according to Document No. 1496874, recorded November 29, 2016, on file and of record in the office of said Recorder and said left sideline there terminates. The right sideline of said 30.00 foot wide strip is to be lengthened or shortened to terminate on the southerly line of said existing water pipeline easement according to Document No. 1228696 and on the southwesterly line of said existing water pipeline easement according to Document No. 1496874.

Containing 0.30 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

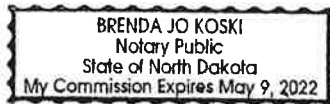
Steven W. Holm
Steven W. Holm, R.L.S.
N.D. License No. LS-6571

Date: 3-10-2020



State of North Dakota)
County of Cass)

On this 10th day of March, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.



Brenda Jo Koski
Notary Public, Cass County, North Dakota

PAGE 2 OF 2

Water Pipeline Easement Exhibit

NE1/4 Sec. 13-140-49
Cass County, North Dakota

PROJECT No. 19189A-213
DATE: 3.10.20
REVISED: -
DRAWN BY: SWH
CHECKED BY: CDH





August 6, 2020

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

Re: Beverly Pearson – Purchase Agreement

Dear Commissioners:

Enclosed and delivered to the City Commission office for review and approval please find an original Purchase Agreement signed by **Beverly Pearson**. 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 purchase of the property located at 12 North Terrace North from **Beverly Pearson** and that the Mayor and City Auditor be instructed to execute the Purchase Agreement on behalf of the City of Fargo.

Please return a copy of the signed original.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Brenda E. Derrig
Nancy J. Morris

PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into by and between **Beverly Pearson, a single person**, the identified owner of the property located at 12 North Terrace North in Fargo, North Dakota hereinafter "Seller" or "Owner", whether one or more, and the **CITY OF FARGO**, a North Dakota municipal corporation, hereinafter "City" or "Buyer",

WITNESSETH:

WHEREAS, Seller is the owner of real estate situated in the County of Cass and State of North Dakota described as follows:

Part of Lots Three and Four, in Block Three, of Oak Grove Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota, said part of Lot Three described as follows:

Commencing at the Southeast corner of said Lot Three: thence North and along the lot line between Lots Three and Four for 65 feet: thence West 6 feet: thence Northerly to a point on the North line of said Lot Three, said point being 17 feet Easterly of the Northwest corner of said Lot Three; thence Southwesterly 17 feet; thence South and along the lot line between Lots Two and Three, for 200 feet; thence Easterly and along the South line of said Lot Three, for 51.8 feet to a point of beginning. Said part of Lot Four described as follows: Commencing at the southwest corner of said Lot Four; thence Easterly along the South line of said Lot Four for 10.33 feet; thence Northerly and at right angle to said South line of Lot Four for a distance of 64 feet to a point which is on the lot line between said Lots Three and Four; thence South and along said Lot line between Lots Three and Four to point of beginning. Less that part of said Lot Three described as follows: Beginning at the Southwest corner of said Lot Three, thence Northeasterly along the Southerly line of said Lot Three for a distance of 20 feet; thence Northwesterly perpendicular to the Southerly line of said Lot Three for a distance of 73.28 feet to a point on the West line of said Lot Three; thence South along the West line of said Lot Three for a distance of 75.97 feet to the Southwest corner of said Lot Three.

Less

That part of Lot 3, Block 3, Oak Grove Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Beginning at the northwest corner of said Lot 3; thence South 02°52'08" East, along the westerly line of said Lot 3, for a distance of 26.61 feet; thence South 65°40'34" East for a distance of 30.46 feet to a point of intersection with the easterly line of said Lot 3; thence North 15°13'39" West, along the easterly line of said Lot 3, for a distance of 46.30 feet to the northeast corner of said Lot 3; thence South

71°50'43" West, along the northerly line of said Lot 3, for a distance of 17.81 feet to the point of beginning.

Property Address: 12 North Terrace North, Fargo, North Dakota

WHEREAS, Owner desires to sell, and the City of Fargo is willing to purchase Owner's property; and

WHEREAS, Seller and Buyer have reached an agreement to purchase the property in accordance with the terms herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements of the parties, it is hereby agreed as follows:

1. **Subject Matter.** The subject matter of this agreement is the real estate described, other buildings located thereon, and all items affixed to the property.

2. **Purchase Price.** The purchase price for the Property is Two Hundred Seventy Thousand Dollars (\$270,000).

3. **Payment of Purchase Price.** The mortgage, if any, as well as any liens or encumbrances, will be paid and Seller shall receive the balance of the purchase price, less any escrow amounts, in cash on the date of closing.

4. **Abstract.** Seller shall furnish Buyer an abstract of title to the subject property and Buyer shall pay for the cost of continuation of said abstract to a recent date. Said abstract must show good and marketable title in Seller free and clear of all liens and encumbrances (other than those that will be handled at closing). City shall pay all costs associated with closing, including deed preparation and recordation.

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

6. **Deeds.** Seller shall sign warranty deeds prepared by Buyer. Buyer will take title as follows: City of Fargo, North Dakota, a municipal corporation.

7. **Closing Date and Transfer of Possession.** Closing shall take place at a time and date to be agreed by the parties, at the earliest possible date.

A separate Occupancy Agreement is entered into between the parties hereto. Seller may occupy the property for 90 days following the first day of the month following closing. If seller remains in the property longer than 90 days, Seller agrees to pay Buyer \$500 per month, commencing the first of month. Seller may occupy the premises no later than April 15, 2021.

If Seller vacates the property prior to closing, the end of the month of closing, or prior to the expiration of the time period contained in an Occupancy Agreement, Seller shall immediately notify Buyer so that appropriate measures can be taken to secure the premises.

9. Fixtures, Structures and Personal Property. Seller and Buyer agree that property affixed to the real estate at the time of closing shall become the Buyer's property without the need for a bill of sale or other conveyance, unless listed below. Items permitted to be removed shall be removed in a workmanlike manner, and all necessary precautions to preserve the property to the extent possible upon the property removal:

Items Identified for Removal by Seller:

claw-footed bathtub
radiators
refrigerator
stove
4 decorative beams and framing (not structural)
hot water heater
front door
kitchen and dining room light fixtures
hand railing on the stairs to the second floor
shed

10. Warranty. Seller provides no express warranties on the subject property. Buyer understands and agrees that the property is a used home and is being purchased "AS IS". Buyer shall make any inspection it deems necessary concerning the condition of said used home.

11. Inspection and Photographs. Seller agrees to allow City to enter the Premises for purposes of inspection, including but not limited to asbestos testing and mitigation.

12. Seller Release. Upon closing, Seller shall forever release Buyer from any and all claims, demands, actions, suits, liabilities, losses, damages (including attorney's fees), judgments, costs or expenses of every kind or nature, in law and in equity, whether known or unknown, direct or indirect, now or in the future, arising out of or related to the Property, but excluding claims arising out of the breach or enforcement of this Purchase Agreement.

13. Unknown Facts. The Parties expressly acknowledge that they are aware that they and/or their attorneys may hereinafter discover claims or facts in addition to or different from those that they now know or believe to exist with respect to the Property and/or the Purchase Agreement, but that it is their intention hereby to fully, finally and forever settle and release all of the claims, disputes and differences, known or unknown, asserted or unasserted, suspected or unsuspected, which do now exist or may heretofore have existed against either Party related to the Property and/or the Purchase Agreement, without regard to the subsequent discovery or existence of different or additional facts. The Parties agree to waive the provisions of N.D.C.C. § 9-13-02, which provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known, must have materially affected his or her settlement with the debtor and to waive the provisions of N.D.C.C. §§ 9-08-08 and 9-08-09. The Parties agree and understand that no mistake, whether it be a mistake of fact or law, shall void, impair or otherwise affect the terms and finality of this agreement and the full discharge of the parties from any further liability to each other.

14. Performance of Additional Acts. The Parties agree to perform such acts and to prepare, execute, file or record any documents, instruments, security interests, or stipulations reasonably required to perform the covenants, to satisfy the conditions herein contained, or to give

full force and effect to this Purchase Agreement.

15. No Admission of Liability. This Purchase Agreement is the result of a compromise by the Parties and is not and shall not be considered as an admission of the truth of any allegations, claims or contentions of the Parties against the other Parties, each of whom continue to deny such allegations, liabilities, and responsibilities. It is further understood and agreed that this Purchase Agreement is entered for the purpose of settling any disputes which exist or may exist between the Parties and may not be introduced as evidence or otherwise used for any purpose in litigation or otherwise except in any proceedings to enforce the terms of this Purchase Agreement.

16. Attorneys' Fees and Expenses. The Parties acknowledge and agree that they shall be responsible for the payment of their own attorneys' fees and expenses in connection with this matter, and that they are not liable for each other's attorneys' fees or expenses in connection with this matter or the negotiation and execution of this Purchase Agreement. The Parties further agree, however, that in the event either Party takes steps to enforce its rights under this Purchase Agreement as a result of the other Party's alleged breach of this Purchase Agreement, the prevailing Party in any litigation concerning rights under this Purchase Agreement shall be entitled to recover from the non-prevailing Party all of the prevailing Party's costs and expenses, including reasonable attorneys' fees and court costs, that it incurs in litigation concerning this Purchase Agreement.

17. Successors and Assigns. This Purchase Agreement shall be binding upon the Parties respective successors, assigns, and legal representatives. The Parties expressly agree that the rights granted herein may not be assigned to any individual or entity without the prior written consent of the other Party.

18. Advice of Counsel. Each of the Parties has received or had the opportunity to receive the advice of independent counsel prior to signing this Purchase Agreement. Each of the Parties acknowledges that neither the other Party, nor any agent or attorney of such Party, has made a promise, representation, or warranty whatsoever, express or implied, not contained herein to induce the other Party to execute this Purchase Agreement.

19. Drafting. This Purchase Agreement is the result of negotiation and compromise, and the Parties agree that should any dispute arise over the interpretation of this Purchase Agreement, the Purchase Agreement will be interpreted neutrally, and that any rule requiring interpretation against the Party drafting various provisions of this Agreement shall not apply.

20. Governing Law. This Purchase Agreement shall be governed by the laws of the State of North Dakota. Any action related to the enforcement of the terms and conditions of this Purchase Agreement shall be brought in Cass County, North Dakota.

21. Severability. In the event that one or more provisions of this Purchase Agreement are found to be invalid or unenforceable, the remainder of the Purchase Agreement shall remain in force.

22. Entire Agreement. This Purchase Agreement contains the entire agreement between the Parties. No statements, promises or inducements made by any party or any agent of any party that are not contained in this Purchase Agreement shall be valid or binding. This Purchase Agreement may not be enlarged, modified or altered, except in writing signed by all parties hereto expressly referencing it.

23. Voluntary Execution; Authority. This Purchase Agreement has been carefully read,


the contents hereof are known, understood, and accepted freely by the Parties executing this Purchase Agreement, and each person executing this Purchase Agreement in a representative capacity is authorized and empowered to do so.

24. Counterparts; Modifications. This Purchase Agreement may be executed in counterparts, each of which taken together shall constitute a fully binding original Purchase Agreement. Facsimile or electronic signatures shall be treated as original. This Purchase Agreement may only be modified or amended by a written agreement executed by the Parties.

(Signatures on following page.)

DATED this 7 day of August, 2020.

SELLER:


Beverly Pearson, a single person

DATED this ____ day of _____, 2020.

BUYER:

City of Fargo, a North Dakota
municipal corporation

ATTEST:

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

Steve Sprague, City Auditor

OCCUPANCY AGREEMENT

THIS AGREEMENT, made by and between, **BEVERLY PEARSON** "Occupant" of property located at 12 North Terrace North in Fargo, North Dakota, hereinafter "Premises", and the **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter "City", as the Owner of said property,

1. City agrees to allow Occupant to remain in the Premises until April 15, 2021. Occupant shall remit to City rent in the amount of \$500 per month, commencing 90 days after the first of the month following closing of the purchase of the Premises by the City.

2. In no event shall Occupant remain in possession of the Premises later than April 15, 2021. Notwithstanding the possession date contained in this agreement, Occupant agrees to allow City to enter the Premises for purposes of inspection and mitigation

3. **Occupant shall furnish to the City a copy of a tenant's policy of insurance insuring against liability in at least the principal sum of \$500,000 per occurrence.** City shall be named as an additional insured on said policy. In addition, Occupant agrees to indemnify and hold City harmless from any and all claims, demands or causes of action that may be asserted as a result of Occupant's continued occupancy of the Premises. Occupant shall pay all utilities to the premises until the property is vacated.

4. Occupant is occupying the premises "as is". Accordingly, City shall not be responsible for any repairs of any kind. If the Premises should become uninhabitable, Occupant's sole remedy is to vacate the Premises. Notice must be immediately provided to City upon vacation.

5. Occupant agrees that City will not be responsible for security or protection of the occupied premises.

6. Occupant may vacate the premises at any time prior to the end of this Occupancy Agreement. Occupant shall notify the City five (5) days prior to vacating the Premises. Vacation prior to the end of the month shall not result in a refund of rental amounts paid by Occupant (rent shall not be pro-rated). Occupant shall schedule a walkthrough with the City Engineer's office at the time of vacation of the property.

Dated this 4th day of August, 2020.

SELLER:


Beverly Pearson

Dated this ____ day of _____, 2020.

THE CITY OF FARGO, NORTH DAKOTA

By _____
Dr. Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steve Sprague, City Auditor

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(9)

Type: ROW & Land Use Agreement

Location: 1 2nd Street South

Date of Hearing: 8/3/2020

<u>Routing</u>	<u>Date</u>
City Commission	8/10/2020
PWPEC File	X
Project File	Kristy Schmidt

The Committee reviewed a communication from Civil Engineer, Kristy Schmidt, regarding Right of Way and Land Use Agreement with Epic Development for the redevelopment of 1 2nd Street South.

The Developer has asked to use the City property adjacent to the development to the east of the construction site.

The Committee discussed a 60-day notice to vacate and a lease charge and asked staff to visit with Assessors office to come up with a value to be charged. There was also discussion that this will have to be approved by the Executive Director of the Diversion Authority.

On a motion by Tim Mahoney, seconded by Ben Dow, the Committee voted to recommend approval of the ROW and Land Use Agreement with the above recommendations contingent upon approval of the Executive Director of the Diversion Authority.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Right of Way and Land Use Agreement with Epic Development.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>

COMMITTEE

Tim Mahoney, Mayor
 Nicole Crutchfield, Director of Planning
 Steve Dirksen, Fire Chief
 Bruce Grubb, City Administrator
 Ben Dow, Director of Operations
 Steve Sprague, City Auditor
 Brenda Derrig, City Engineer
 Kent Costin, Finance Director

Present	Yes	No	Unanimous
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:


 Brenda E. Derrig, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Kristy Schmidt, CEII
Date: July 29, 2020
Re: Epic Development - 310/300 Main Avenue Request for Land Use at 1 2nd Street South & ROW Use Agreement

Epic Development has finalized their plans for their development project in the Fryin' Pan parking lot site. As part of the redevelopment, the Owner and Contractor have been working with the City to enter into a Right of Way and Land Use Agreement. The draft of the Right of Way and Land Use Agreement for this development is included for your review and staff will need direction on several unanswered questions.

The following are some highlights of the Agreement for the use of the City Right of Way until November 15, 2020:

- Use of parking lane on the south side of Main Avenue for material deliveries.
- Removal of eight (8) parking stalls adjacent to the development property
- Closure of sidewalk on the south side of Main Avenue.

The Developer has asked to use of the City property adjacent to the development to the east of the construction site at 1 2nd Street South until October 31, 2021. It is our understanding that this City parcel will be sold within the next 6 months. Several items will need direction from this Committee to move the Land Use portion of this agreement forward.

Staff is asking the PWPEC Committee to review and recommend the following items associated with City Land Use:

1. If City land can be used by Epic for construction laydown area (see Exhibit B for land use)?
 - i) If land can be used:
 - What is the duration of use?
 - Should the City charge a leasing fee for land use? (see attachment regarding Diversion Authority Agreement with this land)
 - What should the termination clause length be (based on the need for the City to sell the parcel)? Our most recent Land Use Agreement was 5 days. This does not seem reasonable in this situation. Possible 30 - 90 days?

If the Committee can recommend these details, these details will be added to the Agreement and forwarded to Commission for approval.

Recommended Motion:

Recommend:

1. If City land can be used by Epic for construction laydown area (see Exhibit B for land use)?
 - i) If land can be used:
 - What is the duration of use?
 - Should the City charge a leasing fee for land use?
 - What should the termination length be based on the need for the City to sell the parcel?

Approve the Right of Way and Land Use Agreement with EPIC GATEWAY NORTH REAL ESTATE HOLDINGS, LLC with recommendations from the Committee.

KLS/klb
Attachment

C: Brain Kounovsky, Epic Companies
Matt Gehrtz, Gehrtz Construction



City of Fargo, ND

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

310 Main Ave- Gateway Project

1:1,128

7/27/2020 4:02:28 PM

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

THE CITY OF
Fargo
FAR MORE

Section 16.10

SALE OF EXCESS PROJECT PROPERTY

The Member Entities agree and acknowledge that excess real property may be acquired in connection with real property needed for the Project. In the event that excess real property is acquired, the Member Entity shall coordinate the sale, conveyance, or lease of such property with the Executive Director and that Member Entity's chief administrative staff. Member Entities shall not sell, trade, and or exchange excess Project Property without prior written approval from the Diversion Authority

Board. All monies generated, less reasonable administrative expenses incurred by the Member Entity, from the sale, conveyance, or lease of excess Project Property by a Member Entity, shall be remitted to the Metro Flood Diversion Authority.

Right of Way and Land Use Agreement

This Agreement, made and entered into between EPIC GATEWAY NORTH REAL ESTATE HOLDINGS, LLC, a North Dakota limited liability company ("Owner"), and the City of Fargo, a North Dakota municipal corporation ("City"), is for the purpose of providing Owner use of the Public Right of Way ("PROW") adjacent to Owner's property located in Fargo, North Dakota (the "Development Property") described below, and use of the City of Fargo owned parcel legally described as Lot 2, Block 4 of North Dakota R2 Urban Renewal Addition, all of the foregoing is located in the City of Fargo, Cass County, North Dakota for purposes of laydown, staging and stockpiling, as provided herein.

For good and valuable consideration hereby acknowledged, the parties agree as follows:

1. Owner holds all right, title and interest in the Development Property, specifically:

Lots 1 and 2, Block 1 of Epic Gateway Addition.

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

2. Owner shall meet the timeframes for interim and final completion as stated in this Agreement. Failure to meet completion days will result in a penalty of \$500 per day/failure. Multiple penalties may accrue concurrently if timeframes are not met.

Owner shall be billed the penalty as it accrues, interest to accrue at a rate of 1 ½%/month on unpaid amounts after 30 days.

3. Owner shall be permitted use of the PROW in such a manner as described in the attached Exhibit "A" until November 15, 2020.
4. Owner shall be permitted use of City Land in such manner as described in the attached Exhibit "B" until October 31, 2021, unless terminated by City prior to that time in accordance with the termination provision stated in this Agreement.
5. Any request for extension or modification of this Agreement must be made in writing at least thirty (30) days' prior to the expiration of this Agreement in order to allow City adequate time to consider the request.
6. Owner understands and agrees that the City Land may be sold or otherwise rendered unavailable for Owner's use at any time. Owner agrees to vacate the City Land and restore the City Land to green space upon 60 days' notice from City, such Notice to be provided Owner as provided in this Agreement.
7. It is understood and agreed by and between the parties that Owner will be responsible for the repair or replacement of any property which may be damaged or destroyed as a direct or indirect result of the use of the City Land, including but not limited to leveling the ground and restoration of the City Land to the condition prior to Owner's permitted use of the City Land, to City's satisfaction, in City's sole discretion..
8. Owner shall be responsible for ensuring all construction and restoration work in the PROW and on the City Land complies with all City Construction Standards and Specifications, which can be found at: <https://fargond.gov/city-government/departments/engineering/design-construction/construction-specifications>
9. Owner shall be required to provide a certified flagger during delivery operations. All barricades and traffic control measures shall comply with the latest edition of the Manual on Uniform Traffic Control Devices, which can be found at: http://mutcd.fhwa.dot.gov/pdfs/2009/pdf_index.htm
10. All lane and pedestrian path closure requests must be received by City at least 14 days in advance of such intended lane closure. Owner shall provide City Engineering a traffic control plan in advance of lane closures. All closures must be approved by City 7 days in advance of such intended lane closure. Timing of lane and pedestrian path closures must be approved by the City. Owner shall amend or modify the traffic control plan as directed by City Engineering.
11. Upon receipt of approval from City, Owner shall provide written notice to impacted property owners at least seven (7) days prior to anticipated impacts, including but not limited to all property owners contiguous to the anticipated parking lane and pedestrian path closures or impacts. Written notice shall include details of traffic configuration and Owner contact information. Owner shall provide the City with notice information

for a news-release publication no less than five (5) days prior to any activity resulting in impacts.

12. Closure of the pedestrian travel path shall be permitted on the south side of Main Avenue adjacent to the Development Property, and such traffic shall be routed to the north side of Main Avenue, as shown in Exhibits "A" attached hereto.
13. Owner agrees to disconnect all existing storm sewer, water and sanitary sewer services to the mains according to City Standards adjacent to the Development property.
14. Owner shall be responsible for the provision and compaction of engineered fill to 95% standard proctor density in the excavated area on the City Land.
15. Owner agrees to provide approved signage for revised street parking in and around the Development Property, at Owner's cost.
16. Owner shall be responsible for all private utilities affected by the construction activities, and shall notify the utility provider of proposed impacts. Owner shall be solely responsible for contracting with the private utility providers and for payment to all parties involved. City shall have no responsibility for the reestablishment of private utility disruptions caused by Owner's construction activities.
17. Owner must remedy any unsafe or unsatisfactory condition due to the use of the PROW and City Land, as determined by City in its sole discretion. If concerns persist, City may require Owner to immediately vacate the PROW and City Land use permitted herein and return the PROW and City Land to its pre-existing condition.
18. Owner hereby grants to City a right of entry and access to the Development Property in the event City must enter the workspace to remedy a public safety concern, provide fire protection to the site and adjoining properties, or for any reason as determined in City's sole discretion. Owner agrees and understands that City is not responsible for construction delay or conflicts occasioned by the City's need to protect the public under any circumstances. City agrees to make a reasonable attempt to contact the Owner prior to City entry to the construction site, except in case of emergency as defined by City.
19. Owner shall be responsible for documenting the condition of the impacted public facilities, including but not limited to the streetlights, sidewalk, and roadway. Documentation, including pictures of these elements, must be submitted to City prior to commencement of any construction activity in the PROW. Owner shall not commence construction or removal activity without first obtaining the approval of the documentation of condition by City.
20. Owner will, during any use of the PROW and City Land, use due care to protect City streets, utilities and all other public property and private utilities occupying the PROW.
21. Owner shall be responsible for the repair or replacement of the condition of the PROW and City Land which may be damaged or destroyed as a direct or indirect result of

Owner's use of the PROW as permitted in this Agreement. Owner shall be responsible for restoring or reconstructing the City infrastructure, including but not limited to all roadways, curbs, and gutters to prior to construction condition.

22. Owner accepts all maintenance responsibility for the street, curb, adjoining green space and all other City infrastructure, which may be impacted by work in the PROW. Owner shall undertake all maintenance activities, including sweeping, snow removal and hauling, on the PROW, on the City Land, and within the construction site, all to the satisfaction of the Director of Public Works.
23. Owner shall provide supplemental snow removal in and around the site, and shall be required to haul or remove snow from the affected area at the direction of the Director of Public Works or City Engineer.
24. At its discretion, City may terminate this Agreement should it view the public infrastructure or public health to be at a greater risk than is acceptable to the City. City shall give Owner thirty (30) days' notice to vacate the PROW and City Land if such condition is found to exist. However, in the event of an emergency, as determined in the sole discretion of City, City may immediately terminate Owner's use of the PROW and City Land and direct Owner to vacate and restore the PROW and City Land to the City's control.
25. Notices required by this Agreement shall be given as follows:

As to the Owner:

Epic Gateway North, LLC
Vicki Campbell
vicki@epiccompaniesnd.com
400 10th St SE
Minot, ND 58701
(701)-852-3045

As to the City:

City of Fargo - Engineering
attn.: Kristy Schmidt
feng@fargond.gov
225 4th St N
Fargo, ND 58102
(701)-241-1545

26. Owner agrees that failure to secure acceptance from City of the restored infrastructure and improvements, may result in the establishment of a special assessment district, consisting solely of the Development Property, for the purpose of financing the completion of the work to City's approval standards. City will levy special assessments against the Development Property to recover all costs of the Project, in accordance with Chapter 40-22 of the North Dakota Century Code. Owner waives its right to protest the resolution of necessity for the 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 improvements and to the assessment of all costs thereof to the Development Property. Owner further waives its right to protest the amount, benefit or any other assessment attribute related to the work completed by City. Project costs, which may be assessed against the Development Property, include all costs of completing the work required in accordance with the terms of this Agreement.

27. Owner agrees to hold the City harmless against any and all expenses, demands, claims or losses of any kind that may be sustained by City, its officers, agents and employees, its property, streets, sidewalks, or any other municipal improvements by reason of the use of the PROW and City Land. Owner agrees to secure liability insurance for at least \$500,000, and name City as an additional insured on such policy. Owner shall provide a Certificate of Insurance evidencing the City's insured status in advance of any construction activity in the PROW and City Land.
28. It is understood and agreed by and between the parties that this Agreement is given subject to any limitation on the authority of City to grant such permission, which may now or hereafter exist.
29. 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.
30. The failure or delay of City 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 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 City to enforce each and every term of this Agreement.
31. 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.
32. 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.
33. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.
34. It is specifically agreed between the parties that this Right of Way and Land Use Agreement may be recorded.
35. This Right of Way and Land Use Agreement shall be binding on the parties' successors and assigns, and may not be transferred or assigned without the prior written consent of the parties hereto.

36. City and Owner wish to work together to provide an acceptable finished product, including but not limited to, restoration of the PROW and City Land to acceptable City Standards. Owner shall provide a deposit in the amount of \$10,000 to cover all expenses that may be incurred by City as a result of Owner's work in the PROW and on the City Land.
37. Owner further agrees to pay City \$????? for the use of the City Land., such payment due upon execution of this Agreement and before Owner shall be permitted use of the City Land. City agrees to prorate the fee on a monthly basis, and shall refund to Owner any full month remaining in the event of early termination of this Agreement for the use of the City Land.
38. When City requires Owner to undertake any corrective measure, City will notify Owner as provided herein. If City incurs any expense for the corrective measure required due to Owner's failure to rectify the issue, the amount of the deposit shall be reduced accordingly. If at any time the amount of the deposit is reduced to less than \$3,000, Owner shall replenish the deposit to \$10,000. Any deposit remaining at the end of the construction project and acceptance by City of the return of the PROW to City control shall be refunded to Owner.

(Remainder of Page Intentionally Left Blank)

Dated this _____ day of _____, 2020.

EPIC GATEWAY NORTH REAL ESTATE
HOLDINGS, LLC,

a North Dakota Limited Liability Company

BY:

ITS:

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

On this _____ day of _____, 2020, before me personally appeared _____ of the, a North Dakota limited liability company that is described in, and that executed the foregoing instrument, and acknowledged to me that such nonprofit corporation executed the same.

(SEAL)

Notary Public

Dated this _____ day of _____, 2020.

City of Fargo, a North Dakota municipal
corporation

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

ATTEST

Steve Sprague, City Auditor

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

On this ____ day of _____, 2020, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, 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.

(SEAL)

Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:
Houston Engineering, Inc
1401 21st Ave N.
Fargo, ND 58102

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 North Broadway, Suite 206
Fargo, ND 58102
701-280-1901
NMorris@lawfargo.com

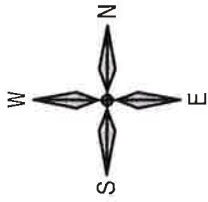


EXHIBIT A

SCALE: 1 INCH = 80 FEET
0 40 80 160

EPIC GATEWAY
MIXED-USE BUILDING

FARGO, ND

NOT FOR CONSTRUCTION

MBN JOB # 20-0017 DATE: 7-24-2022

EXHIBIT

TRAFFIC CONTROL PLAN

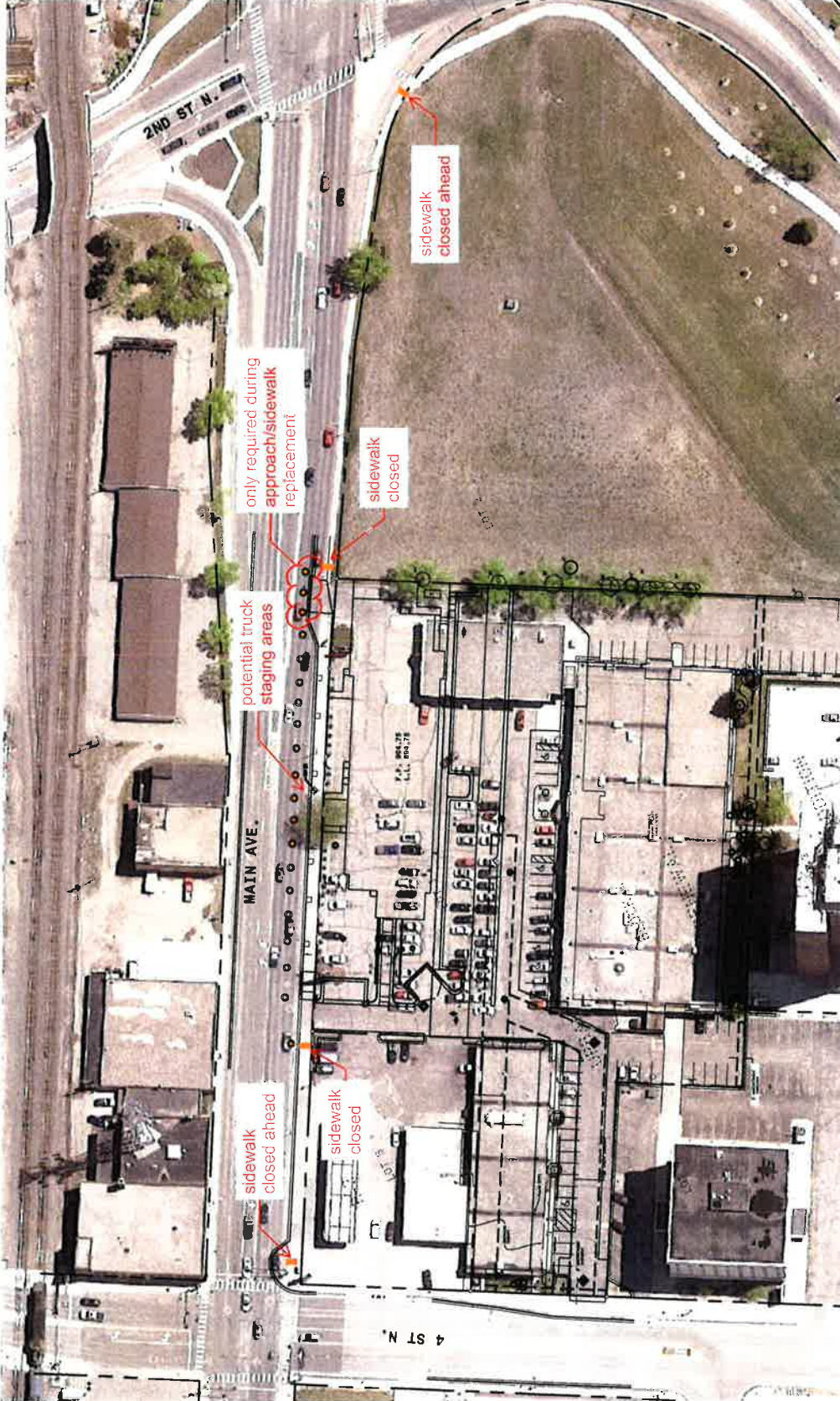
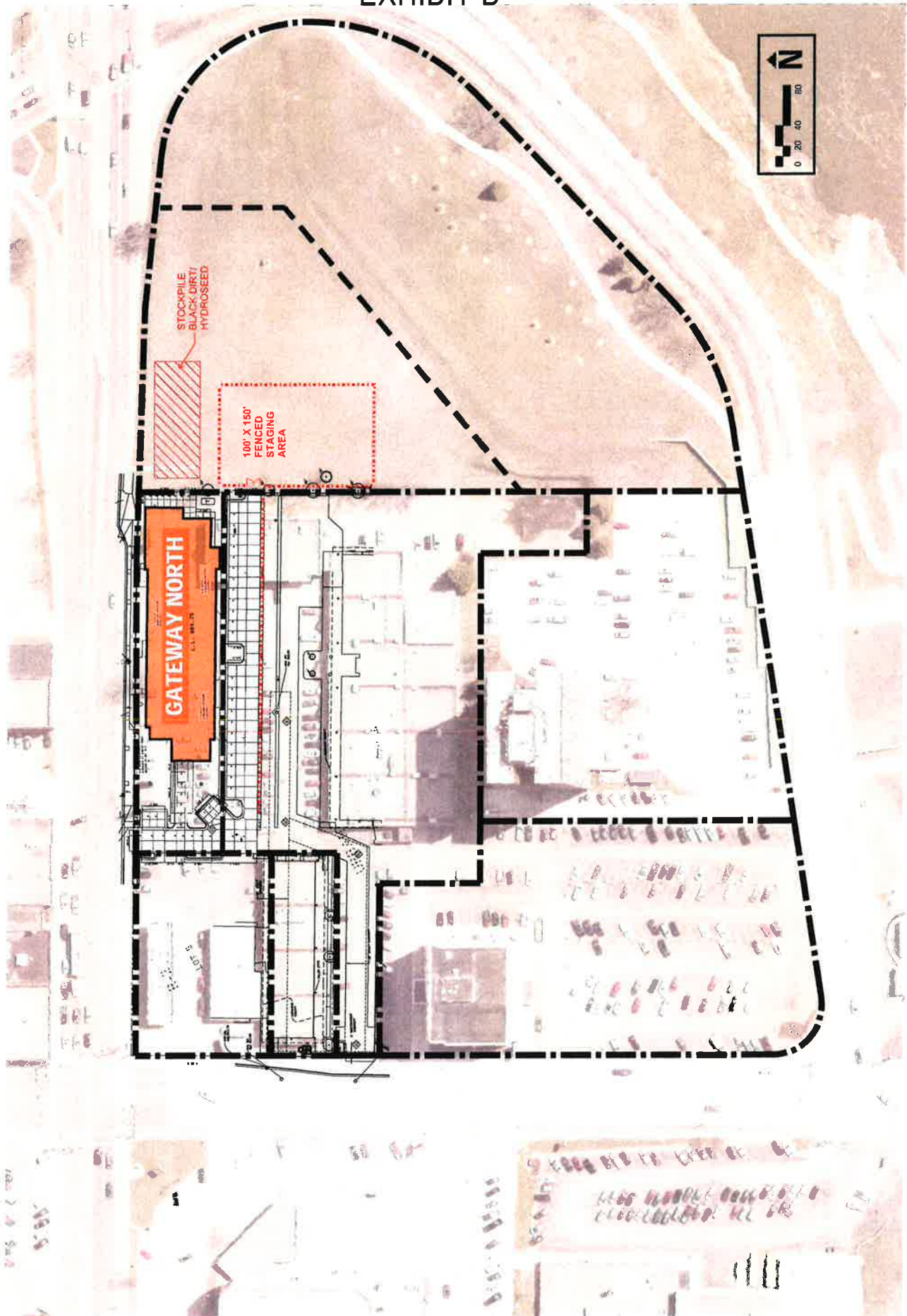


EXHIBIT B



10

August 6, 2020

Honorable Board of City
Commissioners
City of Fargo
Fargo, North Dakota

Re: 1001 NP Encroachment Agreement

Dear Commissioners:

Attached you will find an ROA from PWPEC and an Agreement between the City of Fargo and 1001 NP, LLC. 1001 NP is working on a redevelopment project on the old Nestor and Park Company parcels along 10th Street. As part of this project, we are working together to allow them to place some encroachments in the alley adjacent to this development. The attached Agreement is the result of numerous conversations with 1001 NP and represents a substantial agreement between the parties. NP has requested Commission action on granting an encroachment to keep their project moving forward and it is possible minor modifications could still be made to this Agreement.

Recommended Motion:

Concur with the recommendations of PWPEC and approve the Encroachment Agreement with Kilbourne.

Respectfully,



Kevin Gorder
Division Engineer

Attachments

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Alley Encroachments

Location: 1001 NP Avenue

Date of Hearing: 7/20/2020

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/10/2020</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding a request from Kilbourne to consider four encroachments. Two are storm sewer crossings from their buildings to a detention area in the parking lot west of the north-south alley. Another is to install a short portion of water service line in the southeast corner of the "L" alley. The last is for underground electrical secondary line near the water service encroachment.

Kilbourne would like to enter into an agreement with the City to allow these encroachments. The Committee discussed the risk to the Developer with placing infrastructure in City right of way. The Developer is willing to accept that risk. There was also discussion regarding the possibility of shortening the alley, which would remove the need to encroach.

On a motion by Ben Dow, seconded by Kent Costin, the Committee voted to recommend approval of the Encroachment Agreements with Kilbourne not to exceed \$500 annually.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Encroachment Agreements with Kilbourne.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: None

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)


<u>Yes</u>	<u>No</u>
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>

COMMITTEE

Tim Mahoney, Mayor
 Nicole Crutchfield, Director of Planning
 Steve Dirksen, Fire Chief
 Bruce Grubb, City Administrator
 Ben Dow, Director of Operations
 Steve Sprague, City Auditor
 Brenda Derrig, City Engineer
 Kent Costin, Finance Director

<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
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ATTEST:


 Brenda E. Derrig, P.E.
 City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Kevin Gorder, Division Engineer
Date: July 17, 2020
Re: Nestor Development and Alley Encroachment

Kilbourne Group (owner) is finalizing their plans for this large construction project on the old Nestor and Park Company properties. Kilbourne has asked for the City to consider four encroachments. Two are storm sewer crossings from their buildings to a detention area in the parking lot west of the north-south alley. They also would like to install a short portion of water service line in the southeast corner of the "L" alley when the alley vacation is recorded. The last encroachment they are requesting is for underground electrical secondary lines near the water service encroachment. See attached drawings for more information on locates.

Kilbourne would like to enter into an agreement with the City to allow these encroachments and define responsibilities for these encroachments. Items that would be included in this agreement are listed below. Additional items may need to be added as more detail is provided by Kilbourne. Kilbourne has asked their Civil Consultant for legal descriptions that would be added to the agreement for recording purposes.

1. These encroachments only serve this development so all installation and maintenance costs will be the responsibility of the applicant. Owner will also be responsible for all engineering costs of the encroachment items. If the City has to make any repairs, the costs of the repairs would be assessed to this development.
2. Our encroachment policy requires a \$500 application fee and a \$500/year fee to encroach on the right of way. Kilbourne Group has asked to waive the annual fee.
3. Agreement will be personal to the owner and will terminate upon sale. Subsequent owners may request permission to encroach and enter into a separate agreement with the City. City agrees to not unreasonably withhold permission under the terms of the agreement. Kilbourne is looking for something that is automatic so we will probably need to add more assurances that a transfer is considered.
4. The City has an existing sanitary sewer line in place between 11th Street and 10th Street that will remain in service until 11th Street between NP and 1st Avenue North has been reconstructed. Owner has asked that the alley above a portion of this sanitary sewer line be vacated. Kilbourne and the City of Fargo executed an agreement defining responsibilities if this line is damaged during construction. The same conditions would apply to the installation of these encroachments in the alley right of way.
5. After construction is complete, Owner will be solely responsible for repairing their installed items in the right of way including restoration of all items in the right of way that was damaged or removed to repair their items. Owner will use due care to protect the alley, utilities and other public property, and minimize disruption to pedestrian travel during any use of the public ROW.
6. Restoration must meet City Specifications and be completed in a manner to obtain City acceptance of the repair. If work does not meet these requirements, the City will complete the work and assess the development for all costs to complete including markups as per the Infrastructure Funding Policy. Owner waives its right to protest assessments to this development for this work.
7. City shall have no obligation, liability, or responsibility for the costs incurred by the Owner to complete the Owner's work under this Agreement, including, but not limited to, contractor and engineering fees.
8. Owner will be responsible for restoration if the encroachments are removed.
9. Owner will register with ND One Call and provide locate services as required by the ND One Call Rules and Regulations.

10. Owner agrees to indemnify, release, and hold harmless City for all actions related to the encroachments. Owner agrees to obtain a policy of insurance for public liability and property damage insurance and provide City with a certificate of insurance.
11. The City reserves the right to terminate if the right of way is needed for public use in the future.
12. Owner will be responsible for the repair or replacement of any public property which may be damaged or destroyed as a direct or indirect result of the use of the ROW.
13. Owner understands and agrees that City construction in the ROW may be necessary and may damage or otherwise impact the permitted encroachments. Owner shall be responsible for repair or replacement of the permitted encroachments.
14. City retains authority to operate and maintain existing above ground and underground municipal facilities in the encroachment area.
15. Agreement will be construed and enforced in accordance with North Dakota law.
16. Failure or delay of City to insist on the performance of any of the terms of the Agreement, or the waiver of any breach of any of the terms of the Agreement, will not be construed as a waiver of those terms.
17. The Agreement and permission to encroach is given subject to any statutory limitation on the authority of the City to grant such permission.
18. If any court of competent jurisdiction finds any provision or part of the Agreement invalid, illegal or unenforceable, that portion will be deemed severed from the Agreement, and all remaining terms and provisions of the Agreement will remain binding and enforceable.
19. Modification or amendments to the Agreement must be in writing and signed by both parties.
20. Agreement would be recorded.

Kilbourne will be finalizing their property acquisitions and financing in the next couple weeks and have requested a City Department level assurance if an agreement that follows this framework is acceptable or not. Details would need to be worked out in the next two weeks for submittal to the City Commission.

Suggested motion:

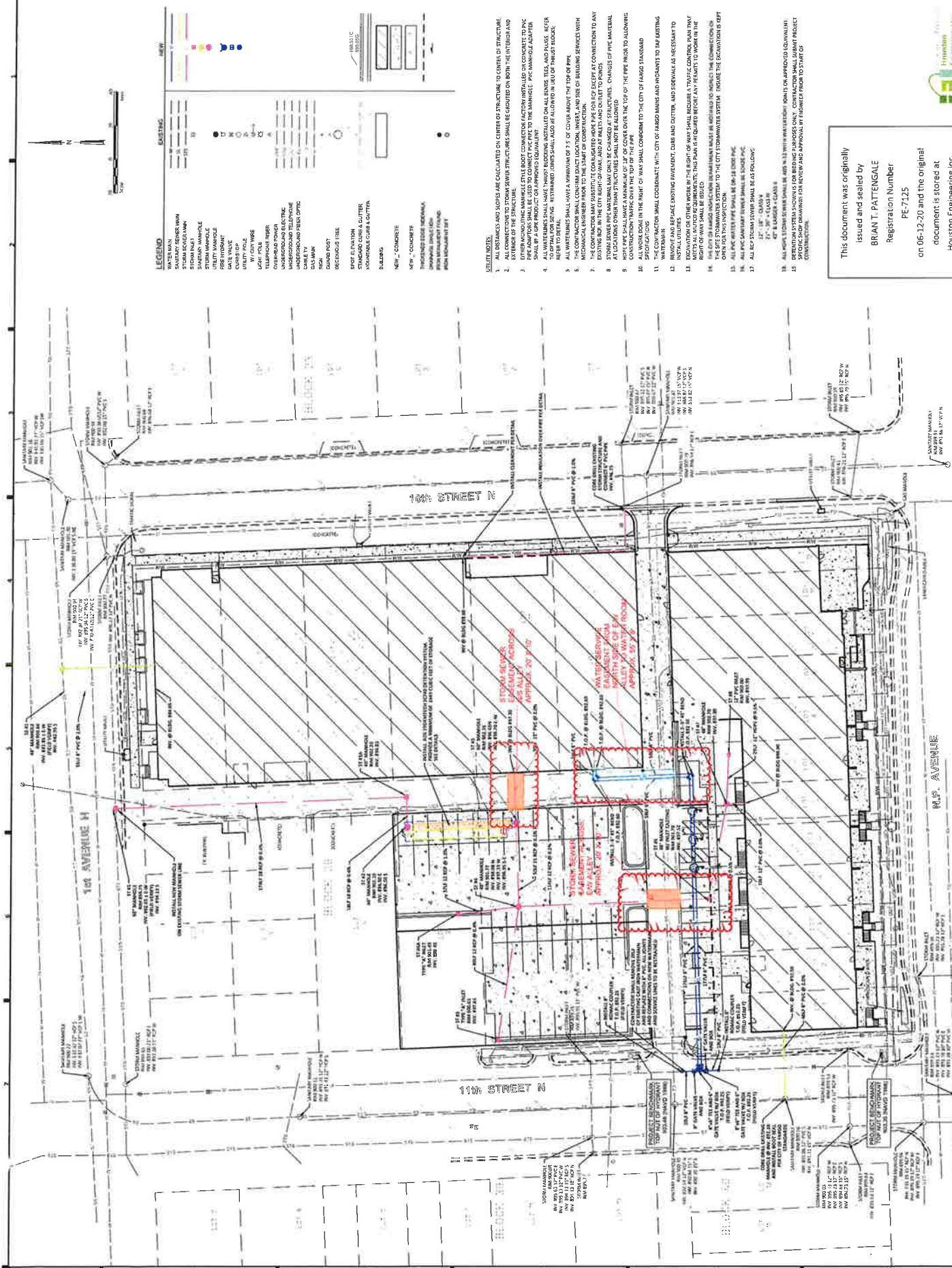
Direct Engineering to develop an Encroachment Agreement with Kilbourne using these items as the framework and provide detailed responsibilities relating to these encroachments.

Options for PWPEC Consideration:

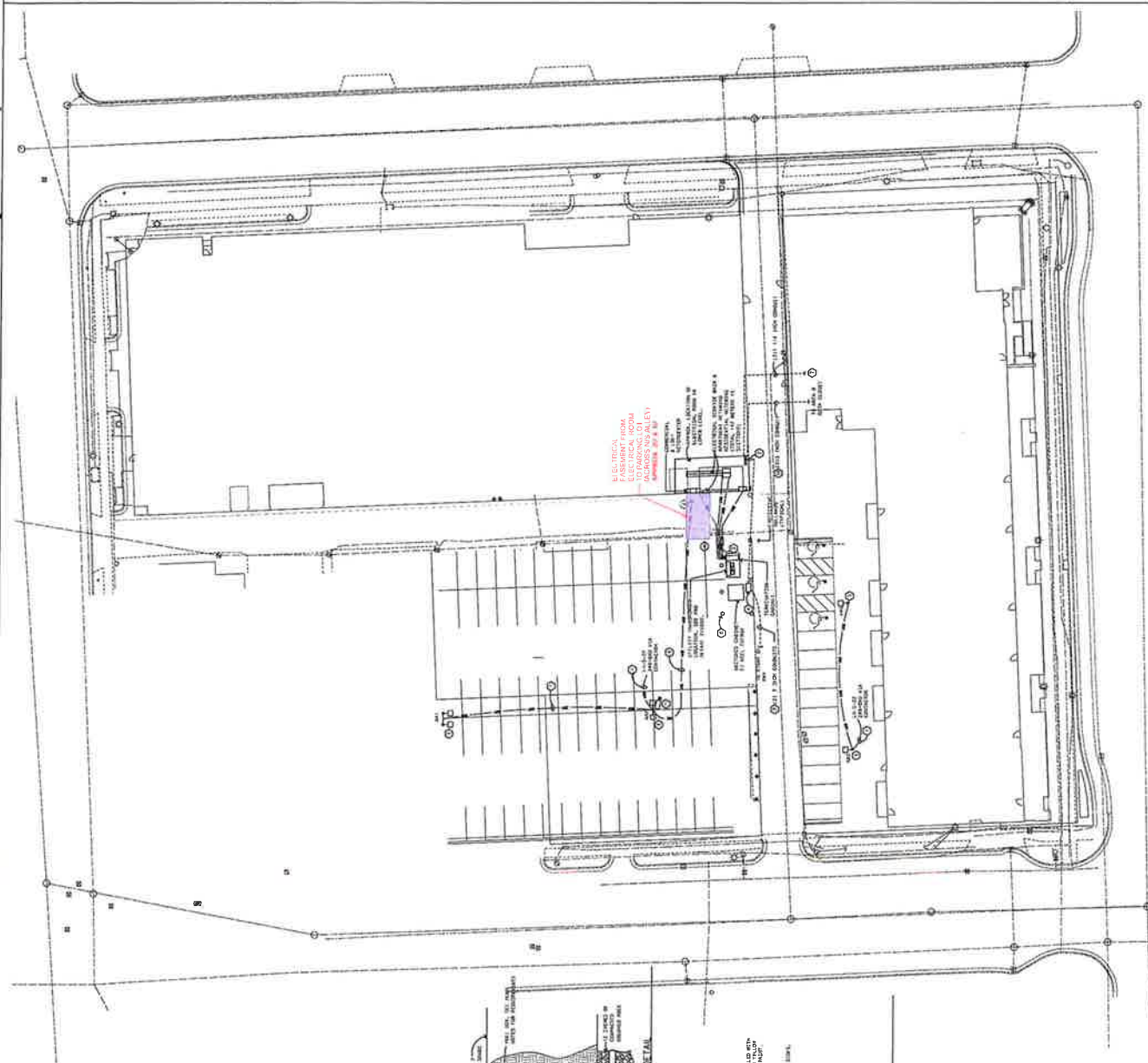
Should the Agreement be brought back to PWPEC prior to submittal to City Commission?

Should the annual fee be waived and only apply the application fee?

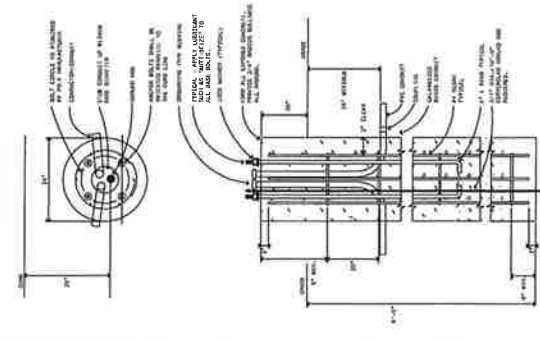
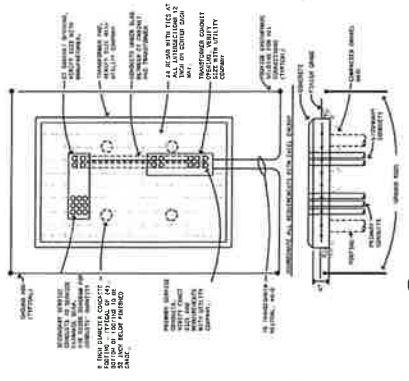
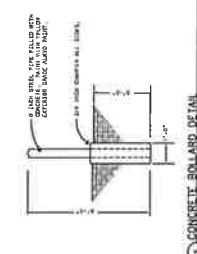
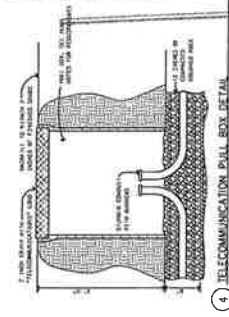
Attachment



This document was originally issued and sealed by
BRIAN T. PATTENGALE
Registration Number
PE-7125
on 06-12-20 and the original document is stored at
Houston Engineering Inc.



- PLAN NOTES:**
1. UNLESS OTHERWISE NOTED, ALL ELECTRICAL SHALL BE INSTALLED IN ACCORDANCE WITH THE 2017 NATIONAL ELECTRICAL CODE (NEC) AND THE 2017 NORTH DAKOTA ELECTRICAL CODE (NDEC).
 2. ALL ELECTRICAL SHALL BE INSTALLED IN ACCORDANCE WITH THE 2017 NATIONAL ELECTRICAL CODE (NEC) AND THE 2017 NORTH DAKOTA ELECTRICAL CODE (NDEC).
 3. ALL ELECTRICAL SHALL BE INSTALLED IN ACCORDANCE WITH THE 2017 NATIONAL ELECTRICAL CODE (NEC) AND THE 2017 NORTH DAKOTA ELECTRICAL CODE (NDEC).
 4. SEE DETAIL 21001-2 FOR CULVERT.
 5. SEE DETAIL 21001-2 FOR CULVERT.
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 99. SEE DETAIL 21001-2 FOR CULVERT.
 100. SEE DETAIL 21001-2 FOR CULVERT.



ENCROACHMENT AND USE AGREEMENT

THIS AGREEMENT, is made and entered into as of the effective date below by and between the **CITY OF FARGO**, a North Dakota municipal corporation [hereinafter "City"] and **Great Plains 1001 Holdings, LLC**, a North Dakota limited liability company [referred to as "Owner"]

WITNESSETH:

WHEREAS, Owner is the fee title owner of (the "Development Property") as described below.

Legal Description

Parcel A:

Lots One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven and Twelve, in Block Twenty-five, of Roberts' Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

Parcel B:

Lots Seven, Eight, Nine, Ten, Eleven and Twelve, in Block Twenty-six, of Roberts' Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

Parcel C:

The East Seventy feet of Lots One, Two and Three, and the South One foot of the East Seventy feet of Lot Four, in Block Twenty-six, of Roberts' Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

WHEREAS, Owner is proposing to build a mixed-use building (“Development”) on the Development Property; and

WHEREAS, there is a publicly dedicated, “L” shaped alley between these parcels (the “Alley”). The Owner has requested four encroachments in the alley for underground services to support its development. Two encroachments will be used to place storm sewer crossings to convey surface water and/or water from roof drains into the underground detention pond. These encroachment areas are defined and described as Storm Sewer Area Tract 1 and Storm Sewer Area Tract 2 in Exhibit B attached hereto and incorporated herein. Owner has requested an encroachment for its water service to its development defined and described as Water Service Area in Exhibit B. The fourth encroachment is for secondary electrical service defined and described as Electrical Service Area in Exhibit B. Together the encroachments are defined as “Encroachment Elements”; and

WHEREAS, the City agrees to allow said encroachments under certain terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein, it is hereby agreed by and between the parties as follows:

1. Owner covenants and agrees that it owns all right, title and interest in the Development Property.
2. City hereby grants Owner the right to encroach and use a portion of the Alley for the purpose of installing the Encroachment Elements for the purposes (and no other purposes) and in the locations shown on Exhibit B. Said Encroachment Elements have the sole purpose to serve the Development Property.

3. This Agreement is personal to Owner and cannot be sold, transferred or otherwise assigned, except as provided for herein. Notwithstanding the foregoing sentence, this Agreement is transferable to subsequent owners, successors and assigns of the Development Property, provided (1) City has not terminated the Agreement as provided herein; and (2) Owner, its successors or assigns, provides a notice of transfer to City within 30 days of such transfer; and (3) Owner, its successors and assigns provides City a certificate of insurance, evidencing continued, uninterrupted insurance as provided for herein. Failure to abide by these requirements may be cause for termination of this Agreement. Further while in force, this Agreement shall be binding upon subsequent owners, successors and assigns of the Development Property, irrespective of whether the foregoing conditions have been satisfied.

4. Owner is responsible for all costs to design, install, maintain, and replace the Encroachment Elements and any associated public improvements (Owner's Work"). City shall have no obligation, liability, or responsibility for costs incurred by the Owner to complete the Encroachment Elements, including, but not limited to, contractor and engineering fees. Owner's contractor(s) and engineer(s) must be licensed under the laws of the State of North Dakota, and otherwise be responsible contractors and engineers as reasonably determined by City. City shall have no obligation, liability, or responsibility for the costs incurred by the Owner to complete the Owner's work under this Agreement. In no event will City be responsible for any payments, including payments for additional work or costs occasioned by unforeseen or changed conditions encountered in doing the work. Except as expressly provided otherwise in this Agreement, the parties understand and agree that City shall have no responsibility for repairs or costs thereof to the Encroachment Elements, or damages which may be occasioned by such repairs, in the event City completes any repairs to the Alley and existing infrastructure.

5. The parties further understand and agree that the cost of any repairs to the Alley and existing public infrastructure therein or adjacent thereto caused by or resulting from by the Encroachment Elements shall be Owner's sole financial responsibility, and further understand and agree that the costs thereof shall be assessed directly to the Development Property following the Infrastructure Funding Policy in effect at the time of repairs. City will levy special assessments against the Development Property to recover

all costs of the Project, in accordance with N.D.C.C. Chapter 40-22. Developer waives its right to protest the resolution of necessity for the 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 improvements and to the assessment of all costs thereof to the Development Property. Developer further waives its right to protest the amount, benefit or any other assessment attribute related to such work completed by City. Project costs, which may be assessed against the Development Property, include all costs of completing such work, including engineering, fiscal agent's and attorney fees, and all other costs authorized by law.

6. Owner agrees to pay a \$500 application fee, and further agrees to pay a yearly fee of \$500. City will invoice the Owner for the fees and the fees are payable within 30 days of invoice. If payment is not received within 30 days, interest will accrue on any unpaid amounts at a rate of 1 ½% per month, until paid in full.

7. The Owner shall use due care when working around any sanitary sewer lines and/or other public improvements located in or near the Alley and will design and construct their Encroachment Elements in a manner that will not impact the continued use thereof. The Owner will give the City notice when performing any such work.

8. If Owner damages any the sanitary sewer lines and/or other public improvements any time during the construction of the Encroachment Elements, City will make the necessary repairs to same and Owner agrees to be financially responsible for such repairs.

9. Owner understands and agrees that City construction in Alley, including but not limited to repair of any sanitary sewer lines and/or other public improvements in the Alley, may damage or impact the Encroachment Elements. City shall have no responsibility for any damage to the Encroachment Elements, if using due and proper care when working around the Encroachment Elements. Owner shall be responsible for the repair or replacement of the Encroachment Elements unless City doesn't use due and proper care.

10. To the extent Owner no longer occupies the Encroachment Area, or if this Agreement is terminated, City shall determine if the Owner must remove or may appropriately cap and abandon in place all Encroachment Elements and restore and replace all public property thereby affected to its pre-encroachment condition. The City must approve the construction methods if the Encroachment Elements are left in place. It is understood and

agreed that Owner, its successors and assigns, are responsible for the repair or replacement of any public property, at Owner's cost and expense.

11. Owner is responsible for all locates and must register with ND One Call and be responsible for all ND One Call requirements as the owner of Encroachment Elements.

12. Except as expressly provided otherwise in this Agreement, Owner, its successors and assigns, agree to hold the City harmless against any and all expenses, demands, claims or losses of any kind that may be sustained by City, its officers, agents and employees, its property, streets, sidewalks, or any other municipal improvements by reason of the use of the Alley pursuant to this Agreement. Owner agrees to provide to the City a certificate of insurance indicating acceptance by its insurer of its obligation to defend and hold the City harmless as hereinabove stated.

13. It is specifically understood and agreed that the City retains authority to operate and maintain existing above ground and underground municipal facilities in the Alley. The intent of this Agreement is to allow the Encroachment Elements to remain in place for so long as the Development remains on the Development Property. In the extraordinary event that City determines a public need for some or all of that portion of the Alley occupied by the Encroachment Elements without while the Development remains in place, including but not limited to the provision of public services such as street widening, storm and sanitary sewer repair and installation and/or water main repair and installation, and the continued presence of some or all of the Encroachment Elements is no longer practicable, as determined by City, under the circumstances, City may, as determined by the City Commission, terminate Owner's rights, in whole or in part, under this Agreement and then written notice to Owner. Upon notice of such termination by the City Commission, Owner's rights shall be terminated and Owner shall have 360 days to remove and/or appropriately cap and abandon in place all Encroachment Elements that are the subject of such notice.

14. Owner understands and agrees that all work completed in the Alley shall meet City of Fargo Construction Standards, including but not limited to City of Fargo Requirements for Engineering Services on Public Construction Projects, dated April 2015, as amended or modified from time to time. Owner must obtain City approval prior to starting work and obtain City acceptance after the work is completed in the Alley. Owner agrees that failure to secure acceptance from City of the agreed upon modifications and

restoration may result in City completing the work and assessing the cost to the Development. Owner waives its right to protest the resolution of necessity for the improvements and restoration or other provisions of NDCC Chapter 40-27 as the same may be amended for which such resolutions are required pursuant to North Dakota Century Code, Section 40-22-17 pertaining to all work authorized by City under this Agreement, and Owner specifically consents to the restoration of the Alley to its pre-existing condition upon termination of this Agreement. Owner further consents to the assessment of cost thereof to the Development, and waives any right to protest the benefit or other assessment attributed to the construction. Project costs which may be assessed against the Development include all costs of the improvement that are authorized by North Dakota law, include; NDCC §40-23-05, such as engineering, fiscal agent's and attorney's fees for any services in connection with authorization and financing of the improvement, and all other costs as authorized by law.

15. It is understood and agreed by and between the parties that this Agreement and permission to encroach is given subject to any limitation on the statutory authority of City to grant such permission, which may now or hereafter exist, provided City acknowledges that it is not aware of any current such limitations.

16. 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.

17. The failure or delay of City 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 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 City to enforce each and every term of this Agreement.

18. 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.

19. 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.

20. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

21. It is specifically agreed between the parties that a copy of this Agreement may be recorded.

22. **EFFECTIVE DATE.** This Agreement shall be effective as of the date and year last signed by the parties below, as reflected by the date of acknowledgement thereof.

Dated this ____ day of _____, 2020.

Great Plains 1001 Holdings, LLC, a North Dakota
limited liability company

By: Bill Rothman
Its: Vice President

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

On this ____ day of _____, 2020, before me, a notary public in and for said county and state, personally appeared _____, to me known to be the persons described in and that executed the within and foregoing instrument.

(SEAL)

Notary Public
Cass County, ND

Dated this ____ day of _____, 2020.

City of Fargo, a North Dakota
Municipal Corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steve Sprague, City Auditor

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

On this ____ day of _____, 2020, before me, a notary public in and for said county and state, personally appeared Timothy J. Mahoney, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, 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

**Map of Development
Property**

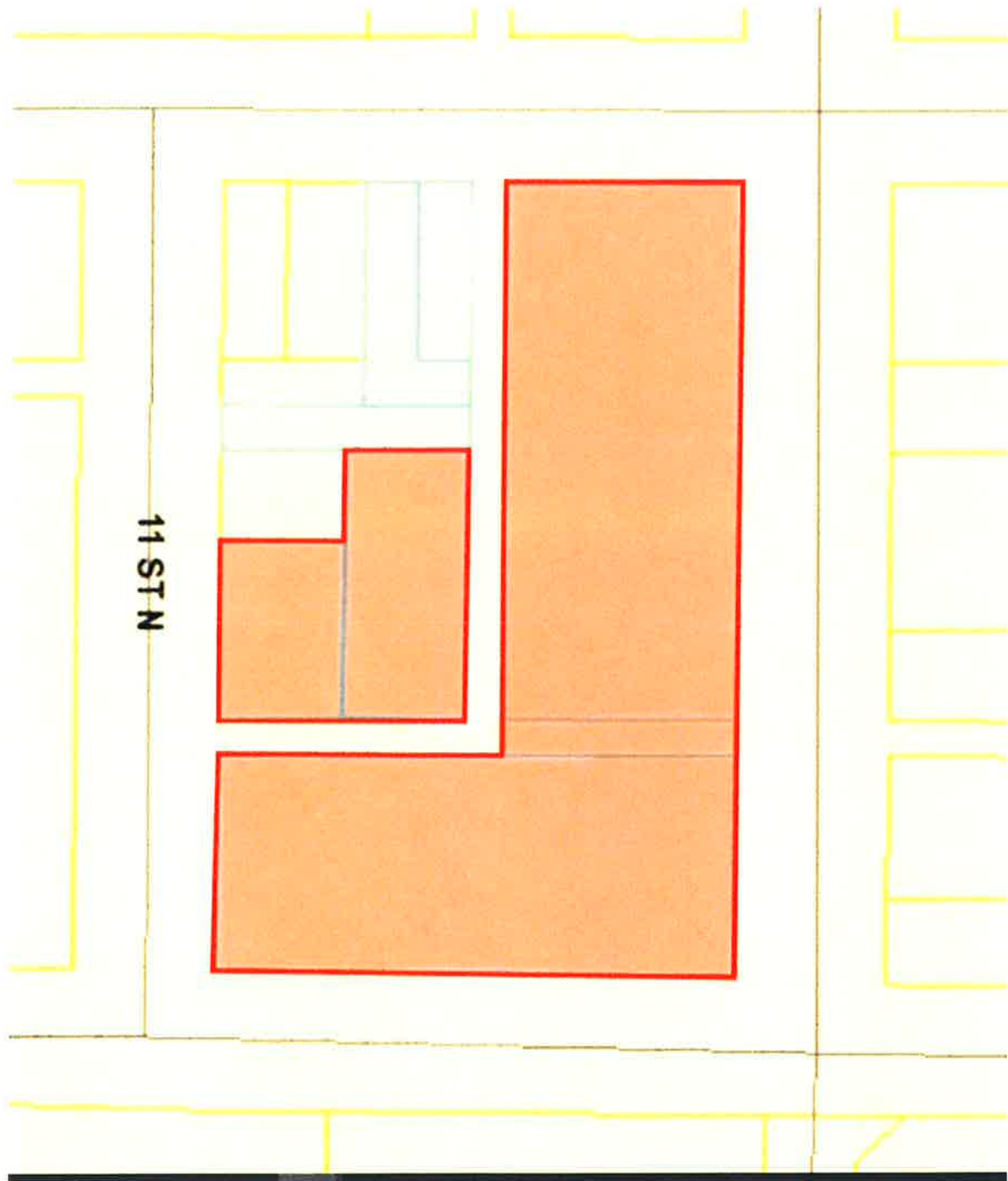
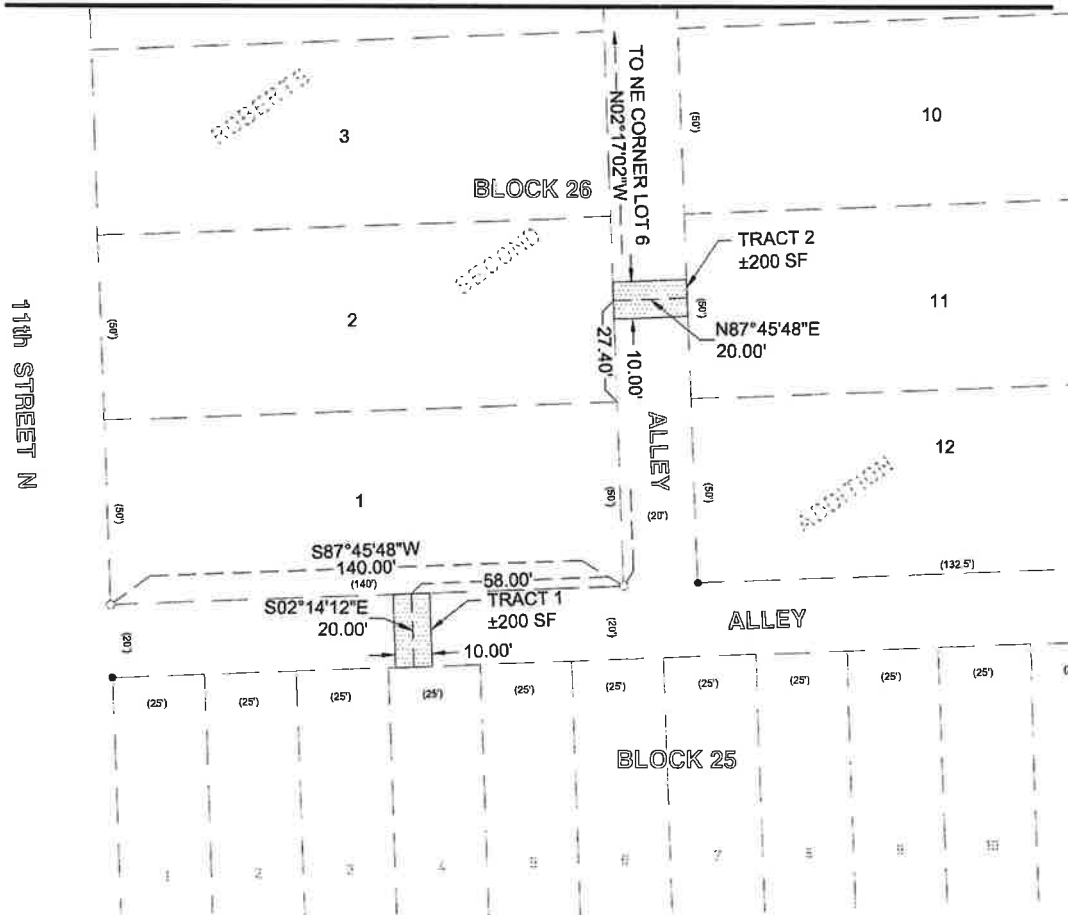


EXHIBIT B

Encroachment Element Locations

PART OF ALLEYS, BLOCKS 25 AND 26
ROBERTS' SECOND ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA



IRON MONUMENT FOUND
MEASURED BEARING
MEASURED DISTANCE
PLAT BEARING
PLAT DISTANCE
PERMANENT EASEMENT

S59°27'46"E
105.00'
(N57°00'00"W)
(105.00')

NOTE: ALL BEARINGS GIVEN ARE
BASED ON THE CITY OF
FARGO GIS COORDINATE SYSTEM.



ENCROACHMENT AGREEMENT EXHIBIT

PROJECT NO.
7862-0006

ROBERTS' SECOND ADDITION
CITY OF FARGO, CASS CO., ND

SHEET
1 OF 5

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Description - Storm Sewer Area Tract 1:

That part of the Alley between Block 25, ROBERTS' SECOND ADDITION and Block 26, said ROBERTS' SECOND ADDITION to the City of Fargo, Cass County, North Dakota, described as follows:

A 10.00-foot-wide strip centered on the following described line:

Commencing at the southeast corner of Lot 1, said Block 26; thence South 87°45'48" West, along the southerly line of said Lot 1 for a distance of 58.00 feet to the true point of beginning of the line to be described; thence South 02°14'12" East for a distance of 20.00 feet to a point of intersection with the northerly line of said Block 25, said line there terminating.

Said strip shall be lengthened or shortened as necessary to intersect the southerly line of said Block 26 on the north and to intersect the northerly line of said Block 25 on the south.

Said strip contains 200 Square Feet, more or less.

Description - Storm Sewer Area Tract 2:

That part of the Alley in Block 26, ROBERTS' SECOND ADDITION to the City of Fargo, Cass County, North Dakota, described as follows:

A 10.00-foot-wide strip centered on the following described line:

Commencing at the southeast corner of Lot 2, said Block 26; thence North 02°17'02" West, along the easterly line of said lot 2, for a distance of 27.40 feet to the true point of beginning of the line to be described; thence North 87°45'48" East for a distance of 20.00 feet to a point of intersection with the westerly line of Lot 11, said Block 26, said line there terminating.

Said strip shall be lengthened or shortened as necessary to intersect the easterly line of said Lot 2 on the west and to intersect the westerly line of said Lot 11 on the east.

Said strip contains 200 Square Feet, more or less.



ENCROACHMENT AGREEMENT EXHIBIT

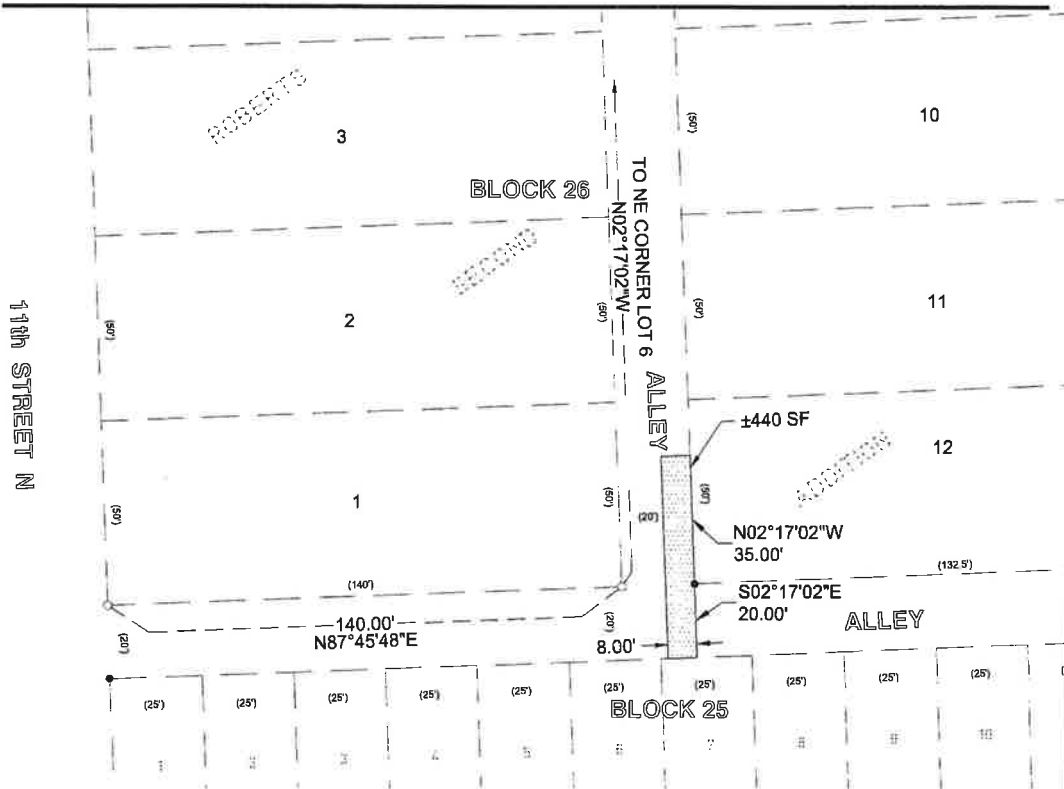
PROJECT NO.
7862-0006

ROBERTS' SECOND ADDITION
CITY OF FARGO, CASS CO., ND

SHEET
2 OF 5

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PART OF ALLEYS, BLOCK 26 AND BLOCK 25
ROBERTS' SECOND ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA



Description - Water Service Area:

That part of the Alley in Block 26, and the Alley between Block 25 and said Block 26, ROBERTS' SECOND ADDITION to the City of Fargo, Cass County, North Dakota, described as follows:

An 8.00-foot-wide strip of land lying westerly of and being coincident with the following described line:

Commencing at the southwest corner of Lot 12, said Block 26; thence North 02°17'02" West, along the westerly line of said lot 12, for a distance of 35.00 feet to the true point of beginning of the line to be described; thence South 02°17'02" East, along the westerly line and the westerly line as extended south of said Lot 12, for a distance of 55.00 feet to a point of intersection with northerly line of said Block 25.

Said strip shall be lengthened or shortened as necessary to intersect the northerly line of said Block 25.

Said strip contains 440 Square Feet, more or less.

Scale: 1"= 40'

IRON MONUMENT FOUND
MEASURED BEARING
MEASURED DISTANCE
PLAT BEARING
PLAT DISTANCE
PERMANENT EASEMENT

•
S59°27'46"E
105.00'
(N57°00'00"W)
(105.00')

NOTE: ALL BEARINGS GIVEN ARE
BASED ON THE CITY OF
FARGO GIS COORDINATE SYSTEM.



ENCROACHMENT AGREEMENT EXHIBIT

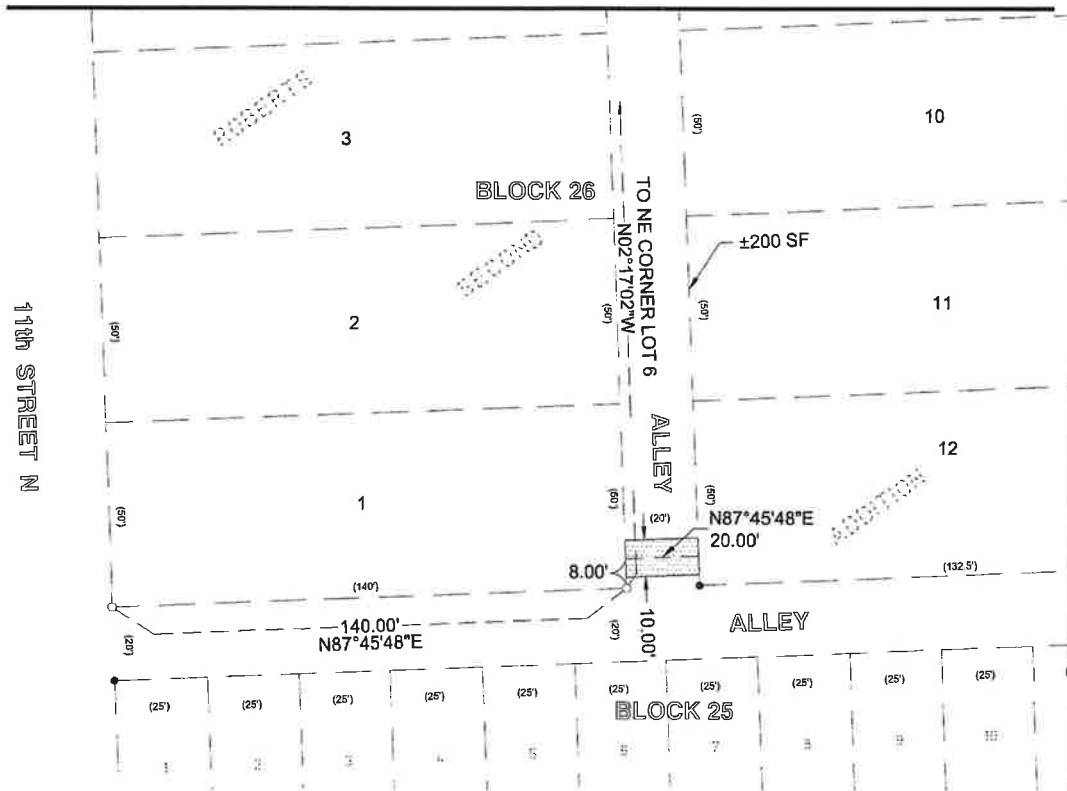
PROJECT NO.
7862-0006

ROBERTS' SECOND ADDITION
CITY OF FARGO, CASS CO., ND

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PART OF ALLEY, BLOCK 26
ROBERTS' SECOND ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA



Description - Electrical Service Area:

That part of the Alley in Block 26, ROBERTS' SECOND ADDITION to the City of Fargo, Cass County, North Dakota, described as follows:

A 10.00-foot-wide strip centered on the following described line:

Commencing at the southeast corner of Lot 1, said Block 26; thence North 02°17'02" West, along the easterly line of said Lot 1, for a distance of 8.00 feet to the true point of beginning of the line to be described; thence North 87°45'48" East for a distance of 20.00 feet to a point of intersection with the westerly line of Lot 12, said Block 26, said line there terminating.

Said strip shall be lengthened or shortened as necessary to intersect the easterly line of said Lot 1 on the west and to intersect the westerly line of said Lot 12 on the east.

Said strip contains 200 Square Feet, more or less.

Scale: 1"= 40'

NOTE: ALL BEARINGS GIVEN ARE
BASED ON THE CITY OF
FARGO GIS COORDINATE SYSTEM.

IRON MONUMENT FOUND	•
MEASURED BEARING	S59°27'46"E
MEASURED DISTANCE	105.00'
PLAT BEARING	(N57°00'00"W)
PLAT DISTANCE	(105.00')
PERMANENT EASEMENT	



ENCROACHMENT AGREEMENT EXHIBIT

PROJECT NO.
7862-0006

ROBERTS' SECOND ADDITION
CITY OF FARGO, CASS CO., ND

SHEET
4 OF 5

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SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

I, Curtis A. Skarphol, hereby certify that this survey, plan, or report was prepared by me or under my direct supervisor, and that I am a duly registered land surveyor under the laws of the state of North Dakota.

Dated this 24th day of JULY, 20 20.

Curtis A. Skarphol
Curtis A. Skarphol
Registered Land Surveyor No. 4723



STATE OF NORTH DAKOTA)
) SS
COUNTY OF CASS)

On this 24th day of July, 20 20, before me, a notary public, personally appeared Curtis A. Skarphol, registered land surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: Bridget Kessler

BRIDGET KESSLER
Notary Public
State of North Dakota
My Commission Expires July 10, 2023



ENCROACHMENT AGREEMENT EXHIBIT

PROJECT NO.
7862-0006

ROBERTS' SECOND ADDITION
CITY OF FARGO, CASS CO., ND

SHEET
5 OF 5

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12

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: GRANT LARSON
DIRECTOR OF ENVIRONMENTAL HEALTH
FARGO CASS PUBLIC HEALTH

DATE: AUGUST 5, 2020

RE: NEW MOBILE FOOD LICENSE CATEGORY

Fargo Cass Public Health requests the approval of a new "**Mobile Retail Pre-Packaged Food**" health license.

This new mobile food category will specifically license mobile retail pre-packaged food vendors such as ice cream trucks. The license fee associated with this new category will remain the same as the one related vendors are currently paying for which is a Mobile Tier 1.

If you have any questions, please contact me at 241.1388.

Suggested Motion: Move to approve the *Mobile Retail Pre-Package Food* health license.

GL
Enclosure

NAME OF ESTABLISHMENT	EMAIL ADDRESS		
NAME OF OWNER	TELEPHONE NUMBER		
ESTABLISHMENT ADDRESS	CITY	STATE	ZIP
MAILING ADDRESS	CITY	STATE	ZIP

Mobile/Concessions Tier 1	\$125.00
Mobile Retail Pre-Packaged Food.....	\$125.00
Mobile/Concessions Tier 2	\$175.00
Mobile/Concessions Tier 3	\$225.00

Additional Tier 1 units (____ units x \$62.50).....	\$ _____
Commissary fee	\$ 25.00

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Truck^
Trailer^

Cart Concessions

**Table Stand
Caterer**

^Trucks and Trailers require completion of Mobile Food License Agreement

Menu submitted for review and Tier determination

Proposed location(s) and hours of operation for unit:

Commissary location: _____

Any changes to proposed location, menu and/or commissary location must be submitted to FCPH.

The undersigned is familiar with the 2013 FDA Food Code and further attests that the unit for which the application is made will be operated in compliance with all applicable City ordinances and the above-mentioned food code.

Make check payable to:

Fargo Cass Public Health
1240 25th Street South
Fargo ND 58103-2367

Printed Name of Licensee

Signature of Licensee

For more information, please call (701) 476-6729

Date _____

APPROVED BY _____ DATE _____
(Environmental Health Representative)

FARGO CASS PUBLIC HEALTH MOBILE FOOD LICENSE AGREEMENT

I understand that every year I must contact Fargo Cass Public Health **prior to operation to:**

1. Schedule a pre-operational inspection
 - Submit a current menu
 - Submit general locations and hours of operation
2. Schedule a commissary inspection
3. Submit payment for the health license fee based on Tier level

The undersigned is familiar with the 2013 FDA Food Code and further attests that the unit for which the application is made will be operated in compliance with all applicable City ordinances and the above-mentioned food code.

FCPH Contact Information:

Fargo Cass Public Health
1240 25th Street South
Fargo ND 58103-2367

Phone: (701) 476-6729

Printed Name of Licensee

Signature of Licensee


Date



(13)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: JULY 30, 2020

RE: NOTICE OF GRANT AWARD WITH THE NORTH DAKOTA DEPARTMENT OF HEALTH FOR INCREASING INFLUENZA VACCINATIONS IN HIGH RISK ADULTS FOR \$15,000 G19.904, CFDA 93.268

The attached notice of grant award with NDDoH is to assist Fargo Cass Public Health to increase high risk adult influenza vaccinations rates.

The following budget adjustments would be needed to carry out this contract:

2020 Expenses

101-6020-451-61-20	Medical Supplies	\$ 3,000
101-6020-451-34-20	Marketing	\$ 1,750

2020 Revenue

101-0000-331-12-59	High Risk Adult Flu	\$15,000
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Suggested Motion:

Move to approve the grant award from North Dakota Department of Health for increasing rates of vaccination for influenza for high risk adults.

DF/lls

Enclosures

**NOTICE OF GRANT AWARD**

NORTH DAKOTA DEPARTMENT OF HEALTH
SFN 53771 (01-2020)

Grant Number G19.904	CFDA Name Immunization Cooperative Agreements		CFDA Number 93.268
FAIN Number NH23IP922623	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 8/3/2020	Grant End Date 6/30/2021
Federal Award Date 06/05/2020	Federal Awarding Agency Department of Health and Human Services		
This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.			
Title of Project/Program Increasing Influenza Vaccination in High Risk Adults		North Dakota Department of Health (NDDoH) Project Code 2201 HLH4771-01	
Grantee Name Fargo Cass Public Health		Project Director Molly Howell	
Address 1240 – 25 th Street South		Address 600 E Boulevard Ave, Dept 301	
City/State/ZIP Code Fargo, ND 58103		City/State/ZIP Code Bismarck, ND 58505	
Contact Name Desi Fleming		Contact Name Abbi Berg	
Telephone Number 701-241-1360		Telephone Number 701-328-3324	
Email Address dfleming@fargond.gov		Email Address alberg@nd.gov	
Amount Awarded	NDDoH Cost Share \$15,000	Grantee Cost Share \$0	Total Costs \$15,000
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$15,000	\$0	\$15,000
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimus rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %
Scope of Service: Grantee will conduct activities to increase high risk adult influenza vaccinations rates, as outlined in the Grantee's proposal.			
Reporting Requirements: Request for Reimbursement (RFR) via electronic billing on the Program Reporting System on the ND Department of Health website is required. Expenditures for the period ending December 31, 2020 must be received by January 15, 2021. The final RFR for the period ending June 30, 2021 must be received by July 15, 2021. A final report must include post-implementation adult influenza vaccinations rates and a plan to maintain and increase high risk adult influenza vaccination rates beyond the grant period.			
Special Conditions: This notification serves as official documentation and should be filed with the Notice of Grant Award for documentation. Non-allowable expenses include: promotional materials (i.e., plaques, clothing, lanyards), purchase of food (unless part of travel per diem), advertising costs (exhibits, displays, souvenirs), lobbying, or honoraria. Additional non-allowable expenses can be found in 2 CFR Part 200, 45 CFR Part 75, HHS Grants Policy Statement.			
This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDoH as signed by Grantee for the period of July 1, 2019 to June 30, 2021 [Fiscal Services Use Only: <input type="checkbox"/> Requirements Received; <input type="checkbox"/> Questionnaire received] and (2) applicable State and Federal regulations.			
Evidence of Grantee's Acceptance		Evidence of NDDoH Acceptance	
Date 8/5/2020	Signature <i>Desi Fleming</i>	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Kirby Kruger, Section Chief, Medical Services Section	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Brenda M. Weisz, Chief Financial Officer	
If attachments are referenced, they must be returned with the signed award. If you did not receive attachments as indicated, contact the Program Director identified above.			

MEMORANDUM

(14)

TO: BOARD OF CITY COMMISSIONERS

FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR *nc*

DATE: AUGUST 5, 2020

RE: COVID COMMUNITY RESPONSE AND PARTNERSHIPS

With the ongoing pandemic, the Planning and Development Department, through the Red River Valley COVID-19 Task Force, continues its effort to understand community development and social service needs and to partner with agencies who can help close gaps. In doing so, staff has identified the following recommendation to bolster the local COVID-19 response through the task force's Education & Awareness and Quarantine Support strategies.

For the past three months, the City of Fargo, through its State COVID-19 Grant allocation, has reimbursed the ESHARA Partners (Ethnic-Self-Help Alliance for Refugee Assistance) for providing family assistance, translation services, education, and case management to New American households directly and indirectly affected by COVID-19, who are often left out of mainstream access to supportive resources. ESHARA Partners have Community Response Team members who cover several languages and ethnicities, including Somali, Swahili, Dinka, and Arabic.

In order to expand their scope to reach more Bhutanese (speaking Nepali) and Iraqi, or more appropriately defined as a geo-cultural historical region of Greater Kurdistan (speaking Kurdish), community members, ESHARA Partners is seeking an increase of \$17,870 to the original agreement. This will help cover reimbursables incurred by two new partners, the Kurdish American Development Organization (KADO) and the Kirat Cultural Society of North Dakota (KCSND).


Recommendation:

Approve amending the existing agreement between the City of Fargo, the United Way, and the Afro American Development Association (on behalf of ESHARA Partners) to increase funding by \$17,870.

(15)

MEMORANDUM

TO: Fargo City Commission

FROM: Mark Williams, Assistant Planning Director 

DATE: August 5, 2020

SUBJECT: Change Order #1 for the GTC underground Project (BP0041)

The construction project repairing the GTC underground parking garage requires modification to the scope of work. The changes are a result of unforeseen conditions and work accidentally being credited to the incorrect project currently underway on the main floor of the GTC.

PR GC3 was the replacement of the expansion joint and was accidentally added to the above ground GTC remodeling project (F18006). PR GC5 was the result of adding new flooring because asbestos was discovered. PR GC11 added ridged insulation to shed water leaking in the facility due to an existing unknown foundation ledge.

PR GC3, PR GC5, and PR GC11 are outlined in the attached documentation from KLJ.

The available funding within the existing budget will cover the proposed change amounts.

Recommendation: Approve Change Order #1 that includes PR GC3, PR GC5, and PR GC11 incorporating them to the contract between the City of Fargo and Gast Construction.

CHANGE ORDER NO. 1

Date of Issuance: 7/20/2020

Effective Date: 7/1/2020

PROJECT TITLE <i>Underground (BP0041)</i>
OWNER <i>City of Fargo</i>
CONTRACTOR <i>Gast Construction Company, Inc.</i>
ORIGINAL CONTRACT DATE <i>1/31/2020</i>

THE CONTRACT DOCUMENTS ARE MODIFIED AS FOLLOWS UPON EXECUTION OF THIS CHANGE ORDER**1. ADDITIONS OR DELETIONS TO THE CONTRACT AND ASSOCIATED COSTS**

Spec. No.	Item	Description of Addition or Deletion	Unit	Quantity	Unit Price	Affect On Contract Price
	1	PR GC3: Expansion Joint	LS	1	\$18,762.10	\$18,762.10
	2	PR GC5: Replace Stairway Flooring	LS	1	\$725.00	\$725.00
	3	PR GC11: Concrete Haunch	LF	325	\$3.10	\$1,007.50
TOTAL COST FOR THESE CONTRACT ADDITIONS OR DELETIONS						\$20,494.60

2. JUSTIFICATION FOR ADDITIONS OR DELETIONS TO CONTRACT

PR GC3: The expansion joint material was originally credited to project F18006, not BP0041. Therefore, it has been added to project BP0041 through this Change Order. In addition, the total quantity of expansion joint was reduced and the type of joint was modified at the buildings. PR GC 5: As demolition was being completed, asbestos was discovered under the existing fritz tile flooring which extends into the stairway to the garage. Although the flooring in the stairway wasn't included in the original project, the City has elected to remove all of the flooring containing asbestos. PR GC5 covers the costs associated with the new flooring only. The original flooring will be removed by the abatement contractor under a separate contract with the City. PR GC11: Some sections of the foundation wall were installed with a concrete haunch (ledge). At these locations, rigid insulation is being added to help divert water away from the wall and into the drain tile.

3. CHANGE TO CONTRACT AMOUNT

ORIGINAL CONTRACT AMOUNT:	\$654,660.00
NET INCREASE/DECREASE FROM PREVIOUS CHANGE ORDER(S):	\$0.00
CONTRACT AMOUNT PRIOR TO THIS CHANGE ORDER:	\$654,660.00
INCREASE/DECREASE FROM THIS CHANGE ORDER:	\$20,494.60
NEW CONTRACT AMOUNT INCLUDING THIS CHANGE ORDER:	\$675,154.60

4. CHANGE TO CONTRACT TIMES**Original Contract Times:**

Substantial Completion (Days or Date): 10/2/2020
 Ready For Final Payment (Days or Date): 10/30/2020

Contract Times from previously Approved Change Orders

Substantial Completion (Days or Date): 10/2/2020
 Ready For Final Payment (Days or Date): 10/30/2020

Contract Times will be Increased/Decreased because of this Change Order No Change

Contract Times including this Change Order

Substantial Completion (Days or Date): 10/2/2020
 Ready For Final Payment (Days or Date): 10/30/2020

5. REQUIRED SIGNATURES - Not valid until signed by Owner. Signature of Contractor indicates agreement herewith, including any adjustments in the Contract Amount or Contract Times

ACCEPTED:

By: _____
OWNER (Authorized Signature)

Name: Timothy J. Mahoney
Title: Mayor
Date: _____

ACCEPTED:

By: _____
CONTRACTOR (Authorized Signature)

Name: James Gast
Title: President
Date: _____

RECOMMENDED:

By: Cassie McNames
ENGINEER (Authorized Signature)

Name: Cassie McNames
Title: Project Manager
Date: 7/22/2020

ACCEPTED:

Funding Agency (if applicable)

By: _____
FUNDING AGENCY (Authorized Signature)

Name: _____
Title: _____
Date: _____


GAST CONSTRUCTION

General Contractors

Fargo • Wahpeton

Cassie McNames, PE
KLJ
728 East Beaton Drive, Suite 101
West Fargo, ND 58078

July 21, 2020

Re: Jefferson GTC Remodel – PR GC3 (JP-150 Seal)

Cassie,

Below is a broken down price for substituting 175 lineal feet of the Delcrete Strip Seal expansion joint along the buildings with 1 ½" Preformed Neoprene Seal JP-150 Delastic Seal (1061). This pricing to reflect the GTC Underground Project (BP0041).

Also includes a deduct of 100 LF of Delcrete Strip Seal from the GTC Underground Project. Deduct will be credited to the GTC Underground (BP0041) Project.

This proposal also includes a deduct/add to deduct the expansion joints line item of \$39,040.00 from the GTC Remodel (F18006) project and the expansion joints line item of \$39,040.00 to the GTC Underground (BP0041) project.

Substituting Delcrete Strip Seal w/ JP-150

Deduct Labor – Delcrete Strip Seal	(\$2,000.00)
Deduct Material – 175 LF of Delcrete Strip Seal	(\$15,750.00)
Add Material – 175 LF of JP-150 Seal	\$6,412.10
Add Labor – JP-150 Seal	<u>\$1,200.00</u>
Total (reflecting GTC Underground BP0041 Project)	(\$10,137.90)

Deduct 100 LF of Delcrete Strip Seal

Deduct Material – 100 LF of Delcrete Strip Seal	(\$9,000.00)
Deduct Labor	<u>(\$1,140.00)</u>
Total (reflecting GTC Underground BP0041 Project)	(\$10,140.00)

Deduct/Add Expansion Joints

Deduct Lump Sum from GTC Remodel (F18006)	(\$39,040.00)
Add Lump Sum to GTC Underground (BP0041)	\$39,040.00

If you have any questions or concerns please call.

Thanks,

Jared Pedersen
Project Manager



728 East Beaton Drive, Suite 101
West Fargo, ND 58078-2650
701 232 5353
KLJENG.COM

March 24, 2020

Jared Pederson
Project Manager
Gast Construction Company, Inc.
3410 39th St S
Fargo, ND 58104

Re: GTC Proposal Request PR GC5

Dear Mr. Pederson:

KLJ is requesting a proposal for the following flooring modifications at the GTC. Your proposal is requested on or before the end of the day on March 25, 2020.

1. The existing flooring in the restrooms is called out as fritz tile. However, this is incorrect as it is epoxy painted concrete. Please provide a credit to the contract to omit approximately 500 square feet of flooring from the demolition. Surface prep for the new flooring will still be required. Refer to drawing PR GC5 attached. This work is associated with the GTC Remodel project (F18006).
2. The city is requesting a cost to prep and install approximately 90 square feet of poured quartz, PQ-1, in the stairwell leading to the underground parking garage. The flooring removal will be removed by the owner as part of the asbestos abatement scheduled for the building. Refer to drawing PR GC5 attached. This work is anticipated to be associated with the GTC Underground project (BP0041).

Please note this is not a change order nor direction to proceed with the work. If you have any questions, please contact me at 701-241-2317 or cassie.mcnames@kljeng.com.

Sincerely,

KLJ

A handwritten signature in cursive script that reads "Cassie McNames".

Cassie McNames, PE
Project Manager

Enclosure(s): Drawing PR GC5
Project #: 1804-00689, 1904-00486
cc: File

**GAST CONSTRUCTION**

General Contractors

Fargo • Wahpeton

Cassie McNames PE
KLJ
728 East Beaton Dr. Suite 101
West Fargo, ND 58078

March 25, 2020

Re: Jefferson GTC Remodel – PR GC5

Cassie,

Below is a broken down price for the flooring modifications at the GTC.

#1 – omit approximately 500 SF of flooring from the demolition and add for surface prep to strip epoxy paint off of concrete floor.

Deduct Labor for 500 SF of Fritz Tile	(\$250.00)
Total Deduct to GTC Remodel Project (F18006)	(\$250.00)

#2 – Add approximately 90 SF of poured quartz flooring, PQ-1, in the stairwell on all three landings.

Add material/labor for quartz flooring	\$630.00
Markup 15%	<u>\$95.00</u>
Total Add to GTC Underground Project (BP0041)	\$725.00

If you have any questions or concerns please call.

Signature for Approval: _____

Date: _____

Thanks,

Jared Pedersen
Project Manager



GAST CONSTRUCTION

General Contractors

Fargo • Wahpeton

Cassie McNames PE
KLJ
728 East Beaton Dr. Suite 101
West Fargo, ND 58078

July 15, 2020

Re: Jefferson GTC ~~Remodel~~ ^{Underground} – Wedge Above Concrete Haunch

Cassie,

Below is pricing to install a 3" rigid insulation wedge above the concrete haunch that is located in the trench on the south side of the parking garage. This price is based upon the 136 LF that we have opened up. I also included a price per LF option based on this amount below if we run into this problem elsewhere. **Pricing to reflect the GTC ~~Remodel, F18006 project.~~ Underground, BP0041, project.**

Material – Rigid Insulation & Adhesive	\$115.46
Labor – 2 workers x 2 hours	
4 total man hours x \$58/hr	\$232.00
Misc. Consumables	<u>\$20.00</u>
Subtotal	\$367.46
Markup 15%	<u>\$54.14</u>
Total	\$421.60

Price per LF = \$3.10 ← **Est. Quantity = 325 LF = \$1,007.50**

If you have any questions or concerns please call.

Signature for Approval: _____

Date: _____

Thanks,

Jared Pedersen
Project Manager

MEMORANDUM

(16)

TO: Fargo City Commission

FROM: Nicole Crutchfield, Director of Planning & Development *NC*
Aaron Nelson, Planning Coordinator *AN*

DATE: August 6, 2020

RE: Time extension to Consultant Contract for the Land Development Code Diagnostic

Staff is requesting approval of the attached amendment ("Amendment No. 1") to the contract for consulting services with Lisa Wise Consulting, Inc. (LWC) for the Land Development Code Diagnostic. The purpose of this amendment is to extend the contract termination date by one year, moving the termination date from September 1, 2020 to September 1, 2021. The project timeline has extended primarily due to delays brought about by the COVID-19 pandemic. Aside from extending the contract termination date, there are no changes to the original contract and no changes to the project budget.

Background

Last year, the City hired LWC to conduct a diagnostic study of the Fargo Land Development Code (LDC). The main objectives of this study were to identify and examine the strengths and weaknesses of the LDC, and to build consensus around a preferred set of action steps towards addressing identified issues. This process kicked-off in the fall of 2019 and has included conversations with the Planning Commission, small group discussions with City staff, as well as input from numerous stakeholder interviews, and a public open house. In conjunction with this input, LWC has conducted an in-depth review of the LDC and has drafted a Diagnostic Report, which details their findings from these efforts.

With the completion of the LDC Diagnostic Report, LWC will now guide the City through the final phase of this project, which will include identifying and assessing a range of potential options for making improvements to the City's development regulations. Within the next few months, the project team plans to host discussions with the Board of City Commissioners, the Planning Commission, and project stakeholders in order to identify a preferred course of action towards improvements to the Land Development Code.

Attached please find the proposed contract amendment along with the original contract with Lisa Wise Consulting, Inc., which was originally approved by the City Commission in August of 2019. Additionally, a copy of the LDC Diagnostic Report is attached for your reference.

Suggested Motion

"To approve the contract amendment ("Amendment No. 1") with Lisa Wise Consulting, Inc. for professional consulting services for the Land Development Code Diagnostic."

AMENDMENT NO. 1 TO PRIME AGREEMENT

This AMENDMENT NO.1 ("Amendment") is made effective on August __, 2020, by and between the City of Fargo, North Dakota and Lisa Wise Consulting, Inc., client and consultant respectively.

WHEREAS, the City of Fargo, North Dakota and Lisa Wise Consulting, Inc. agree to amend the prime agreement ("Agreement") for the Land Development Code Diagnostic.

The City of Fargo and Lisa Wise Consulting, Inc. agree as follows:

1. Except as amended herein, the Agreement (see Attachment 1) entered into on September 1, 2019 by and between City of Fargo (client) and Lisa Wise Consulting, Inc. (LWC) and each of its terms and conditions shall remain in full force and effect.
2. Any ambiguity or inconsistency between this Amendment and the Agreement shall be resolved in favor of the Amendment.
3. Pursuant to Section 2 of the Agreement, the Client and LWC agree to extend the contract termination date to September 1, 2021.

IN WITNESS WHEREOF, the parties hereby execute this Amendment upon the terms and conditions stated above.

Consultant: Lisa Wise Consulting, Inc. (LWC)

By: 

Name/Title: Henry Pontarelli, Vice President,
Secretary

Date Signed: August 5, 2020

City of Fargo,
a North Dakota municipal
corporation

Client: _____

By: _____

Name/Title: Timothy J. Mahoney, M.D., its
Mayor

Date Signed: _____

Attest: _____

Name/Title: Steven Sprague, City Auditor

Date Signed: _____

Please email a digital copy of the completed amendment to Henry Pontarelli at henry@lisawiseconsulting.com.

Attachment 1

AGREEMENT BETWEEN THE CITY OF FARGO, NORTH DAKOTA AND
LISA WISE CONSULTING, INC. FOR PROFESSIONAL CONSULTING SERVICES
FOR LAND DEVELOPMENT CODE DIAGNOSTIC

NAME OF CONSULTANT: Lisa Wise Consulting, Inc.

RESPONSIBLE PRINCIPAL OF CONSULTANT: Lisa Wise, President

CONSULTANT'S ADDRESS: Lisa Wise Consulting, Inc.
Attention: Lisa Wise
983 Osos Street
San Luis Obispo, CA 93401

CITY'S ADDRESS: City of Fargo, North Dakota
225 4th Street N
Fargo, ND 58102

And

City of Fargo
Attn: City Auditor
225 4th Street N
Fargo, ND 58102

COMMENCEMENT DATE: September 1, 2019

TERMINATION DATE: September 1, 2020, unless extended pursuant to
Section 2

CONSIDERATION: Not to exceed \$197,433

AGREEMENT BETWEEN THE CITY OF FARGO, ND AND LISA WISE CONSULTING, INC. FOR
PROFESSIONAL CONSULTING SERVICES FOR LAND DEVELOPMENT CODE DIAGNOSTIC

This Agreement is made by and between the City of Fargo, North Dakota (hereinafter called "CITY"), and
Lisa Wise Consulting, Inc. (hereinafter called "CONSULTANT").

RECITALS

- A. CITY desires to have certain services and/or goods provided as set forth in Exhibit A (the
"Scope of Work"), attached hereto and incorporated herein.
- B. CONSULTANT represents that it is qualified and able to perform the Scope of
Work.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Scope of Work. CONSULTANT shall perform the Scope of
Work described in Exhibit A in a manner satisfactory to CITY and consistent with that
level of care and skill ordinarily exercised by members of the profession currently
practicing in the same locality under similar conditions. CITY shall have the right to order,
in writing, changes in the Scope of Work. Any changes in the Scope of Work must be
made in writing and approved by both parties. Any changes to the budget must also be
made in writing and agreed to by both parties in writing.

Section 2. Time of Performance. CONSULTANT shall commence its services under this
Agreement upon the Commencement Date or upon a receipt of a written notice to
proceed from CITY. CONSULTANT shall complete the performance of services by the
Termination Date set forth above and/or in conformance with the project timeline
established by the CITY.

The CITY may extend the time of performance in writing for two (2) additional one-year
terms or such other term not to exceed two years from the date of termination pursuant to
the same terms and conditions of this Agreement.

Section 3. Compensation.

(a) Compensation

CITY agrees to compensate CONSULTANT for the services and/or goods provides
under this Agreement, and CONSULTANT agrees to accept in full satisfaction for
such services, a sum not to exceed the Consideration set forth above and more
particularly described in Exhibit B, attached hereto and incorporated herein.

(b) Expenses

The amount set forth in paragraph (a) shall include reimbursement for all actual and
necessary expenditures reasonably incurred in the performance of this Agreement
(including, but not limited to, all labor, materials, delivery, tax, assembly, installation,
and expenses as applicable). There shall be no claims for additional compensation
for reimbursable expenses.

(c) **Additional Services.**

CITY may from time to time require CONSULTANT to perform additional services not included in the Scope of Work. Such requests for additional services shall be made by CITY in writing and agreed upon by both parties in writing.

Section 4. Method of Payment. CITY shall pay CONSULTANT on a monthly basis based on invoices which include: period in which the work was completed, total budget available per task, percentage of task complete for that time period, and total amount due. Each invoice will be accompanied by a cover letter summarizing the work completed, and issues encountered within the invoicing period and well as work anticipated in the proceeding period.

Section 5. Independent Contractor. CONSULTANT is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as herein set forth. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 6. Assignment. This Agreement shall not be assigned in whole or in part, by CONSULTANT without the prior written approval of CITY. Any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s)

- (a) CONSULTANT's Responsible Principal set forth above shall be responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible Principal by CONSULTANT shall not be made without prior written consent of CITY.
- (b) CITY's Responsible Principal shall be Nicole Crutchfield or their designee, Aaron Nelson, set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 8. Personnel. CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 9. Interests of CONSULTANT. CONSULTANT affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT.

Section 10. Insurance

(a) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by CONSULTANT in performing the Scope of Work required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(4) A policy or policies of Professional Liability Insurance (errors and omissions) with minimum limits of One Million Dollars (\$1,000,000) per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to and be approved by CITY. Further, CONSULTANT agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(b) CONSULTANT shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) CONSULTANT agrees that it will keep the aforesaid insurance in full force and effect during the term of this Agreement.

(d) At all times during the term of this Agreement, CONSULTANT shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONSULTANT shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance shall contain an endorsement naming the CITY as an additional insured.

(e) The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(f) The insurance coverage amounts required under the Agreement do not limit CITY's right to recover against CONSULTANT and its insurance carriers.

Section 11. Indemnification. CONSULTANT agrees to indemnify, hold harmless and defend CITY, City Commission and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys' fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 12. Termination.

- (a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon ten calendar days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of such notice.
- (b) CONSULTANT may terminate this agreement upon 15 calendar days' written notice if, the City fails to pay any undisputed amount, fails to materially comply with obligations under this agreement or in the event the City experiences financial insolvency.
- (c) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid based on the percentage of work performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services required by this Agreement. CONSULTANT shall have no other claim against CITY by reason of such termination, including any claim for compensation.

Section 13. CITY's Responsibility. CITY shall provide CONSULTANT with all pertinent data, documents, and other requested information as is available for the proper performance of CONSULTANT's Scope of Work.

Section 14. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by CONSULTANT and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 15. Records and Inspections. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of 2 years. CITY shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

Section 16. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, each party shall be responsible for its own attorney fees, costs and disbursements.

Section 17. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONSULTANT.

Section 18. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

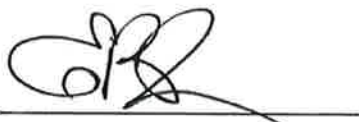
Section 19. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of North Dakota.

Section 20. CITY Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

Section 21. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

IN WITNESSETH HEREOF, the parties have hereunto set their hands and seals.

Approved as to Form:



City Attorney

City of Fargo,

A North Dakota municipal corporation

by: 

Timothy J. Mahoney (M.D., its Mayor

Attest:



Steven Sprague, City Auditor

CONSULTANT/CONTRACTOR:



Lisa Wise, AICP President

EXHIBIT A

SCOPE OF WORK

TASK 1: Project Initiation and Management

1.1 Data Needs

The LWC Team will prepare and present a list of data needs to City staff prior to the project initiation meeting, including, but not limited to, maps, GIS data, Comprehensive Plan, Area Plans, the Land Development Code, uncodified ordinances, a list of technical zoning issues or interpretations from staff, and representative projects for use in reviewing the application of specific standards.

1.2 Public Outreach Program

The LWC Team will work closely with City staff to finalize the details of the Public Outreach Program (comprised of the outreach activities outlined in this Scope of Work) targeted to the City of Fargo. The Public Outreach Program will outline all public meetings, work sessions, interviews, and other outreach efforts (such as educational and website materials); detail LWC and City roles and responsibilities for each outreach event; and provide preliminary schedule of events. The outreach activities identified in this Scope of Work (Tasks 2, 4, and 5) are based on our initial understanding of the project needs and objectives and may be modified as part of this Task to best suit the needs of the project. The Outreach Program will also include the agreed upon approach to noticing, including a combination of traditional (e.g. flyers, e-mail blasts) and modern (e.g. Facebook, twitter, Next Door) outreach techniques, so project information and meeting notices are distributed to a wide audience.

The LWC Team will work with City staff to refine a public process that enables residents, business owners and operators, property owners, City staff, Planning Commission and special interest groups to participate in the code evaluation and alternatives process and to assure that the collective community's perspective is evident in the preferred alternatives. The main objective of the outreach program is to ensure multiple and substantive opportunities for participation, and to nurture a strong sense of ownership from a wide range of the community as well as City staff and elected and appointed officials. The LWC Team's public outreach efforts are grounded in proactive and consistent messaging and regular, noticed meetings with community leaders and stakeholders aimed at transparency, and ensuring the people who live and work in the City are a partner in decisions regarding development regulations.

1.3 Project Initiation Meeting

The LWC Team will meet with City staff to discuss their aspirations and priorities for the project and the outreach process, finalize the schedule and work program, and clarify roles, responsibilities, and communication protocols. As part of the initiation meeting, the LWC Team will tour the City on foot and by car with staff to experience and understand the types and patterns of development that have occurred as a result of the current regulations.

1.4 City Staff Interviews

During the Project Initiation Meeting trip, the LWC Team will conduct personal interviews with City staff from Engineering, Planning and Development, Inspections, Public Works, and other departments to get an insider's view of issues and concerns on the effectiveness and usability of the LDC, administration and enforcement issues, priority amendments, and overall desires for the LDC Update. Staff interviews will help identify the highest priority issues and inform the LWC

Team's review and analysis in Task 3. Staff interviews are in addition to public and stakeholder interviews in Task 2.

The LWC Team's interview methods are grounded in ethnographic research and employ a brief survey of 4-5 basic, open-ended questions (What is your relationship to the LDC? What is working well? What is not working well? What do we need to do?) that enables the respondent to drive the interview in an informal and conversational manner. This method is most effective at identifying the highest priority issues as well as areas of consensus and potential dispute.

1.5 Website Materials

Throughout the project, the LWC Team will provide material for the City's website, such as text, photographs, maps calendars and other information that describes the project process, objectives, findings, milestones, and opportunities to participate. The City will maintain the webpage and the LWC Team will work closely to provide timely, attractive, and informative material in the appropriate format.

1.6 Project Management

The LWC Team will prepare a Project Management and Communications Plan, which will provide a clear and mutually agreed upon protocol for the LDC Analysis and ensure information flows consistently among the City, LWC, and the Team and avoids misinterpretations or redundancies. Through this task the LWC Team will also identify clear lines of authority and responsibility, and when to elevate issues up the chain of command. As project lead, LWC will be responsible for ensuring quality of deliverables, monitoring and reporting on progress, maintaining "laser" focus on City objectives, open and constant communication with the City, and compliance with timeline and project budget.

LWC will participate in regularly scheduled conference calls with the City project manager and key staff, with members of the Team as needed. The purpose of the calls is to discuss project progress and upcoming milestones, coordinate on meetings and outreach events, and serve as an early warning system to issues or problems that may impact project goals.

Task 1 Meetings

- *Project initiation meeting, staff interviews, city tour (Trip 1)*
- *Project check-in calls with staff, bi-weekly or as needed.*

Task 1 Deliverables

- *List of data needs*
- *Public Outreach Program*
- *Project Management and Communication Plan*
- *Website materials*

TASK 2: Listening, Understanding, and Education

2.1 Education Materials

The LWC Team will prepare educational materials to use during outreach and engagement events and post to the City's website. Educational Materials will include 'Land Development Code 101' memos addressing: what a Land Development Code is, how it relates to the City's Comprehensive Plan, limits of the Land Development Code (what the City can and cannot do), and descriptions and summaries of the different types of code approaches (performance-based, form-based, and use-based regulations).

2.2 Public and Stakeholder Interviews

The LWC Team will prepare for and participate in up to two days (targeting 20 interviews) of one-on-one or small group interviews with City Commissioners and officials, decision makers, code-users (property owners, business owners and operators, real estate professionals, architects, developers, etc.), the local chamber of commerce, and others with interest in or familiarity with the City's regulatory framework. City staff will be responsible for identifying and coordinating interviews with stakeholders. Issues identified by stakeholders will be classified and sorted to identify common themes and shared concerns and summarized in the Development Code Analysis Report (Task 4). Interviewees are much more likely to share personal perspectives in one-on-one and small group interviews than in larger gatherings, public settings or written surveys. The LWC Team interview methodology is grounded in ethnographic research protocols and described in Task 1.4 (Staff Interviews).

2.3 Listening to the Community Workshop

During the same trip as the stakeholder interviews, The LWC Team will conduct a public workshop to meet the community, introduce the project and the project team, develop a mutual understanding of the project, introduce the basics of land use and development controls, present the various approaches of development codes, and gather feedback on code-related issues. Following this brief presentation, the participants will break out into smaller, more intimate groups where they can pose direct questions and engage in discussion with individual LWC Team members and City Staff on specific concerns, and opportunities with development in Fargo.

2.4 Planning Commission Initiation Work Session

During the same trip as the stakeholder interviews and Workshop #1, the Team will attend a Planning Commission meeting to provide an overview of the project and gather feedback from the Commission on what is, and is not working, with existing development regulations.

Task 2 Meetings

- *Public and Stakeholder Interviews (Trip 2)*
- *Listening to the Community Workshop (Trip 2)*
- *Planning Commission Initiation Work Session (Trip 2)*

Task 2 Deliverables

- *Education Materials*
- *Meeting Materials*

TASK 3: Land Development Code Analysis

The LWC Team will conduct an in-depth and multi-faceted analysis of the City's development regulations, focusing on Chapter 20 (Land Development Code) of the Fargo Municipal Code. The Team will also review and assess development standards and other regulatory codes outside of Title 20, as they relate to the project. The LWC Team and the City will agree on the approach and method of analyses prior to beginning work. The analysis will include the following subtasks.

3.1 Comprehensive Plan and Policy Review

The LWC Team will review the Go2030 Comprehensive Plan and Downtown InFocus catalysts, opportunity sites, key initiatives, future land use map, policies, and implementation tasks as well as other relevant plans and policy documents (such as the 2015 Housing Study) and analyze the effectiveness of existing regulations and regulatory structure to implement the Comprehensive Plan, accommodate growth targets, and meet other City planning objectives. As part of this, the LWC Team will prepare a summary matrix of Comprehensive Plan goals and action items as related to the LDC and perform a consistency assessment of adopted policy and regulation. Where inconsistencies occur, the LWC Team will identify how they could be resolved.

3.2 Legal Consistency Review

The LWC Team will perform a legal consistency review to identify and summarize inconsistencies between the existing LDC and State and federal law, including the 2015 federal Supreme Court case, *Reed v. Town of Gilbert*, which abolished content-based restrictions on signage. The LWC Team will coordinate this work with the City Attorney, as appropriate.

3.3 Best Practice Review

The LWC Team will conduct a technical review of the City's existing LDC and analyze how well the development codes align with industry best practices, and align with City and community expectations for growth, flexibility, and predictability.

3.4 Development Process Review

As part of the technical review, the LWC Team will analyze the permit and approval process as written, and as applied, to identify any issues with Code administration and entitlement.

3.5 User Friendliness Review

The LWC Team will analyze how effectively the current LDC meets the City planning objectives for a user friendly, easy to use Code. The analysis will focus on the LDC's structure, organization, use of cross references, general simplicity, intelligibility, and overall usability.

3.6 Economic and Fiscal Review

The LWC Team will evaluate commercial, industrial, and residential growth trends and development patterns in Fargo to understand how existing regulations affect the City budget, local economy and how closely they align with community goals. The Team will also work with the City to evaluate the fee schedule and discuss fee with representatives from the local development community.

Task 3 Deliverables

- *Findings from Task 3 analysis will be incorporated into Task 4 and inform the development of alternatives and the preferred alternative.*

TASK 4: Land Development Code Analysis Report

4.1 Administrative Draft Land Development Codes Analysis Report

Based on findings from initial outreach efforts (Planning Commission work session, stakeholder and City Staff interviews, Listening Workshop, etc.) and technical review and evaluation, The LWC Team will prepare a Land Development Code Analysis Report presenting the strengths and weaknesses of the existing Development Codes. The objective of the report is to provide the City and stakeholders an understanding of the strengths and weaknesses of current development codes and processes, as they relate to the assessment elements in Task 3. The report will include a summary of:

- Consistencies or inconsistencies between the current LDC and City policy
- Consistencies or inconsistencies between the current LDC and state and federal law
- Fargo LDC alignment with national best practices and community expectations
- Issues and opportunities related to the City's Development review process
- Assessment of "User-friendliness" (clarity and consistency of cross references, terms, definitions, and use of graphics over lengthy narrative)
- Findings from the fiscal and economic assessment
- Summary of comments and input from stakeholder and City staff interviews, workshop, Planning Commission work session and other public input with issues classified and sorted to identify common themes and shared concerns

4.2 Revised Land Development Codes Analysis Report

The LWC Team will participate in a conference call to discuss the Administrative Draft Report and review questions or comments. The LWC Team will prepare a revised report based on staff comments.

4.3 Analysis Report Joint Planning Commission and City Commission Work Session

The LWC Team will prepare for and conduct a joint work session with the Planning Commission and City Commission to present the findings of the technical review and analysis. The workshop will focus on major issues of the current regulations, Comprehensive Plan direction for new/modified regulations, and key issues to be addressed. The Team will solicit feedback on priorities and considerations which will inform the alternative approaches in Task 5.

Task 4 Meetings

- *Analysis Report Joint Commission Work Session (Trip 3)*

Task 4 Deliverables

- *Land Development Code Analysis Report*
- *Meeting materials*

Task 5: Alternatives and Code Work Plan

5.1 Alternatives City Staff Meeting

The LWC Team will participate in a conference call with City staff to discuss options and alternative approaches to address identified issues. The purpose of the meeting is to check in after the Joint Work Session on the Analysis Report (Task 4.3), discuss the range of potential alternatives, and prioritize and confirm community priorities for recommended actions.

5.2 Land Development Code Alternatives and Recommendation Memo

In consideration of input from City staff, elected officials and civic leaders, business owners and operators, landowners, special interest groups, and the community, the LWC Team will prepare a memo summarizing up to three primary alternative approaches to addressing issues identified within the Development Code Analysis Report. Each alternative will include a discussion of:

- How the alternative addresses the issues identified in the Analysis Report,
- An overview of the pros and cons to the given alternative, and
- A comparison to other alternatives in terms of estimated cost, timeline to completion, and City vs. Consultant resources needed for implementation.

Alternatives may vary by techniques used (e.g. use-based, form-based, or hybrid approach) as well as degree of change (e.g. focused amendments vs. comprehensive update), or a combination of the two (e.g. form-based regulations Downtown and surrounding neighborhoods, and minimal modifications to traditional residential districts on the periphery of the City).

The LWC Team will develop a clear rationale supporting one recommended alternative from the range of potential alternatives, and present to the Planning Commission and City Commission for consideration and input (see Task 5.3). The aim of the memo is to demonstrate why the recommended alternative best aligns with city goals for long-term development while addressing deficiencies identified in Tasks 3 and 4.

The LWC Team will discuss the preliminary alternatives and recommendations with City staff and make necessary revisions prior to presenting at a joint Planning Commission and City Commission work session.

5.3 Alternatives Joint Planning Commission and City Commission Work Session

The LWC Team will present the Land Development Code Alternatives and Recommendation Memo at a joint work session with the Planning Commission and City Commission and solicit input from the commissions on priorities and the preferred alternative.

5.4 Preferred Alternative and Work Plan

The LWC Team will prepare a detailed work plan for the preferred alternative. The Work Plan will reflect the preferred alternative based on input received at the Joint Work Session in Task 5.3, and prioritize the involvement of City staff and the community to generate a sense of ownership and commitment to the updated LDC. The preferred alternative Work Plan will be based on input from City staff, Planning Commission, City Commission, and stakeholders throughout the process, include a priority list of amendments and demonstrate how the preferred framework and proposed amendments and work plan result in an improved Land Development Code completed to the satisfaction of the City.

5.5 Land Development Code Update Preferred Alternative and Work Plan Work Session

The LWC Team will prepare for and conduct one work session to present the preferred alternative and introduce next steps for implementing the preferred alternative. Alternatively, at the City's request, the LWC Team will attend two separate meetings, one with the Planning Commission and one with the City Commission.

Task 5 Meetings

- *Alternatives City Staff Meeting*
- *Alternatives Joint Work Session (Trip 4)*
- *Preferred Alternative and Work Plan Work Session (Trip 5)*

Task 5 Deliverables

- *Land Development Code Alternatives and Recommendations Memo*
- *Land Development Code Update Preferred Alternative and Work Plan*
- *Meeting Materials*

EXHIBIT B
SCHEDULE OF PAYMENT

CITY shall compensate CONSULTANT for the performance of the work described in this Agreement in an amount not to exceed of One Hundred Ninety-Seven Thousand, Four Hundred and Thirty-Three Dollars (\$197,433.00).

Additional services outside the scope of Exhibit A shall be compensated as mutually agreed upon in writing prior to performing such services.

CONSULTANT shall submit to CITY a detailed invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services by task rendered during the billing period, the amount due, and the approximate percentage complete. Within 30 days of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall pay CONSULTANT said Consideration in accordance with the schedule of payment set forth in this Exhibit.

Rate Schedule:

Staff	Rate
LISA WISE CONSULTING, INC.	
Principal	\$275
Director	\$205
Senior Associate	\$180
Associate	\$145
SRF CONSULTING	
Senior Associate	\$162
Associate	\$148
Administrative Associate	\$80

Detailed Budget:**Fargo Land
Development
Code Diagnostic**

		Project Initiation and Management	Listening, Understanding, and Education	Land Development Code Analysis	Land Development Code Analysis Report	Alternatives and Code Update Work Plan	Project Total
Lisa Wise Consulting, Inc.							
Principal	Hours	8	6	13	6	13	46
	Fee	\$2,200	\$1,650	\$3,575	\$1,650	\$3,575	\$12,650
Director	Hours	32	22	13	16	18	101
	Fee	\$6,560	\$4,510	\$2,665	\$3,280	\$3,690	\$20,705
Senior Associate	Hours	80	36	46	30	60	252
	Fee	\$14,400	\$6,480	\$8,280	\$5,400	\$10,800	\$45,360
Associate	Hours	62	54	60	60	62	298
	Fee	\$8,990	\$7,830	\$8,700	\$8,700	\$8,990	\$43,210
Expenses		\$1,960	\$4,280	\$0	\$1,960	\$3,920	\$12,120
SRF Consulting							
Senior Associate	Hours	31	31	56	37	57	212
	Fee	\$5,030	\$5,030	\$9,087	\$6,004	\$9,249	\$34,399
Associate	Hours	8	12	28	6	8	62
	Fee	\$1,181	\$1,771	\$4,132	\$885	\$1,181	\$9,150
Admin Assistant	Hours	1	2	0	0	3	6
	Fee	\$80	\$160	\$0	\$0	\$241	\$481
Expenses		\$678	\$930	\$0	\$500	\$1,500	\$3,608
Legal Assessment							
Staff	Hours	8	0	32	5	0	45
	Fee	\$2,800	\$0	\$11,200	\$1,750	\$0	\$15,750
TOTAL	Hours	230	163	248	160	221	1,022
	Fee	\$43,879	\$32,641	\$47,639	\$30,129	\$43,145	\$197,433



City of Fargo Land Development Code Diagnostic Report

Public Review Draft

June 05, 2020



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***Lisa Wise Consulting Inc.
983 Osos Street
San Luis Obispo, CA 93401***



***SRF Consulting
2370 Vermont Avenue
Bismarck, ND 58504***

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Executive Summary

The objectives of the Land Development Code Diagnostic Report are to analyze the Land Development Code (LDC) based on its effectiveness as tool to achieve the land use and development goals expressed in Fargo's Comprehensive Plan, *Go2030*, whether it provides a user-friendly set of regulations that provide clear direction about the City's expectations, a predictable development review process, legal consistency with relevant State and Federal laws, how it could impact City finances, and to assess its ability to facilitate the development of quality projects that advance City goals while offering best practices as models.

This Report has two purposes. First, it analyzes existing challenges and shortfalls with Chapter 20 (Land Development Code) of the City of Fargo Code of Ordinances (Municipal Code), considering zoning districts, development regulations, organization, form, and style. Second, it helps prepare the City to evaluate alternatives, develop appropriate recommendations, and establish clear priorities for future LDC revisions or amendments.

The Report identifies several issues with the existing LDC that need to be addressed. The issues range from the Code having certain identified conflicts and ambiguities including a lack of available up-to-date information; an unpredictable discretionary application process; inclusion of subjective standards; and, not being coordinated with the City's *Go2030* Comprehensive Plan Vision for future development. As part of the overall analysis, LWC was tasked with providing an analysis of the economic and fiscal implications of the existing Code. The diagnostic review found that the current Code inhibits the development of economically productive spaces within Fargo. Further, the LDC does not take advantage of the opportunity to produce dense urban spaces that are more efficient in terms of their use of infrastructure or the delivery of public services. Additionally, the lack of suitable land use designations that support mixed-use or denser projects can be seen as discouraging the private investment that would be required to meet the goals of the *Go2030* Comprehensive Plan.

Key takeaways to expand upon include:

- Absence of built-form standards
- Parking and building location (Creating a pedestrian friendly streetscape)
- Parking regulations
- Infill development
- Paving standards in industrial areas
- Creation of new parks, public spaces, and open spaces
- Mixed-use and affordable housing development
- Landscaping standards

- Subdivision regulations
- Lack of graphics and diagrams
- Zoning Map discrepancies
- Planned Unit Development and Conditional Overlay approval processes
- Residential Protection Standards
- Discretionary review process
- Availability of information (Zoning Map, Site Plan Application etc.)
- Subdivision Parkland Dedication
- Sign Code
- Economic and fiscal implications of LDC policies.

As the next step, LWC and City staff will work together to create a list of alternative actions to address the issues identified within the LDC. In coordination with the City planning staff, Planning Commission, Board of City Commissioners, residents, and stakeholders, LWC will create preferred alternatives for how the LDC may be updated, as well as a work plan for implementation.

Section 1 Introduction

Subsections:

- 1.1 Summary of the Project
- 1.2 What are Land Development Codes
- 1.3 Why Analyze the Land Development Code
- 1.4 Overview of this Report
- 1.5 Next Steps

1.1 Summary of the Project

The City of Fargo (City) hired Lisa Wise Consulting, Inc. (LWC) to evaluate the City's Land Development Code (LDC) and related ordinances, document any deficiencies or opportunities for improvement, and develop a preferred alternative to remedying any noted deficiencies. The Land Development Code Diagnostic Report is the first step in this project.

This Report has two purposes. First, it analyzes existing challenges and shortfalls with [Chapter 20 \(Land Development Code\)](#) of the City of Fargo Code of Ordinances ([Municipal Code](#)), considering zoning districts, development regulations, organization, form, and style. Second, it helps prepare the City to evaluate alternatives, develop appropriate recommendations, and set clear priorities for future LDC revisions or amendments. The topics covered in this report were borne out of conversations with City officials, City staff, stakeholders, residents, and industry best practices based on LWC's experience writing Code Diagnosis reports for cities and towns throughout the country.

1.2 What are Land Development Codes?

While *Go2030* establishes a wide-ranging and long-term vision for the City, the LDC specifies how each individual property can be used to achieve those objectives. Land development codes are the body of rules and regulations that control what is built on the ground, as well as what uses can occupy buildings and sites.

The use regulations and development standards established in land development codes provide adjacent and nearby property owners with assurance of which land uses are permitted and the scale to which they may be developed. Developers benefit from knowing exactly what they can build. City staff benefit too since the need for case-by-case discretionary review of development applications is reduced.

1.2.1 What Land Development Codes Can Do.

Land development codes implement the community goals expressed in a Comprehensive Plan and other long-term policy documents. Land development codes include the following:

- **Development and Design Standards.** Land development codes reflect the desired physical character of the community by providing development standards that control the height and bulk of buildings, building placement on a lot, and landscaping and open space requirements. Land development codes can also provide design, streetscape, building frontage, and building form standards.
- **Use Regulations.** Land development codes specify which uses are permitted, prohibited, or require specified standards or limitations. In this way, land development codes determine the appropriate mix of compatible uses.
- **Performance Standards.** Land development codes often include standards that control the “performance” of uses to ensure land use compatibility between new and existing neighborhoods or uses. Performance standards typically address items such as noise, glare, vibration, and stormwater runoff.
- **Review Procedures.** Land development codes identify the level of review required for project approval, including the required number of hearings with the Planning Commission and/or City Commission.
- **Subdivision Regulations.** Subdivision and public improvement standards can also be included in Land Development Codes to capture all forms of development in one place within the Municipal Code.

1.2.2 What Land Development Codes Cannot Do.

There are things that land development codes typically cannot do. However, issues not addressed in a land development code are usually addressed by other planning tools, such as master plans and design guidelines. The land development code will not do the following:

- **Dictate Architectural Style.** Although land development codes can improve the overall physical character of the community, they typically focus on objective, quantifiable criteria when it comes to design. The architectural style of individual projects is usually addressed in master plans, neighborhood plans, historic guidelines, and design guidelines adopted separate from the land development code.
- **Dictate Market Demand.** Land development codes cannot create a market for new development. For example, they cannot determine the exact mix of tenants or number of units in a private development or require a grocery store to be built on a vacant lot. They can, however, create opportunities in the real estate market by removing barriers such as onerous review processes and offering incentives for desirable uses.

- **Establish Land Use Policy.** Land development codes are a tool for implementing land use policy, not setting it. As such, land development codes are not the appropriate means for planning analysis. Land development codes are informed by the policy direction in the *Go2030* and other relevant plans and policies.

1.3 Why Analyze the Land Development Code

Before beginning any updates or revisions to the LDC, it is important to first document its issues or deficiencies. This allows the City to understand the extent of the potential modifications to existing regulations, and to develop an approach in response that is most effective and efficient. The Land Development Code, Chapter 20 of the Municipal Code, was last comprehensively updated 20 years ago. While it has been amended numerous times, including significant revisions in 1999, the LDC does not reflect best practices in the field of planning and development regulation. A thorough assessment will highlight opportunities for the City to improve the LDC, keep up with national trends and best practices, and more effectively implement *Go2030*.

Furthermore, the LDC may not completely align with current City goals or priorities. *Go2030* provides a vision for the future, establishes a framework for how the City should grow and change over the next decade, and addresses all aspects of City growth and development including economic development, housing, education, environmental sustainability, and transportation, among other topics. *Go2030* emphasizes:

- High quality, mixed-use and infill development in the downtown area;
- The preservation and enhancement of residential neighborhoods;
- The creation of open space and resource protection;
- A vibrant local economy; and
- A community with a variety of housing options.

This Report observes and identifies areas of the LDC which are inconsistent with or ineffective in achieving the vision articulated in *Go2030*.

1.4 Overview of this Report

This Report documents the LDC's ability to achieve the type of development the City desires with the effective implementation of *Go2030* policies (see Section 2). Additionally, the report summarizes the principal findings and conclusions of an assessment of existing regulatory tools across a variety of topics based on best practices and discussions with code users and City staff (see Sections 3 through 6). Some topics, such as infill development, are addressed in more than one section.

The findings in this Report cover the following topics:

- Implementing the *Go2030* Comprehensive Plan;
- Land Development Code Overview and Analysis;
- Administration and Procedures;
- Legal Compliance; and
- Economic and Fiscal Implications.

1.5 Next Steps

The conclusions and recommendations included in this Report will be presented at a virtual work session of the Planning Commission to which members of the City Commission will be invited. The work session will focus on the major issues identified with the current regulations, review *Go2030's* direction for new/modified regulations, and any other key issues that need to be addressed. After the work session and a call with City staff to discuss alternative approaches to the identified issues, the LWC team will prepare a memo summarizing up to three primary alternative approaches to addressing issues identified within the LDC Diagnosis Report. This memo will eventually lead to another work session with the Planning Commission and City Commission to develop a preferred alternative and work plan.

Section 2 Implementing the Comprehensive Plan

Subsections:

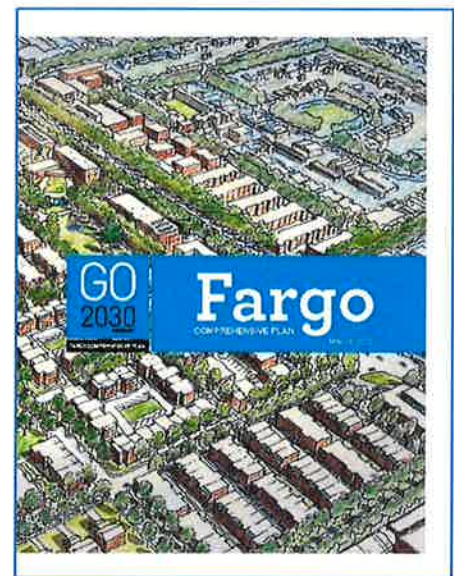
- 2.1 Comprehensive Plan Overview
- 2.2 Other Policies Overview
- 2.3 Effectiveness in Policy Implementation

2.1 Comprehensive Plan Overview

2.1.1 Comprehensive Plan Policy Objectives

Go2030 is Fargo's current Comprehensive Plan that was adopted in 2012. It covers a wide range of elements that guide how the City should grow and change through the year 2030. These elements are called "guiding principles" and build on the Plan's vision. The guiding principles listed below demonstrate the comprehensive nature of the Plan:

- Water and Environment
- Energy
- Arts and Culture
- Health
- Transportation
- Economy
- Neighborhoods, Infill, and New Development
- Education
- Safety.



Go2030 Comprehensive Plan

Each guiding principle is described in a chapter of the Plan and includes multiple initiatives with recommendations on how to implement each initiative.

Go2030 does not include a stand-alone guiding principle or chapter focused solely on land use policy. Rather, *Go2030* integrates land use policy throughout all the guiding principles, where applicable. The guiding principle that provides the most direction to the City's land use policy is Neighborhoods, Infill, and New Development. Example initiatives that follow from this guiding principle and most impact land use policy include the following:

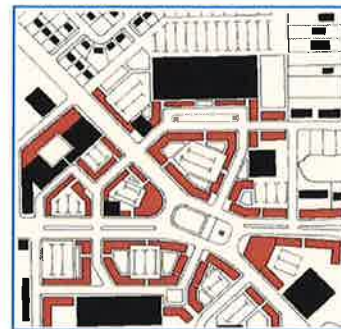
- **Promote Infill** - Develop policies to promote infill and density within areas that are already developed and are protected by a flood resiliency strategy. Control sprawl and focus on areas outside of the floodplain.

- **Design Standards** - Develop a Commercial Design Zone District and continue to follow the [Design Guidelines for Growth Areas of the City of Fargo](#) (2007) for infill and new residential development. Improve quality of new housing by fostering strong relationships with the development and building community to promote dense, walkable communities with neighborhood centers.
- **Quality New Development** - Support homebuilders and developers that construct high quality, energy efficient buildings, and require new development to meet site design standards that result in well-designed new neighborhoods.

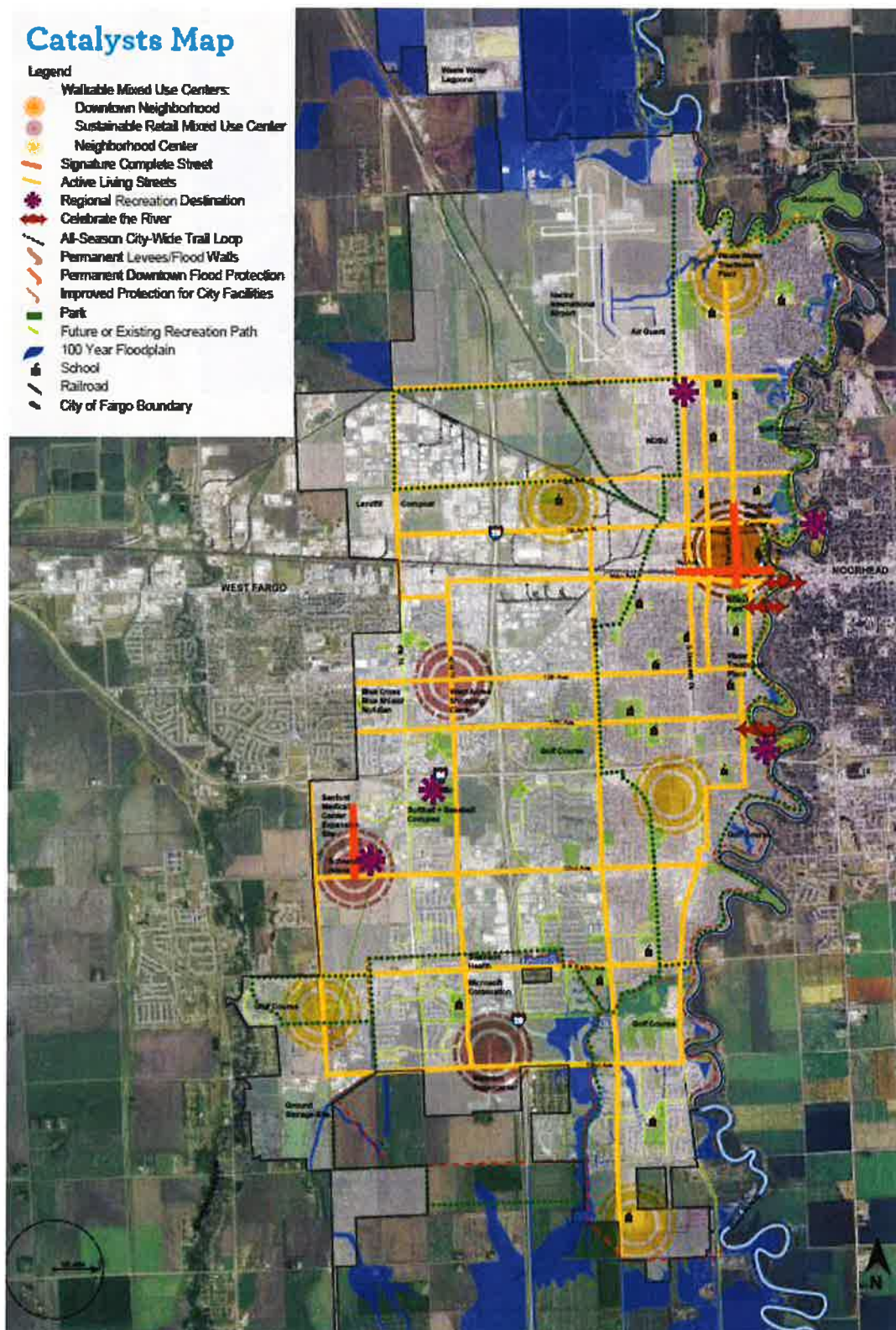
Land use policy in the Plan is also envisioned through many of the “catalysts.” The catalysts are ideas that “...have the biggest potential to impact Fargo as it continues to grow and develop.” (pg.33). The catalysts are visually established in the Catalysts Map below, showing the areas of the City where these catalysts should be applied. Some of the catalysts that most impact land use policy includes walkable mixed-use centers, signature streets, and active living streets. “Walkability” is a key term used throughout *Go2030* as a strategy create a vibrant pedestrian realm and its associated positive effects of increased retail sales due to patrons spending more time in commercial areas, lessening automobile traffic, increasing overall public health. A walkable area has wide-ranging effects on its population and the land use goals in *Go2030* are centered on this as a driving force in new development. *Go2030* also indicates which catalysts are tied to the initiatives. For example, the Design Standard initiative of the Neighborhoods, Infill, and New Development guiding principle can be applied through the mixed-use centers



Automobile-Oriented Development



Walkable, Mixed-Use Development



Catalysts Map (Go2030 Comprehensive Plan, Page 33)

2.2 Other Policies Overview

In addition to the *Go2030 Comprehensive Plan*, there are several other policies and plans which define the long-term vision for Fargo. These include:

Downtown InFocus

Downtown InFocus is an implementation-focused plan for the revitalization of Downtown Fargo. The plan lays out seven specific goals with multiple strategies to accomplish each goal. Specifically, the City wants Downtown to become an active neighborhood beyond the normal weekday business hours and a cultural destination in the region, particularly for the arts. To turn Downtown into a true neighborhood, the Plan focuses on housing and transportation, all through the lens of an inclusive development process that limits displacement and gentrification. In addition, creating a vibrant sense of place is key to the long-term success of Downtown which can be achieved through investments in streetscape improvements, new parks/public spaces, and high-quality development that accentuates the pedestrian experience by creating attractive storefronts, ground-floors, and building façades.

The Plan also highlights the need for middle-income housing due to the dominating presence of both affordable housing and expensive housing. Various plans and studies from years prior were utilized to inform the overall strategies including the *Go2030 Comprehensive Plan*, 2015's *Riverfront Design Study*, 2015's *Fargo Housing Study*, 2016's *Bicycle and Pedestrian Plan*, among others. Overall, the Plan serves as a guidebook for the community's vision of a future Downtown and how to make that vision a reality.

Fargo/West Fargo Parking & Access Plan

The *Fargo/West Fargo Parking & Access Plan* assesses existing conditions in terms of development patterns, roadway classifications, zoning procedures, parking utilization, and incorporating stakeholder feedback. The Plan establishes seven different street types that take a holistic view of the factors that must be incorporated into a street such as land use, pedestrian crossings, and speed limits. The goal in creating these street typologies is to align the street design with the surrounding land uses. The study lays out a number of achievable goals as next steps for both cities which include a more in-depth look at parking minimums and maximums along with the associated land uses, promoting alternative modes of transportation by requiring more pedestrian amenities, Transportation Demand Management plans for new developments, exploring a fee in-lieu of parking programing, and shared parking provisions for new developments. The Plan creates a path for establishing development typologies based on land use (e.g. commercial, mixed-use, or residential) that have best practices associated with connectivity, parking ratios, building orientation, and traffic flow.

Public Art Master Plan

The City of Fargo's Arts and Culture Commission completed a *Public Art Master Plan* that provides action items for the City and its residents to foster its growing arts scene. The Plan enables the *Go2030* goal of more art and culture in the City and to use art to transform public spaces as well as increase public gathering and community interaction. The Arts and Culture Commission identifies public art not only as a cultural benefit but also an economic benefit for the City's ability to attract and retain professionals, students, and creative talent.

Fargo-Moorhead Metropolitan Council of Government's Bicycle and Pedestrian Plan

In 2016, the City of Fargo participated in the creation of a Plan to develop action items which will foster an increase in bicycle and pedestrian activity throughout the City. The Plan is a vital element in the overall land use and transportation planning process for the City and will ensure that transportation-related bicycle and pedestrian needs are considered eligible for future federal funding. The Bicycle and Pedestrian Plan is intended to enhance the bicycling and pedestrian experience in the metropolitan area and improve the health, safety, and quality of life for all citizens.

Roosevelt/NDSU Neighborhood Plan

The City of Fargo's Planning Commission and Community Development Committee together with the citizens of the Roosevelt Neighborhood and NDSU completed the Roosevelt/NDSU Neighborhood Plan in 2004. The purpose of the Plan was to bring residents of the area together to discuss shared concerns and develop shared goals for the neighborhood. Primary goals developed in the Plan include stabilizing the neighborhood housing stock, making the neighborhood a safe place to live, and preserving the neighborhood's rich history and overall quality of life. In addition, the City is currently in the process of creating a new plan that will encompass the City's Core Neighborhoods, including the Roosevelt Neighborhood.

City's Analysis of Impediments to Fair Housing Choice

In 2010, the City prepared this document to fulfill a HUD requirement to certify compliance with the Consolidated Plan Final Rule. It serves several purposes: as a housing and community development document; a strategy to help carry out HUD programs; an action plan providing the basis for assessing performance; and as an

application for a variety of HUD grant programs. The Analysis of Impediments document is used by HUD to establish the measure of fair housing for CDBG grantees such as the City of Fargo.

2.3 Effectiveness in Policy Implementation

2.3.1 - Initiatives: Promote Infill

Overview

Go2030 identifies the following initiatives related to infill.

1. Promote Infill. Develop policies to promote infill and density within areas that are already developed and are protected by a flood resiliency strategy. Control sprawl and focus on areas outside of the floodplain.
2. Promote Connections and Infill within Strip Commercial Developments. Direct future development around strip commercial areas to increase the amount of retail space, density, and promote walkability to increase the competitiveness of these shopping destinations.

Related Initiatives

In addition to Go2030, the City's *Analysis of Impediments to Fair Housing Choice* (2010) includes an initiative focused on infill:

- Review zoning to determine the effect on housing affordability and new neighborhood development.
 - Examine zoning requirements for the redevelopment of "non-conforming" infill residential land.

The *Fargo-Moorhead Metropolitan Council of Government's Bicycle and Pedestrian Plan* (2016) also includes initiatives focused on infill:

- **Improve bikeability/walkability within the region.**
 - Promote infill, increase density, and enhance urban design in order to encourage livability and more bicycle and pedestrian use.
- **Urban Design/Planning.**
 - Local jurisdictions should revisit current planning standards to allow and encourage more density, mixed-use developments, infill, and complete streets to encourage livability and encourage more bicycle and pedestrian use.

Analysis/Findings

Recognition and direction on how infill lots can be developed helps to promote infill. The term “infill” is only used once in the LDC where it is not used as a descriptor of any type of development but rather in the description of a type of design standard.

In addition to not addressing infill directly, the Code includes a limited set of zoning-related tools to promote infill in developed portions of the City. Two zoning districts, Downtown Mixed Use (DMU) and University Mixed Use (UMU), provide considerable flexibility that has proven to promote and facilitate development on older City lots in Downtown and south of North Dakota State University (NDSU). Outside of both the DMU and UMU districts, residential, commercial, and industrial district regulations provide little if any flexibility to develop older lots. With the lack of flexibility, developers are forced to request zoning changes, density modifications, and variances to setbacks, lot coverage, and parking. Many developers have relied upon negotiated zoning (Planned Unit Development and Conditional Overlay Zoning) to secure needed flexibility, density, and protections often necessary to develop on older lots. For more detail, see Section 3.4.3 (Land Use & Housing Development).

The LDC’s subdivision regulations can also create impediments to the infill process. Unwritten Engineering Department standards not listed in the Code (or provided with a link/reference to another document), such as utility placement requirements ([Section 20-0608.A](#)), can also pose challenges to the development of infill lots that may be smaller or shaped differently than conventional suburban lots. Infill development that proposes to create lot sizes and associated rights-of-way similar to historic development in the City core may not be feasible using existing subdivision standards. For example, traditional residential development with alley access poses challenges with current right-of-way standards and easements requirements. For more detail, see Section 3.4.4 (Subdivisions).

As envisioned in *Go2030*, infill is also an opportunity within suburban strip commercial development. Commercial retail parking requirements are high, especially for big box retail and shopping centers. These uses are grouped under “All other Retail Sales & Service uses not specifically listed” in [Section 20-0701.B.1](#), requiring one space per 250 square feet. A reduction in parking requirements for retail commercial uses such as big box retail and shopping centers could open parking lots within strip commercial areas of the City to infill opportunities.

2.3.2 - Initiatives: Design Standards and Quality New Development

Overview

The *Go2030* Comprehensive Plan highlights the desire for design standards for new development as well as standards that produce high quality new development. The intent of new standards would be to improve the quality of housing and also create well-designed, higher intensity, and walkable communities with neighborhood centers.

Analysis/Findings

The majority of the LDC's base zoning districts do not include design standards intended to control building form (i.e. the standards pertaining to the building envelope, including features such as materials, transparency, and overall building articulation), which leads to unpredictable built results throughout most of the City. The two districts that do include building form standards are the Downtown Mixed-Use (DMU) and University Mixed Use (UMU). See also 3.4.2 (Development Standards) for more details. In addition, the use of Planned Unit Developments (PUD) and Conditional Overlays (CO) also add a layer of unpredictability to development in the City. PUDs and COs have an equal number of examples that either show developers requesting changes to certain LDC provisions or adding provisions to support their development, such as design standards. For example, PUD's can be used by a developer to make sure that all aspects of approval are to benefit them or to add additional design provisions that are not reflected in the LDC.

Similarly, COs are utilized to add certain protections to mitigate impacts on surrounding properties, such as design provisions or Residential Protection Standards. See also Section 3.4.1 (Zoning Districts) and Section 4.1 (Legal Compliance) for more information.

Furthermore, when Conditional Use Permits (CUPs) are approved with conditions recommended by staff and approved as part of a CUP the conditions often include standards intended to control site design and/or building form. While there are no City-wide or neighborhood-specific design standards, CUPs tend to be used as a tool to implement design standards. Since CUPs are approved on a case-by-case basis, design standards included as conditions tend to be subjective and vary from one development to another. Given the lack of codified design standards, CUPs are a convenient way to bridge the gap where the existing Code's standards do not meet the needs of a project.

2.3.3 – Initiative: Historical Preservation

Overview

Go2030 identifies one initiative related to historic preservation.

- Historical Preservation. Strengthen historical preservation incentives.

Related Initiatives

In addition to Go2030, the City's Roosevelt-NDSU Neighborhood Plan (2004) includes a goal related to historic preservation:

- Goal 3 – Quality of Life: Preserve the neighborhood's rich history and general quality of life.

Analysis/Findings

The LDC supports a well-established historic preservation program. The Code establishes the Historic Preservation Commission (Section 20-0804) to oversee the program for the preservation, protection, and regulation of historic properties and to serve other functions related to historic preservation. Historic Overlay Districts are also in place as a zoning tool (Section 20-0305) requiring additional effort in conserving historic structures and the historic character of designated areas.

Multiple financial incentives are available and promoted by the City for historic preservation incentives. These include: Federal Historic Tax Credits (20 percent credit), Fargo Renaissance Zone (property and state income tax exemptions), and Residential Remodeling program (tax exemption). Another incentive not specifically tied to the structure's historic qualities but that is available for existing housing stock is the Neighborhood Revitalization Initiative which provides low-interest loans. The LDC itself does not provide financial or non-financial incentives. For more details, refer to Section 5 (Economics and Fiscal Implications).

2.3.4 – Initiative: Housing

Overview

Go2030 identifies two initiatives related to housing.

- High Quality Affordable Housing Near NDSU. To develop higher quality affordable housing near the North Dakota State University campus.

- *Housing for Workforce and Low-Income Residents*. To pursue strategies to increase access to housing for workforce and low-income residents.

Related Initiatives

In addition to *Go2030*, the City has other policies regarding housing, including the following from the City's *Analysis of Impediments to Fair Housing Choice* (2010):

- Study how regulations, such as zoning regulations, may cause impediments to fair housing.
- Review zoning to determine the effect on housing affordability and new neighborhood development.
 - Examine zoning requirements for the redevelopment of "non-conforming" infill residential land.
 - Make allowances in the City Code for mixed density/mixed income residential developments.
 - Actively promote creative use of the LDC to facilitate affordable and diverse housing development,

The *Roosevelt-NDSU Neighborhood Plan* (2004) includes policies regarding housing particularly for the neighborhood area:

- Promote improved landlord and tenant behaviors.
- Facilitate the maintenance and rehabilitation of existing housing units.
- Address parking concerns associated with neighborhood housing.
- Develop planning policies that encourage a balanced mix of quality housing.

The *Downtown InFocus Plan* (2018) includes policies regarding housing particularly for the Downtown area:

- Encourage a mix of housing types for a range of price points.
- Preserve existing single-family housing in near neighborhoods.
- Provide a range of housing options within Downtown, at a range of price points.

Analysis/Findings:

The LDC does not allow for high-quality affordable housing near North Dakota State University (NDSU) in a straightforward manner. Some zoning districts, such as University Mixed Use (UMU), allow a certain degree of design flexibility and density for projects that can provide high quality, affordable housing units. Other districts that allow multi-family housing near NDSU limit development opportunities due to suburban-style dimensional standards on lots originally designed to accommodate narrower buildings with less restrictive dimensional

standard constraints (in an area platted prior to the advent of conventional suburban development and zoning control). For more details, refer to Section 3.4.1 (Zoning Districts) and Section 3.4.2 (Development Standards).

The LDC provides a straightforward and predictable path for the review and approval of multi-family and small lot single-family housing (including housing for workforce and low-income residents) in new parts of the City outside of Downtown and the core neighborhoods through the provision of base zoning districts planned in accordance with a future land use map and lot sizes that conform to base zoning districts. As a result, the need for negotiated zoning through tools such as PUD or CO zoning is greatly diminished, and the approval process is generally predictable.

However, in regard to housing in the older parts of the City where there is a demand for redevelopment or infill projects (such as in the Core Neighborhoods), the LDC does not provide a straightforward or predictable path for multi-family and small lot single-family development. In older residential neighborhoods there are many cases where lot sizes do not easily accommodate the standards of the existing base zoning districts. As a result, many multi-family and small lot single-family projects have relied upon negotiated zoning tools such as PUD or CO zoning. For more details, refer to Section 3.4.1 (Zoning Districts).

Regarding negotiated zoning tools, the negotiations required to effectuate a PUD, for example, require a protracted process between the developer and the neighborhood. The process is unpredictable for all parties involved and does not always lead to a satisfactory outcome. Based on stakeholder feedback, neither the developers nor the residents see this method as an effective tool for development.

The LDC lacks any mandates or incentives for new development to provide affordable housing. The Bonus Density provision ([Section 20-0505 \(Bonus Density\)](#)) allows added density but includes qualifying standards, such as a minimum open space requirement of 40 percent and requiring that 70 percent of the building footprint contain tuck-under or underground parking. These requirements may be counterproductive to increasing development density and the potential for affordable housing. For more details, refer to Section 3.4.2 (Development Standards).

Setback constraints, both through district standards and easement constraints increase development cost and ultimately housing affordability by increasing the minimum lot size needed to accommodate housing. Comments from stakeholders often noted that minimum

setback regulations in residential districts, especially in South Fargo, are too large. Unique to Downtown, constraints associated with the accommodation of utilities can impact opportunities for affordable housing. Housing cost can be impacted in many cases where utilities along the edge of the right-of-way requires the use of expensive shoring techniques. In many cases, it is more cost effective to move back the building façade and to build less than the code allows. For more details, refer to Section 3.4.2 (Development Standards).

City staff and stakeholders noted an increasing market demand for smaller single-family housing types that offer more affordable home ownership options. This has resulted in the use of PUD and CO zoning to accommodate housing types and associated neighborhood design that do not fit the design parameters established by the City's base zoning districts. The market demand for housing compatible in scale with detached single-family housing, often referred to as "missing middle housing", is not directly or easily allowed by the LDC. For more details, refer to Section 3.4.1 (Zoning Districts).

"Missing Middle Housing" is defined as lower-scale housing development such as a duplex, triplex, or fourplex that are generally affordable to most income groups. These low-unit multi-family structures can seamlessly integrate into most neighborhood types without the impacts associated with high-rise multi-family developments. The "missing" refers to the fact that this type of housing is not being coded for or developed in today's housing market. Most housing being is either low-income, affordable housing or high-end, luxury housing. The graphic below illustrates how "missing middle housing" integrates into the built environment within the overall spectrum of housing types.



Missing Middle Housing Types

It is also important to weigh the impact of other LDC have on housing cost and affordability. Parking, subdivision, and other “ancillary standards” can increase development and associated housing cost. For more details, refer to Section 3.4.2 (Development Standards).

It is also important to weigh the impact other LDC standards on housing cost and affordability. Parking, landscaping, subdivision, and other “ancillary standards” can increase development and associated housing cost. For more details, refer to Section 3.4.2 (Development Standards).

2.3.5 – Initiative: Parking

Overview

Go2030 identifies one initiative related to parking.

- Parking. Pursue creative parking strategies to fund and activate parking structures, explore reducing minimum parking standards, and share parking between daytime and nighttime uses.

Related Initiatives

In addition to *Go2030*, the Fargo-Moorhead Metropolitan Council of Governments has established the following parking recommendations from the *Fargo/West Fargo Parking and Access Study* (2018):

- Adopt parking maximums in combination with minimum requirements.
- To provide parking above the maximum requirement, development should provide a Transportation Demand Management (TDM) or shared parking analysis to prove the need for additional parking.
- To provide parking below the minimum requirement, development should provide a fee-in-lieu of parking to fund alternative transportation initiatives, creating additional shared parking supply, or upgrading existing parking assets.
- Take steps that encourage the use of shared parking including variance alterations, establishing parking management districts around key commercial nodes, and encouraging the use of on-street parking.

The *Roosevelt-NDSU Neighborhood Plan* (2004) includes policies regarding parking particularly for the neighborhood area:

- Address parking concerns associated with neighborhood housing.

The *Downtown InFocus Plan (2018)* includes policies regarding parking particularly for the Downtown area:

- Create a tiered parking management approach.
- Advocate for metered parking.
- Make it easy for visitors to park once, when spending the day in Downtown.
- Make desirable parking spaces available to customers, even at night.
- Pursue a shared parking model.
- Work with willing local employers to incentivize alternative modes of commute.
- Create an on-street parking permit for Downtown employees.
- Consider implementing parking maximums.
- Beautify parking lots.

Analysis/Finding

The LDC is not effective in implementing parking-related initiatives from *Go2030*, the *Fargo/West Fargo Parking & Access Plan*, and related policy documents. The off-street parking tables for parking space requirements ([Section 20-0701.B \(Off-Street Parking Schedules\)](#)) only include minimum space requirements and do not include maximum requirements. Also, the minimum parking requirements have not been reduced or adjusted since the adoption of the LDC, and they do not reflect current trends and practices. Interviews with City staff and community stakeholders revealed that some land uses have a minimum parking requirement that is too high (e.g. large retail stores) and other uses (e.g. offices) may have a minimum parking requirement that is too low. Also, parking needs vary geographically or within different contexts. For more details, refer to Section 3.4.2 (Development Standards).

The LDC does provide a limited degree of flexibility from the minimum parking requirements. The “Alternative Access Plans” provision ([Section 20-0701.E \(Alternative Access Plans\)](#)) lists several methods to achieve a reduction in required parking, including Transportation Demand Management (TDM), off-site parking, shared parking, bicycle parking, and valet parking. “Schedule C” is another tool available ([Section 20-0701.B \(Off-Street Parking Schedules\)](#)) for uses that “have widely varying parking demand characteristics” where a parking study can be used to determine parking needs. City staff and stakeholders have noted that this tool has been widely used in recent years, but some have questioned whether there may be a better option to determining parking needs for unique uses. Input from stakeholders indicated that the Alternative Access Plan provision for large parking facilities ([Section 20-0701.E](#)) was less utilized due to the requirement to obtain a Conditional Use Permit, which adds additional time and cost to gain approval. For more details, refer to Section 3.4.2 (Development Standards).

The application of maximum parking requirements in addition to minimums could have the effect of forcing some uses to apply alternative strategies as allowed by the Alternative Access Plan provision. Maximum parking requirements may increase the use of alternative parking strategies as envisioned in *Go2030* and related policy documents.

A pattern of development that has continued to promote an auto-centric environment, especially in newer parts of Fargo, has been how off-street parking has been incorporated into development site design. For example, some recent mixed-use development in South Fargo includes parking located between the building and the street, degrading the pedestrian realm in favor of automobiles. Concerns were expressed by City staff and stakeholders that existing regulations do not provide guidance to best locate off-street parking within a site, creating the potential to impede City initiatives focused on creating active, walkable, or multi-modal environments. For more details, refer to Section 3.4.2 (Development Standards).

Despite the promotion of funding and activating parking structures identified in *Go2030*, the LDC does not provide design guidance for parking structures, such as how they should interface with the street or required placement to maximize use. For example, the DMU district already includes several parking structures, with the potential for more as growth and activity increases in Downtown Fargo. However, the DMU district provides no standards on the preferred location of parking structures and adjacent uses. While Section 20-0212 (DMU, Downtown Mixed-Use) does include a section on screening of parking lots and structures, the standards are minimal and could produce different results per project due to lack of design specificity. For more details, refer to Section 3.4.2 (Development Standards).

2.3.6 - Initiatives: Trees, Landscaping, and Green Stormwater Infrastructure

Overview

Go2030 identifies one initiative related to landscaping and the LDC.

1. Tree Canopy. Increase the amount of trees in Fargo by preserving and planting new trees in new developments, planting trees in parks, and increasing the number of street trees along Fargo's main corridors.

Related Initiatives: In addition to *Go2030*, the Downtown InFocus Plan (2018) includes policies regarding parking particularly for the Downtown area:

- Beautify parking lots.

Analysis/Finding:

The LDC includes clear but inconsistent requirements for providing trees and landscaping in greenfield developments, adaptive reuse sites, and for infill projects. The Code stipulates requirements for trees and landscaping along streets, for open space areas in most zoning districts, and in parking lots ([Section 20-0705 \(Trees and Landscaping\)](#)). City staff and stakeholders noted that tree and landscaping planting requirements were satisfactory and supported city initiatives for a greater tree canopy. However, stakeholders noted that tree and associated landscaping requirements were not right-sized to appropriate zoning districts and areas of the City with unique needs. Stakeholders also highlighted a lack of functionality/practicality with the application of some landscaping and tree requirements. For more detail, please see Section 3.4.2 (Development Standards).

2.3.7 - Initiatives: Parks, Public Gathering Spaces, Festivals and Events**Overview**

Go2030 identifies three initiatives related to parks, events, and open space:

- [*Parks, Open Space, and Habitat*](#). To ensure all neighborhoods have access to safe and well-maintained neighborhood parks, improve quality and amenities of parks, and protect habitat and open spaces.
- [*Public Gathering Spaces*](#). To develop space for public gathering or neighborhood centers.
- [*Festivals and Cultural Events*](#). To develop space for festivals and events.

Analysis/Findings:

The LDC is not effective in implementing the parks, open space, and habitat initiative as well as the public gathering spaces initiative. The LDC defines 'open space' as "an outdoor, unenclosed area, located on the ground or on a roof, balcony, deck, porch or terrace designed and accessible for outdoor living, recreation, pedestrian access or landscaping, but not including roads, parking areas, driveways, or other areas intended for vehicular travel" while it does not have specific definitions for parks, habitats, or public gathering spaces. Through discussions with City staff, there is a parkland dedication procedure in all subdivision applications, but this process is not codified in the LDC. While the creation of parkland in subdivision developments is a viable way of creating new park space in the city, it is not standardized and done on an ad hoc basis. Also, there are codified open space requirements and habitat protection provisions, they are only required in very specific circumstances such as a new cluster development or a multi-family development utilizing the [Bonus Density](#) program. In addition, there are no

requirements for the creation or development of public gathering spaces within the LDC. For more details, refer to Section 3.4.2 (Development Standards).

While the LDC does not specifically address the development of space for festivals and cultural events, the City does have permit applications for "[General Special Permit/Street Closing/Block Party Request](#)" and "[Outdoor Amplified Sound Permit Request](#)" available on the website. These permit applications are not Planning Department initiatives and they are managed by either the Engineering Department or the Police Department, respectively. Existing right-of-way sidewalk space and streets can be utilized for events via the "General Special Permit/Street Closing/Block Party Request" permit. While the existence of these processes does not guarantee there will be more festivals and cultural events, the fact that the City has official processes set up to make them happen, is notable. For more details, refer to Section 3.4.2 (Development Standards).

2.3.8 - Catalyst: Walkable Mixed-Use Centers

All walkable mixed-use centers are defined by:

- A pedestrian-oriented streetscape with wide sidewalks, street furniture, appropriately scaled lighting, amenities such as bicycle parking etc.
- A density of destinations with a range of uses including residential, commercial, and office.
- Block sizes ranging between 200 and 400 feet to keep walking distances short, creating a streetscape for pedestrians with smaller storefronts. Ideally, pedestrians would encounter a different storefront every 40 feet.
- Transparent storefronts with minimal blank walls.
- Building orientation standards that ensure walkability by building to the sidewalk or a very low setback and locating any parking lots behind buildings or within them rather than in front.
- Requiring public spaces to be constructed with new developments, for more people-oriented spaces along the street that encourage walking such as pocket parks.
- Connecting these mixed-use centers to greenspace, such as Island Park or Pioneer Prairie, providing pedestrians with open space and recreation space within walking distance of their residence.

Analysis/Findings:

The characteristics listed above are only possible within the Downtown Mixed-Use (DMU) district and the University Mixed-Use (UMU) district. Many stakeholders expressed the desire for more walkable mixed-use centers, but these are hard to develop given the limitations of

the base zoning districts outside of the DMU and UMU zones. Other than the two mixed-use zones, the only way to achieve these goals would be with a PUD rezoning. For more analysis on the zoning tools to achieve walkability and the challenges of mixed-use development outside of downtown and the UMU district, see Section 3.4.1 (Zoning Districts) and Section 3.4.2 (Development Standards).



Typical Urban Mixed-Use Building



Typical Walkable, Mixed-Use Neighborhood (Credit: CNU-Atlanta)

Section 3 Land Development Code Overview and Analysis

Subsections:

- 3.1 LDC Organization and Structure
- 3.2 Zones Overview
- 3.3 Standards and Allowed Uses Overview
- 3.4 Diagnosis and Findings

3.1 LDC Organization and Structure

The LDC consists of 13 Articles (see Table 3-1 (Land Development Code Articles)). Each Article is divided into Sections and Subsections for an overall hierarchy as shown below:

Chapter > Article > Section > Subsection

The Chapter number is the first number to appear in the titling sequence. Articles are numbered sequentially in increments of one. (e.g. Article 20-01, Article 20-02). Sections are also numbered sequentially, with the two-digit section number added to the article number (e.g. Section 20-0101, Section 20-0102, etc.).

Table 3-1 – Land Development Code Articles	
Article	Title
20-01	General Provisions
20-02	Base Zoning Districts
20-03	Overlay and Special Purpose Districts
20-04	Use Regulations
20-05	Dimensional Standards
20-06	Subdivision Design and Improvements
20-07	General Development Standards
20-08	Review and Decision-Making Bodies
20-09	Development Review Procedures
20-10	Nonconformities
20-11	Violations and Enforcement
20-12	Definitions
20-13	Fargo Sign Code

The LDC is a traditional use-based, or “Euclidean”, code. Use-based codes, which originated in the early twentieth century out of a need for cities to protect public health, welfare, and safety by regulating incompatible uses, are characterized by an emphasis on separation of uses. While use-based codes regulate building form to some degree (e.g. with setbacks, FAR, lot coverage, and building height), the use inside the building is prioritized over the shape or size of the building. By focusing on use regulations rather than the built form and development pattern, communities often struggle to achieve predictable built results that better respond to changing market trends.

3.2 Zones Overview

[Article 20-02 \(Base Zoning Districts\)](#) establishes 20 unique use-based base zoning districts for the City. The following sixteen sections in the [Article \(20-0201 – 20-0216\)](#) contain descriptions of each zoning district, references to the allowed use table for each district, and references to the standards within [Article 20-05 \(Dimensional Standards\)](#). The base zoning districts include 10 residential districts, five commercial districts, two mixed-use districts, two industrial districts, and one agricultural district. [Article 20-03 \(Overlay and Special Purpose Districts\)](#) establishes three overlay and two special districts along with their respective applicability, use regulations, and dimensional standards.

3.2.1 Base Zoning Districts

Table 2-3 (Base Zoning Districts) lists the purpose and intent for each base zoning district organized by the overall zoning district category.

Table 3.2.1 (Base Zoning Districts)

Zoning District		Purpose and Intent
Agricultural Zoning District		
AG	Agricultural District	The AG District is intended to accommodate agricultural land uses and provide an interim zoning classification for lands pending a determination of an appropriate permanent zoning designation
Residential Zoning Districts		
SR-O, SR-1, SR-2, SR-3, SR-4, SR-5	Single-Dwelling Residential	The SR Districts are intended to preserve land for housing and to provide housing opportunities for individual households. The regulations are intended to create, maintain, and promote single-dwelling neighborhoods. The regulations accommodate a variety of single-dwelling housing styles and residential densities. The dimensional standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.
MR-1	Multi-Dwelling District	The MR-1 District is primarily intended to accommodate household living in detached houses, attached houses, duplexes and small multi-dwelling structures. The district allows up to 16 dwelling units per acre

Table 3.2.1 (Base Zoning Districts)

Zoning District	Purpose and Intent
MR-2 Multi-Dwelling District	of land. Development within the district will be characterized by one- and two-story buildings with relatively low building coverage.
MR-3 Multi-Dwelling District	The MR-2 District is primarily intended to accommodate household living in detached houses, attached houses, duplexes and multi-dwelling structures. The district allows up to 20 dwelling units per acre of land. Development within the district will be characterized by one- to three-story buildings with slightly higher building coverage than in the MR-1 district.
MR-3 Multi-Dwelling District	The MR-3 District is primarily intended to accommodate household living in detached houses, attached houses, duplexes and multi-dwelling structures. The district allows up to 24 dwelling units per acre of land. Development within the district will be characterized by one- to five-story buildings with higher building coverage than in the MR-2 district.
MHP Mobile Home Park District	The MHP District is intended to accommodate mobile home park developments.
Commercial Zoning Districts	
NO Neighborhood Office District	The NO District is primarily intended to accommodate very low-intensity office uses on small sites in or near residential areas or between residential and commercial areas. The district regulations are intended to ensure that allowed uses do not adversely affect nearby neighborhoods. Development is intended to be of a scale and character similar to nearby residential areas in order to ensure compatibility.
NC Neighborhood Commercial District	The NC District is primarily intended to accommodate small retail sales and service uses on small sites in or near residential neighborhoods. Uses are restricted in size to promote a local orientation and to limit adverse impacts on nearby residential areas. Development is intended to be compatible with the scale of nearby residential areas.
GO General Office District	The GO District is primarily intended to accommodate office development. The GO district regulations help to prevent the appearance of strip commercial development by allowing office uses but not other commercial uses.
LC Limited Commercial District	The LC District is primarily intended to accommodate low-intensity office and retail sales and service uses.
GC General Commercial District	The GC District is primarily intended to accommodate commercial uses. It allows a full range of retail, service, office, and commercial uses.
Mixed-Use Zoning Districts	
DMU Downtown Mixed-Use District	The DMU district is intended to preserve and enhance the City's downtown area. The district allows a broad range of uses in order to enhance downtown Fargo's role as a commercial, cultural, governmental, and residential center. Development is intended to be

Table 3.2.1 (Base Zoning Districts)

Zoning District	Purpose and Intent
	pedestrian-oriented with a strong emphasis on a safe and attractive streetscape.
UMU University Mixed-Use District	<p>The UMU district is intended to provide for the location and grouping of compatible uses. The appropriate location for this district will meet three factors. 1) The location will be in close proximity to a university or campus setting. The term campus includes large medical or business settings. 2) The location will have access to public transportation routes and alternative transportation corridors. 3) The location will be in a setting where the neighborhood is in transition from owner-occupied housing to rental housing or where blighted conditions are present.</p> <p>The objective of the zoning district is to encourage high-quality, durable, and long-lasting investments in order to enhance the quality of life and discourage blight. To achieve this objective, the University Mixed-Use zoning district allows higher overall residential density and limited commercial uses while incorporating design standards to achieve quality housing. Development is intended to be pedestrian oriented and neighborhood friendly.</p>
Industrial Zoning Districts	
LI Limited Industrial District	The LI District is primarily intended to accommodate manufacturing, wholesale, warehousing, and distribution related uses.
GI General Industrial District	The GI district is intended to serve as an exclusive industrial district and to protect manufacturing and industrial operations from encroachment by lower intensity, incompatible uses.

3.2.2 Overlay and Special Purpose Districts

[Article 20-03 \(Overlay and Special Purpose Districts\)](#) establishes five unique overlay and special purpose zoning districts for the City. Given the nature of these districts, they have separate and distinct applicability, land use, development, and approval requirements. Noteworthy is [Section 20-0303 \(C-O Conditional Overlay\)](#) which allows limited modification and restriction of the standards of the underlying base zone. While the P/I (Public and Institutional) zoning district is listed as a Special Purpose District within Article 20-03, City staff have indicated that it is considered as a base zoning district.

Table 3-3 (Overlay and Special Purpose Districts) lists the purpose and intent for each overlay and special purpose district.

Table 3.2.2 (Overlay and Special Purpose Districts)

Zoning District		Purpose and Intent
Overlay Districts		
H-O	Historic Overlay	The H-O district may be applied in areas of historic or cultural significance that have been designated by the U.S. Department of the Interior, the North Dakota State Historical Society, or the Board of City Commissioners.
HIA-O	Hector International Airport Overlay	The HIA-O, Hector International Airport Overlay district is intended to reduce airport hazards that endanger the lives and property of users of the Hector International Airport and of occupants of land in its vicinity
C-O	Conditional Overlay	By providing for flexible use or property development standards tailored to individual projects or specific properties, the C-O, Conditional Overlay district is intended to: <ul style="list-style-type: none"> - Ensure compatibility among incompatible or potentially incompatible land uses; - Ease the transition from one zoning district to another; - Address sites or land uses with special requirements; and guide development in unusual situations or unique circumstances
Special Purpose Districts		
P/I	Public and Institutional	The P/I, Public and Institutional district is intended to accommodate uses of a governmental, civic, public service or quasi-public nature, including major public facilities. It offers an alternative (versus residential) zoning classification for public and institutional uses, thereby increasing development predictability within residential neighborhoods.
PUD	Planned Unit Development	The PUD, Planned Unit Development district is an overlay zoning district that permits greater flexibility of land planning and site design than conventional zoning districts.

3.3 Standards and Allowed Uses Overview

[Article 20-04 \(Use Regulations\)](#) and [Article 20-05 \(Dimensional Standards\)](#) specify development standards and permitted use regulations for each individual base zoning district.

3.3.1 - Land Uses

The LDC includes 39 use categories that are organized in five groups, including residential, commercial, institutional, industrial, and other uses.

The land use table in [Section 20-0401\(Use Table\)](#) establishes permit requirements for each land use, by zoning district, regulated as follows:

P - Permitted By-Right

C - Conditional Uses

/C - Uses Subject to Specific Conditions

- - Uses Not Allowed

See [Article 20-09 \(Development Review Procedures\)](#) for more information on review and approval procedures

Some uses (e.g., Adult Entertainment Center, Household Living/Group Living, and Bed and Breakfast) are subject to additional requirements established in [Section 20-0402 \(Use Standards\)](#).

3.3.2 – Zoning District Standards

[Article 20-05 \(Dimensional Standards\)](#) establishes development standards for residential uses (Table 20-0501) and nonresidential uses (Table 20-0502), including standards for height, setbacks, minimum lot size, density, building coverage, open space, and floor area ratio. These standards vary by zoning district and apply to any development or use located within the given zoning district.

3.3.3 – Citywide Standards

[Article 20-07 \(General Development Standards\)](#) establishes development standards applicable to uses and zoning districts Citywide. The standards include parking and loading, roadway access and driveways, residential protection standards, trees and landscaping, and corner visibility.

3.4 [Diagnosis and Findings](#)

3.4.1 – Zoning Districts

Findings from the review and analysis include:

- The Code does not have the right zoning tools to implement *Go2030*;
- The City relies on negotiated zoning (PUDs, COs, etc.) for flexibility, increased density, additional protections, etc.; and
- There is a limited applicability of the UMU and DMU zones.

Achieving the goal of walkable mixed-use centers is only possible through the University Mixed-Use (UMU) and the Downtown Mixed-Use (DMU) districts. The UMU and DMU are only applied in a very limited area of the City. The land area these districts represent is roughly one square mile out of an estimated 48 square miles throughout the entire City. Eventually, these two districts will be fully built-out and there will not be opportunities to create these centers in

the remaining 47 square miles of the City. See Section 3.4.2 (Development Standards) below for details on LDC regulations that help create walkable mixed-use centers.

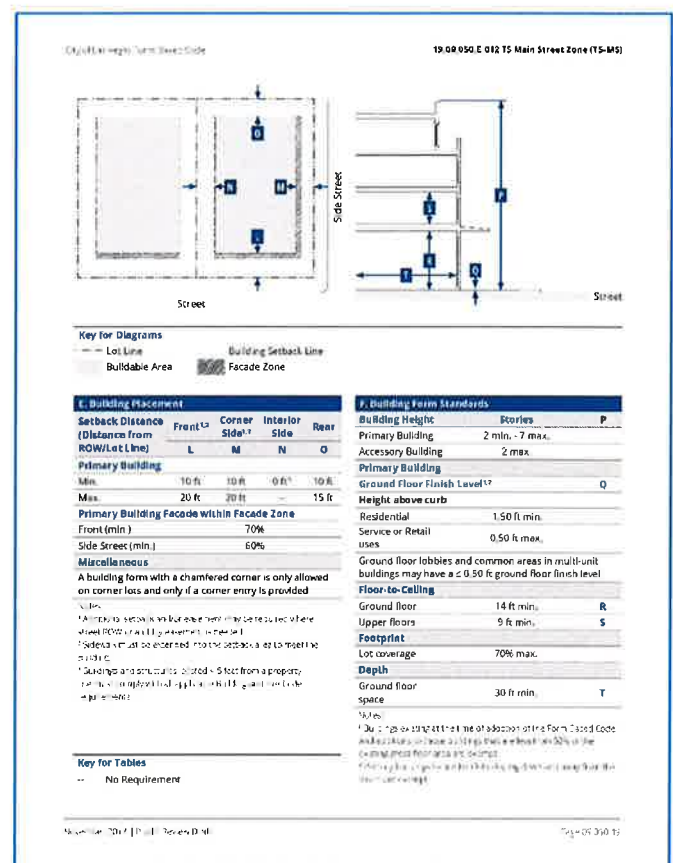
PUDs are frequently utilized to provide flexibility that does not normally exist within the LDC because the base zoning districts make it difficult to achieve walkable neighborhoods. The negotiations required to effectuate a PUD, for example, require a protracted process between the developer and the neighborhood. The process is unpredictable for all parties involved and does not necessarily always end up with the desired result. Based on stakeholder feedback, neither the developers nor the residents see this approach as an effective tool for development.

3.4.2 – Development Standards

Absence of built-form standards

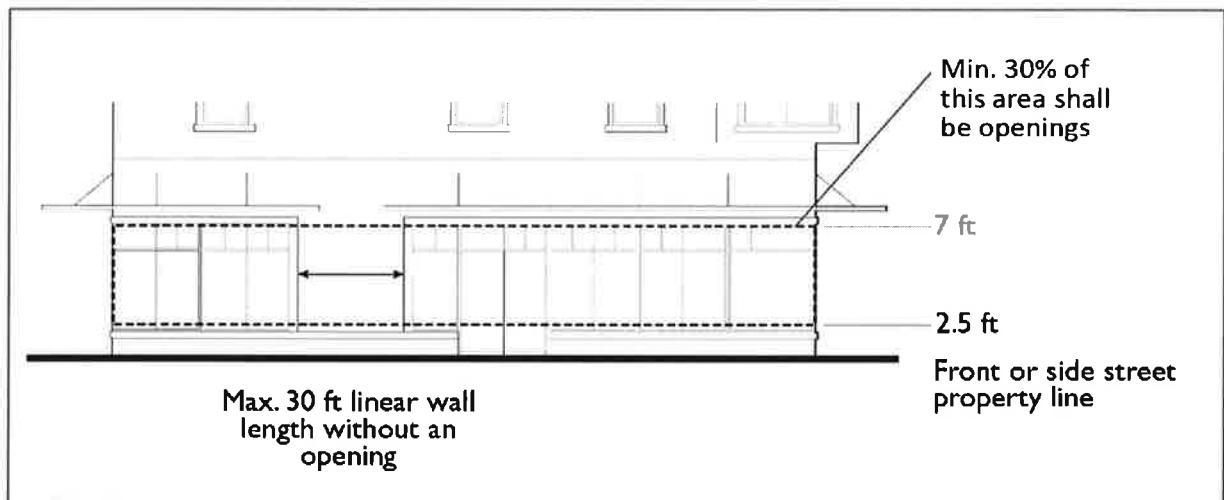
The LDC does not contain many built-form standards, such as building and frontage requirements. Two base zoning districts, out of 21 (including the Public and Institutional Zone), contain some standards that would ordinarily produce more predictable results in terms of how the building will integrate into the existing urban fabric, i.e. the DMU district and the UMU district. The DMU district incorporates no minimum front setback, specific facade materials, ground-floor transparency standards, while the UMU incorporates building orientation standards, specific facade materials and articulation standards, and ground-floor articulation standards.

Most of the City contains no built-form standards to promote walkability, especially within the residential neighborhoods. *Downtown InFocus* specifically highlights a goal to “Tweak the DMU” by developing form-based requirements that guide the placement of buildings, parking, and other key design considerations of for Downtown (Page 35, *Downtown InFocus*). This goal is detailed by including recommendations for standards such as transparency, pedestrian access, height, parking, setbacks, and street trees. Lastly, there is also a proposed Build-to-Zone (BTZ) in with



An Example of a Page From a Form-Based Code

a percentage of the façade must be located along primary (and secondary) streets, establishing a maximum setback to ensure that buildings are placed closer to the sidewalk edge, and establish guidelines for parking location in the rear or side of the lot. These proposed regulations are in line with form-based best practices and could solve the problem of a lack of built-form standards in the LDC.



A Typical Building Transparency Diagram

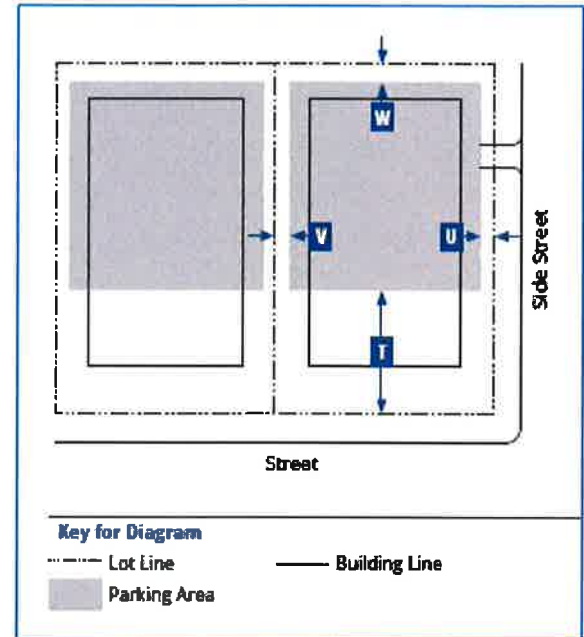
Even in the DMU district and the UMU district regulations are difficult to implement. For example, stakeholder feedback indicated that, new developments in the DMU are rarely built to the sidewalk edge, due to challenges with utility placement and access. As the requirements for utilities are typically inflexible, buildings tend to be pushed away from the street which further erodes the potential for a quality pedestrian-friendly environment that the standards intend to promote. While coordination between the Planning Department and the Engineering Department to find a solution to the utility placement issue would need to occur, best practices dictate that the base zoning districts, for example, include requirements for buildings to be placed at the sidewalk edge and to integrate similar built-form standards, (e.g. ground-floor transparency standards), into the other commercial districts outside of downtown and the University area. Fostering walkable commercial areas through built-form standards can be achieved by adding these types of regulations.

Parking and Building Location (Impact on Pedestrian Friendly Streetscape)

Many stakeholders and residents reported that the current regulations create large expanses of surface parking in nonresidential areas. While the LDC's minimum required parking standards are one factor, the required placement of parking on the site is also an issue. The required large front setbacks typically tend to influence the placement of parking in front of

buildings along the fronting street. Parking placed in front of buildings severely limits an area's walkability due to the distance of the buildings from the street and the prioritization of automobiles over pedestrians.

[Section 20-0701 \(Parking and Loading\)](#) does not apply any standard for parking location relative to the primary building. One exception is within [Section 20-0701.D \(Location of Required Parking\)](#) which has a parking location requirement within Single-Family Districts. The combination of large minimum setbacks ([Section 20-0502](#)), high minimum parking standards ([Section 20-0701](#)), and the lack of parking location standards leads to an unfriendly pedestrian streetscape with large parking lots occupying most of the properties. As mentioned in the previous section, *Downtown InFocus* recommends establish guidelines for parking location in the rear or side of the lot. Best practices to remedy the issue include requiring parking to be located behind buildings or to the side of a building when possible or establishing a maximum front setback. Either of these regulations would reduce the negative impact of parking lots on the pedestrian streetscape.



A Typical Building and Parking Area Location Diagram from a Form-Based Code

Parking Regulations

The existing parking regulations do not account for how parking needs might vary based on location or context within the City. Instead, uniform requirements are provided. For example, the restaurant parking requirement of 1 space per 75 square feet for “Restaurant, General, Bars, Taverns and Lounges”) near NDSU where a range of transportation options are viable should not be the same as the amount of parking for a restaurant on the southern suburban fringe adjacent to Interstate 29 where driving is the most viable option of transport ([Section 20-0701.B.1 \(Parking and Loading\)](#)). Some areas, such as adjacent to NDSU and other areas where the existing land use context promotes walkability and other viable forms of transportation, the demand for off-street parking may be lower than for other more auto-centric parts of the City.

The increasing use of “Schedule C” to identify alternative parking requirements indicates that the listed requirements (Schedules A and B) may not be adequate and that other alternatives

to the parking requirements may be needed. The original intent of the provision documented in [Section 20-0701.B.3 \(Parking and Loading\)](#) is for “uses that have widely varying parking demand characteristics, making it impossible to specify a single off-street parking standard.” Heavy use of Schedule C shows that the listed parking requirements do not reflect the current (and possibly the projected) development market. Overuse of Schedule C creates an added administrative burden on City staff and adds time and cost to development proposals.

Regarding the location of off-street parking within a development site, design guidance is lacking in zoning districts where the City has planned for active streets, or in other words, a walkable environment. “Walkable Mixed-Use Centers” are envisioned in *Go2030* throughout the City and the same concept is promoted throughout Downtown as documented in the *Downtown InFocus Plan*. In the absence of design criteria to better locate off-street parking on a development site, off-street parking has the potential to degrade walkability in Downtown Fargo or impede the creation of a more walkable environment in areas where *Go2030* envisions a walkable mixed-use center.

Challenges in Residential Compatibility (Standards and Consistency in Application)

[Section 20-0704 \(Residential Protection Standards\)](#) includes an extensive list of Residential Protection Standards that apply to all multi-dwelling developments located within 150 feet of any SR or MHP zoning districts and all nonresidential development when the development occurs on a site located within 150 feet of any SR, MR or MHP zoning districts.

The standards consist of additional setback provisions, screening, building height, landscape buffers, operating hours, lighting, and odors. Each standard is based on distances from the nearest residentially zoned property and can change depending on how close the development is to residential base zoning districts. [Section 20-0704.I \(Waivers\)](#) provides flexibility to reduce or waive one or more of the Residential Protection Standards. If any reductions or waivers are issued, a notice is sent to all properties within 300 feet of the development. Lastly, the LDC has a provision for residents to appeal the waiver. The appeal may be heard by either the Planning Commission or the City Commission.

Based on stakeholder and community feedback, it is evident that the Residential Protection Standards have been utilized frequently, especially due to the amount of new multi-family structures and industrial parcels within close proximity to single-family residential base zoning districts. Many stakeholders were split on the issue of Residential Protection Standards, either because they are not adhered to and developers consistently sought waivers, or the standards are too rigid and need to be better defined.

Infill Development

Infill is promoted in the City of Fargo through the application of two zoning districts, Downtown Mixed Use (DMU) and University Mixed Use (UMU). Key elements of both districts that promote infill that are unique from the rest of the LDC's base zoning districts include:

- DMU: The district allows 100 percent lot coverage and does not have any lot size, setback, or height requirements ([Section 20-0502 \(Nonresidential District Standards\)](#)).
- UMU: In comparison to the Code's other residential districts, UMU has the smallest minimum lot size requirement, some of the smallest setback requirements, has the greatest lot coverage allowance, and the greatest height allowance ([Section 20-0501 \(Residential District Standards\)](#)).

Other than DMU and UMU, all the LDC's base districts make development difficult on most infill lots in the City's core areas. The dimensional standards for the other districts are crafted for conventional suburban development ([Sections 20-0501 \(Residential District Standards\)](#) and [20-0502 \(Nonresidential District Standards\)](#)). For example, many existing lots in the Horace Mann neighborhood are approximately 40 feet by 140 feet and are zoned SR-2. The SR-2's district dimensional standards result in many existing lots in core neighborhoods being nonconforming. In addition, many existing homes and accessory structures in core neighborhoods do not meet current setback standards. Therefore, it is difficult for any property owner or developer to develop a vacant, nonconforming lot and to meet all current dimensional standard requirements to simply create development consistent with what currently exists throughout much of the neighborhood. As a result, many property owners/developers resort to negotiated zoning and related tools, such as variances, Planned Unit Development zoning, or Conditional Overlay zoning. Whether or not the use of negotiated zoning tools to allow infill development is the appropriate path the City should provide, a roadmap that explains how to successfully present an infill development project is missing from the Code or from general policy guidance provided by the City online or otherwise. An infill development "roadmap" is especially lacking for the City's core neighborhoods outside of the DMU and UMU districts.

Paving Standards in Industrial Areas

Multiple stakeholders commented on the paving requirements as being very costly, and potentially rendering projects infeasible. The stakeholders agreed that there should be more flexibility for allowing alternative materials, such as gravel or crushed concrete.

[Section 20-0701.G \(Parking and Loading\)](#) states that in the Limited Industrial district and the General Industrial district, "... rear yard vehicular circulation area, not including parking spaces, may be crushed concrete or similar material as approved by the Zoning Administrator." The key is that the parking areas may not be crushed concrete or another material, and the City is requiring it to be an "All Weather Surface", which consists of concrete, asphalt, paving blocks, brick etc. In addition, [Section 20-0704.3 \(Residential Protection Standards\)](#) states that any structural alteration of an existing building that increases the building footprint by more than 1,000 square feet or increases the height by 10 percent requires the property to come into full zoning compliance. These two standards have the effect of making some industrial-specific improvement projects financially infeasible. Industrial-zoned sites in Fargo tend to be much larger than almost all other properties in the City. The required paving of parking areas in industrial districts, rather than gravel or a similar material, has been a challenge for many business owners and could result in fewer properties being improved due to these regulations.

Inadequate Provisions to Create New Parks, Public Spaces, Open Spaces and to Protect Existing Habitats

Parks and Open Areas, defined in [Section 20-1203 \(Use Categories\)](#) as "natural areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, or public squares" are a land use allowed throughout the City except in the University Mixed Use (UMU) and General Industrial (GI) districts. However, neither parks nor open areas appear [in Article 20-12 \(Definitions\)](#). Further, there are no design or development criteria for parks to ensure adequate size, access, or amenities, and, the LDC does not include a requirement for parkland dedications within large developments or new subdivisions. City staff have confirmed that an unwritten process for requiring parkland dedications is utilized for these projects. Best practices going forward would be to codify the parkland dedication process as a part of subdivision approvals in order to ensure that new parkland will be created with each application and to provide clear requirements for applicants. [Section 20-0705 \(Trees and Landscaping\)](#) contains tree planting requirements based on the size of the lot (e.g. 3 plantings per 1,000 square feet of lot area). While these requirements ensure trees and shrubs are incorporated throughout a site, these regulations do not guarantee dedicated area for usable open space, recreation, or public gathering.

The LDC contains provisions for the creation of open space and the protection of existing habitats but only in limited circumstances. [Section 20-0302.F.3 \(PUD, Planned Unit Development\)](#) states that at least 10 percent of the gross land area in PUDs must consist of open space. The next provision, in [Section 20-0302.F.3](#) states that a PUD must preserve natural

features such as mature trees, vegetative cover, watercourses, and other natural site features "... to the greatest extent possible." The question regarding the open space and natural features protection policies is how often developers seek and are granted waivers from this provision.

Uses such as religious institutions and schools are required to provide minimum of 35 percent of the site area as landscaped open space. Only the multi-family residential base zoning districts (MR-1, MR-2, MR-3) include Minimum Open Space requirements, as a percentage of the lot, at a minimum of 35 percent. The Bonus Density program contains the most stringent minimum open space requirement of 40 percent of the lot area as one of three standards for which compliance is needed in order to allow a maximum density of 30 dwelling units per acre.

[Section 20-0506 \(Alternative Residential Development Options\)](#) contains provisions for Open Space requirements, but only regarding Cluster Developments. In general, Cluster Developments are subject to the minimum on-site open space standards of the base zoning district. The Section contains separate requirements for Common Open Space which is defined as, "Open space within a development, not in individually owned lots or dedicated for public use, but which is designed and intended for the common use or enjoyment of the residents or occupants of the development. Common Open Space does not include areas used for streets, alleys, driveways, or off-street parking or loading areas. However, the area of recreational activities such as swimming pools, tennis courts, shuffleboard courts, etc., may be counted as common open space." This provision represents a very specific case of open space being required for a new development but likely on a limited scale.



Typical Common Open Space in a Cluster Development

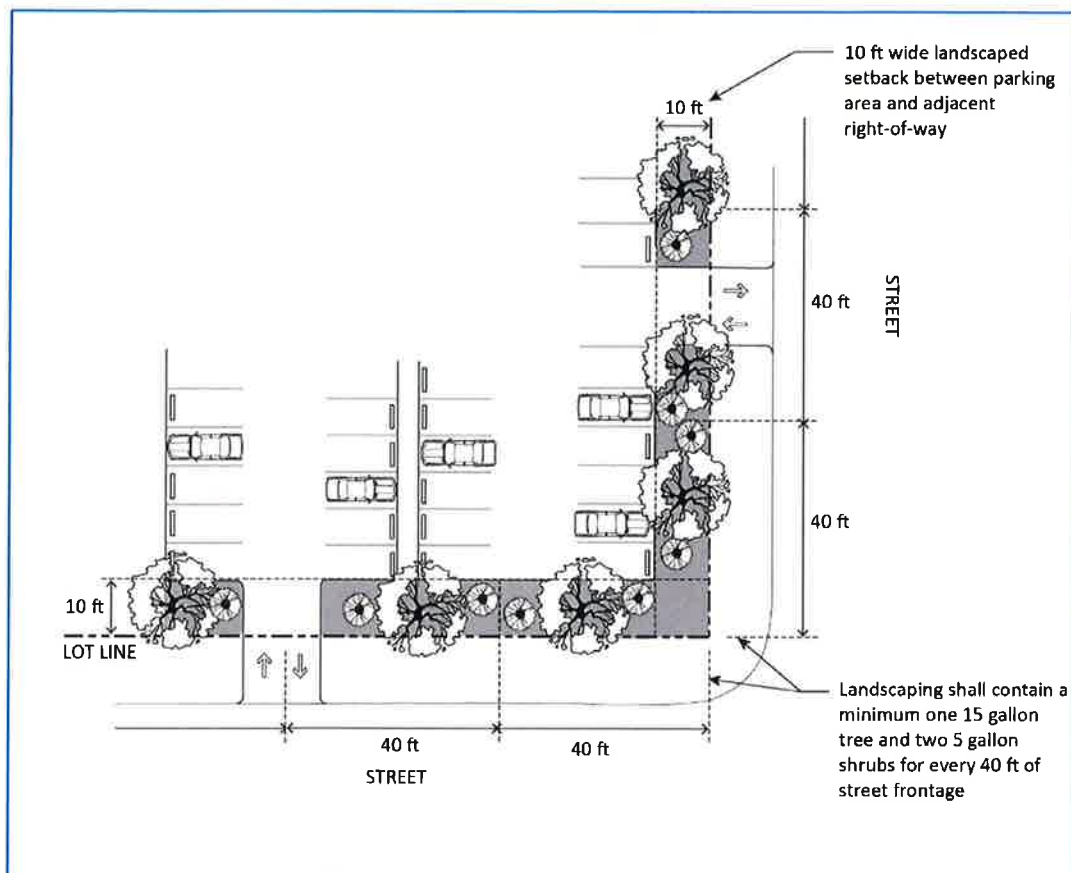
Inflexible Landscaping Standards

The Land Development Code's tree and landscaping requirements for new commercial and residential development in greenfield areas are robust and understood through stakeholder and City staff input to work well and to result in high quality development. However, the tree and landscaping requirements lack flexibility when it comes to infill and adaptive reuse projects in older parts of the City. [Section 20-0705 \(Trees and Landscaping\)](#) of the Code contains one set of requirements for all new development in the City whether it is an infill,

greenfield, or adaptive reuse project. [Section 20-0705](#) does include some exemptions that are effective. Yet the flexibility afforded by these exemptions is limited when it comes to infill and adaptive reuse development outside of the University Mixed Use (UMU) district. Exemptions include development in the UMU district and improvements to existing development that does not involve more than 1,000 square feet or ten percent of the building, whichever is greater. Two examples regarding the Code's lack of flexibility pertaining to Section 20-0705 are outlined below:

- Trees and landscaping required through [Section 20-0704 \(Residential Protection Standards\)](#) cannot be counted toward the total tree and plant units required in [Section 20-0705](#). Since the Residential Protection Standards are often triggered with infill or adaptive reuse projects, this can have the effect of limiting development, especially those on smaller lots in the older parts of the City. The Code lacks a comprehensive recognition of the total planting requirements placed on a single development, based on all the individual standards that require landscaping.
- The required location of planting units can also limit development on smaller or irregularly shaped lots in older parts of the City. [Section 20-0705.C.4](#) requires a minimum of 70 percent of the required plant units to be installed along the development's street frontage. Such a high percentage may work well on wide suburban lots but presents significant challenges for older narrow lots common throughout the City's core.

Since much of [Section 20-0705 \(Trees and Landscaping\)](#) concerns spatial requirements (e.g. the location of required planting units, buffer standards, etc.), the lack of illustrations presents a challenge to the layperson, especially to those new to the Land Development Code.



A Typical Parking Area Landscaping Diagram

With regard to industrial development, especially large industrial sites involving expansive parking, loading, and circulation areas, stakeholders generally noted that the Land Development Code's requirements pertaining to landscaping and the improvement of parking/circulation areas were not practical and made some new development and additions cost-prohibitive. Since large industrial sites are typically planned and zoned to be located away from high-visibility corridors (such as arterial routes) and do not cater to the general public, some Code requirements for industrial development should not be the equivalent of requirements for commercial development. Outlined below is an assessment of how landscaping and parking requirements compare for new industrial and commercial development:

- **Tree and Landscaping Requirements.** [Section 20-0705.D](#) includes planting requirements for the parking lot perimeter that are the same for commercial and industrial development ([Section 20-0705.D](#)). However, [Section 20-0705.C](#) does require a lesser amount of planting units in industrial districts than for commercial districts.

- **Parking and Loading Area Surfacing Requirements.** Section 20-0701.G allows the rear yard circulation area in the Light Industrial and General Industrial Districts to be crushed concrete or similar material. Depending on development location and the context (i.e. existing buffers or landscaping), practical factors that may allow for crushed concrete or a similar material for industrial development are not considered in the section. Considerations for dust control and the mitigation of storm water runoff are also missing from the section.

3.4.3 – Housing Development

The LDC's predominant multi-family housing zoning districts are MR-1, MR-2, and MR-3. These districts are intended to allow development on large suburban lots. For example, front setback requirements are 25 feet and building coverage requirements range from 35 to 37.5 percent (Article 20-05 (Dimensional Standards)). Such restrictive dimensional standards push up development costs by requiring the use of larger lots and making infill or redevelopment in older portions of the City more difficult where smaller lots predominate. As a result, these restrictive requirements decrease the affordability of multi-family housing.

New multi-family housing development on infill or vacant property that requires a zone change or Conditional Use Permit is benefited in areas where the City has identified a future land use designation for the site. However, many developed areas of the City outside of the boundaries of the *Downtown InFocus Plan* and the *Roosevelt-NDSU Neighborhood Plan* do not have an adopted future land use map in place to guide zoning decisions. Therefore, in cases where applicants are seeking to develop higher density housing where a zone change or Conditional Use Permit is necessary, approval cannot be based on a future land use map. This lack of development predictability can easily jeopardize housing projects (such as multi-family and/or affordable housing) that are often supported by complex financing arrangements dependent upon certainty in local land use policies and regulations. The recent Craig's Oak Grove Second Addition proposal including townhomes and an apartment building is a good example of a situation where there was no future land use designation to help guide the proposed change in zoning. While the subdivision and zone change request was approved in late 2019 (for more information, refer to Planning Commission staff report and minutes from September 3, 2019), the lack of future land use direction added a substantial burden on the applicant to prove consistency with *Go2030*. The City is presently moving to provide future land use and policy direction for the City's Core Neighborhoods with the current development of the Core Neighborhoods Plan.

City staff and stakeholders noted the success of the UMU district in providing housing for the NDSU student population. As provided in Section 20-0501 (Residential District Standards), the UMU district allows multi-family housing without less restrictive dimensional standards than

the MR zones (10-foot front setback and 75 percent maximum building coverage). These standards provide an opportunity to create affordable units through development savings on lot size requirements, in addition to less restrictive parking requirements. However, areas zoned UMU are close to build-out, and the district is limited in its application throughout the City to areas “in close proximity to a university or campus setting” ([Section 20-0216 \(UMU, University Mixed Use\)](#)).

The Bonus Density provision ([Section 20-0505 \(Bonus Density\)](#)) as an incentive to increase density and the potential for affordable housing has less potential due to overly restrictive qualifying standards. The qualifying standards include requirements for tuck-under parking, provision of minimum open space of 40 percent, and no allowance for a height increase above the district standards. Combined, the standards have the potential to increase the necessary lot size to earn the added density and, thereby, significantly to increase development costs. The standards also limit the geographical application of the provision to properties large enough to accommodate these standards, making infill and redevelopment difficult.

Other ancillary standards have an impact on the potential for housing affordability. The cost of on-site parking should be considered as part of the cost of the associated housing. The UMU district stands out from other zoning districts that allow multifamily housing, as the district allows a 38 percent reduction in required off-street parking ([Section 20-0701 \(Parking and Loading\)](#)). Comments from City staff and stakeholders were generally positive about the functionality of the UMU district, including parking. Subdivision regulations can also have a considerable impact on housing cost. Stakeholder comments related to the development of more affordable single-family housing noted that regulations pertaining to right-of-way improvement standards ([Section 20-0611 \(Streets\)](#)) create cost concerns and impediments to the design of smaller lot, higher density single family residential neighborhoods. As a result, some recent subdivisions have relied on private streets and alternative zoning mechanisms such as PUD or Conditional Overlay zoning.

3.4.4 – Subdivisions

Infill developments that involve a subdivision application to create new lots and rights-of-way in any of the City’s core neighborhoods, are subject to similar limitations noted with the LDC’s zoning regulations. The Code’s street standards ([Section 20-0611 \(Streets\)](#)) allow for a range of local street cross sections, but do not include allowances for alleys, or at least a right-of-way cross section similar to existing alleys in the City’s core neighborhoods. Another element critical to right-of-way cross sections is utility placement. City staff noted that utilities are typically placed in a corridor ten feet in width beginning on the outside edge of the sidewalk. The concern is that utility placement requirements are not referred to directly in the Code.

Rather, the City Engineer is referenced as providing utility “standards and requirements” ([Section 20-0608 \(Utilities\)](#)).

To modify subdivision requirements like the street and utility requirements, some projects in South Fargo have utilized Planned Unit Development (PUD) zoning and private access easements. Infill developers would be expected to use similar tools for subdivision development. The LDC lacks mechanisms that could better facilitate small lot subdivisions, such as greater right-of-way and utility placement flexibility. This flexibility would not only benefit greenfield development in South Fargo but also infill projects in the core neighborhoods.

3.4.5 – Code Usability and Format

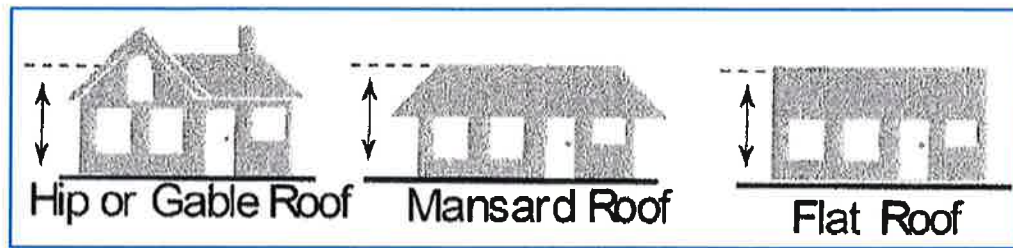
The ability to use and navigate a zoning code is vital to its effectiveness. Easy-to-use and understand land development codes are well organized and formatted, provide necessary cross-references, and utilize tables, graphics, and illustrations. This subsection provides a summary of the usability and format issues which are potential barriers to understanding and using the LDC.

Submittal Requirements on Application Forms

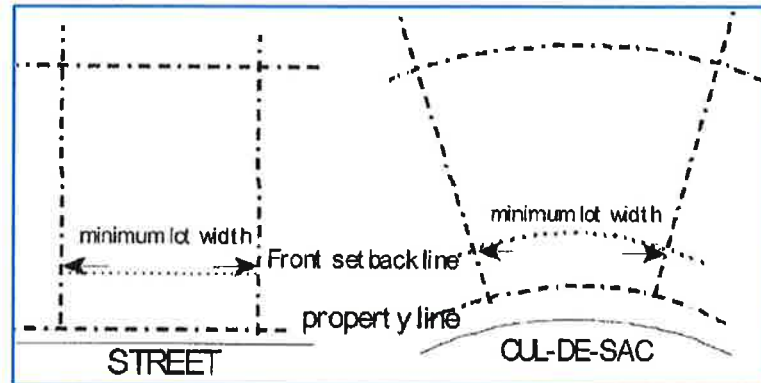
While [Article 20-09 \(Development Review Procedures\)](#) does not include specific submittal requirements for each application type, [Article 20-13 \(Fargo Sign Code\)](#) includes specific application requirements in [Section 20-1303 \(General Standards\)](#). An applicable best practice is to include all submittal requirements on applicable permit/application forms. The advantage of this approach is that if the submittal requirements change they can be adjusted administratively. However, if submittal requirements are included in the LDC, then any change to the requirements will require approval of a text amendment by the City Commission, a process that can be time consuming.

Need for More Graphics and Diagrams

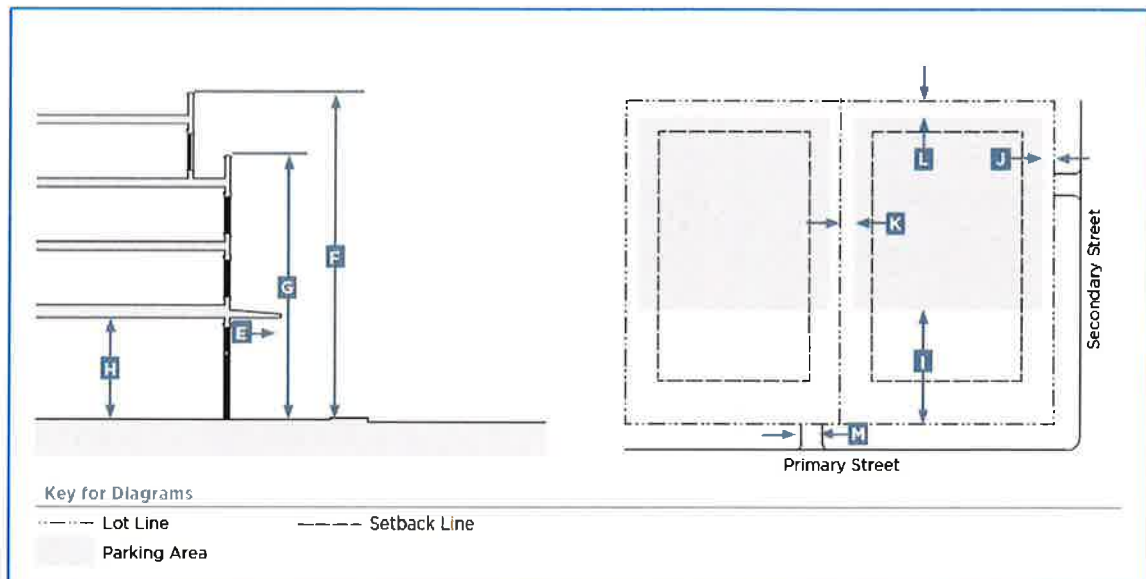
The LDC lacks graphics and diagrams to illustrate and explain its regulatory intent, particularly with dimensional regulations. While [Article 20-05 \(Dimensional Regulations\)](#) includes two graphics for lot width and building height (see diagrams below from [Section 20-0504](#)), it does not include any graphics for other standards such as setbacks and building coverage. Graphics or diagrams are important to illustrate how a setback is measured or how a single-family home can occupy only 25 percent of lot and must comply with minimum setbacks. Land development codes that include clear user-friendly diagrams frequently result in fewer calls to City staff by people seeking clarification of otherwise written code standards.



Building Height Diagram from the Fargo LDC



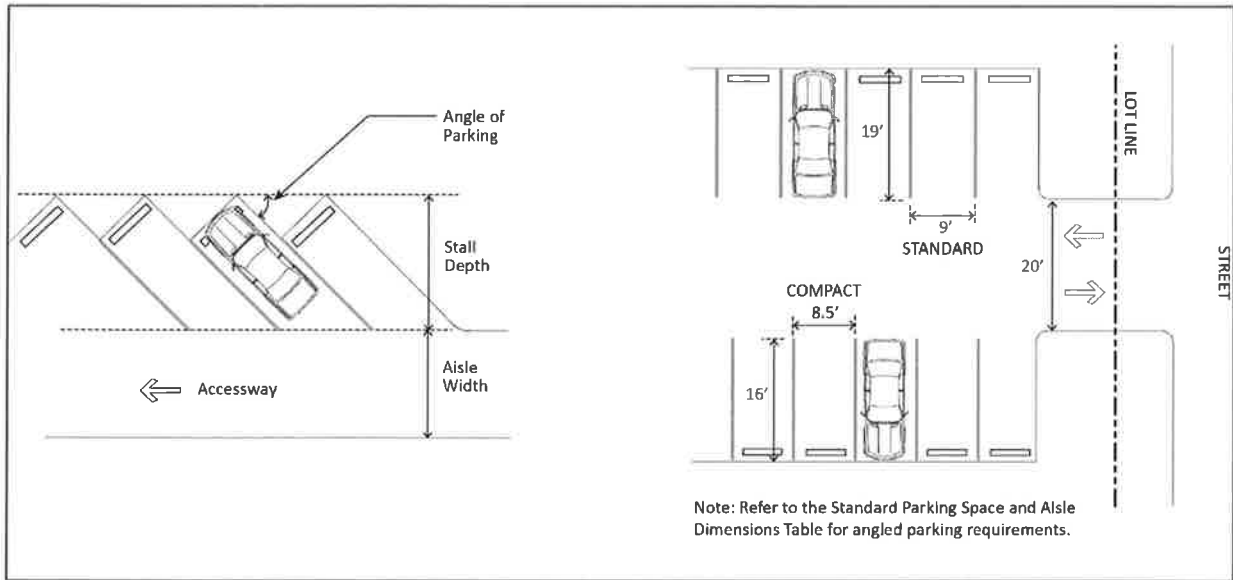
Lot Width Diagram from the Fargo LDC



A Typical Building Height and Setback Diagram

Another Article that would benefit from graphics and/or diagrams is [Article 20-07 \(General Development Standards\)](#). Like [Article 20-05 \(Dimensional Regulations\)](#), development standards tend to be inherently visual concepts such as the design and layout of an off-street parking lot. A scaled diagram for the off-street parking could display the dimensional requirements of each space, how a lot could conform to the vehicle stacking area requirements, the parking lot

landscape requirements by showing the dimensional areas that would require planting, and the corner visibility requirements for entry and exit in relation to the required landscaping.



A Typical Off-Street Parking Diagram

Section 4 Administration and Procedures

Subsections:

4.1 LDC Administration and Development Review Procedures

4.2 Diagnosis and Findings

4.1 Administration and Procedures

4.1.1. Permits and Approvals

The LDC establishes several procedural requirements that applicants must follow depending on the proposed use, configuration, site design, or if a variance or other exceptions are requested. Procedures include legislative processes, such as rezoning and LDC amendments, and administrative processes such as planning permits and approvals. Certain projects must undergo Site Plan Review in compliance with [Section 20-0910 \(Site Plan Review\)](#). The threshold for Site Plan Review varies by project type (e.g. residential, commercial, industrial) and other factors, such as the size or location of the development.

Table 4-1 (Permits and Approvals) identifies the responsible review authority and noticing and hearing requirements for all types of LDC procedures.

Table 4.1.1 – Permits and Approvals								
Type of Procedure	Review Authority					Notice Required	Hearing Required	Article/Section
	Staff	HPC	BOA	PC	BCC			
LDC Text Amendments	Review	-	-	Review	Decision	Yes	Yes	Article 20-09 (Section 20-0904)
Area Plan	Review	-	-	Review	Decision	Yes	Yes	Article 20-09 (Section 20-0905)
Zoning Map Amendments	Review	Review	-	Review ¹	Decision	Yes	Yes	Article 20-09 (Section 20-0906)
Subdivision								Article 20-09 (Section 20-0907)
Minor	-	-	-	Review	Decision	Yes	Yes	
Major	Review	-	-	Review	Decision	Yes	Yes	
Planned Unit Developments								Article 20-09 (Section 20-0908)
Master Land Use Plan	Review	-	-	Review	Decision	Yes	Yes	
PUD Rezoning	Review	-	-	Review	Decision	Yes	Yes	
Final Development Plan	Review	-	-	Decision	Appeal	Yes	Yes	
Conditional Use Permit	Review	-	-	Decision	Appeal	Yes	Yes	Article 20-09 (Section 20-0909)

Table 4.1.1 – Permits and Approvals

Type of Procedure	Review Authority					Notice Required	Hearing Required	Article/Section
	Staff	HPC	BOA	PC	BCC			
Site Plan Review	Decision	-	-	Appeal	Appeal ²	No	No	Article 20-09 (Section 20-0910)
Institutional Master Plan	Review	-	-	Decision	Appeal	Yes	Yes	Article 20-09 (Section 20-0911)
Certificates of Appropriateness	Review & Decision ³	Decision & Appeal ³	-	-	Appeal ²	No	No	Article 20-09 (Section 20-0912)
Building Permits/Certificates of Occupancy	Decision	-	Appeal	-	-	No	No	Article 20-09 (Section 20-0913)
Variances	-	-	Decision	-	Appeal	Yes	Yes	Article 20-09 (Section 20-0914)
Written Interpretations	Decision	-	Appeals	-	-	No	No	Article 20-09 (Section 20-0915)
Appeals of Administrative Decisions	-	-	Decision	-	Appeal	Yes	Yes	Article 20-09 (Section 20-0916)

Key:

HPC – Historic Preservation Commission;

BOA – Board of Adjustment;

PC- Planning Commission;

BCC- Board of City Commissioners

Notes:

1) Historic Preservation Commission is involved only on H-O District applications, pursuant to Section 20-0305

2) Appeals are not required to go to Planning Commission and Board of City Commissioners. Board of City Commissioners acts as appellate body only if the Planning Commission's decision is appealed.

3) Review, Decision Making and Appeals process is different depending on nature of request. See Section 20-0912

4.1.2. Review Process

The Fargo Planning Department manages the review process from application submission until the review authority's final decision. All applications must be on a form required by the Department and accompanied by applicable fees. Detailed review procedures are established for each permit or approval type, ([Sections 20-0904 - 20-0916](#)), and include information regarding application requirements, review and approval criteria, and any post decision procedures such as appeals and expiration.

Apart from a Site Plan application, the City's website offers all applications regarding land use and zoning, variances, subdivisions, and administrative review along with their associated fees.

4.2 Diagnosis and Findings

4.2.1 Zoning Map Discrepancies

The City's website contains two different zoning maps, one is a PDF that was last updated in May of 2017 and the other is an interactive GIS map that seems to be updated regularly. While neither the North Dakota Century Code nor the LDC contain any specific requirement for an 'up-to-date and accurate zoning map', keeping only one zoning map on the website will provide more clarity to residents visiting the website. It is a common best practice to have a single zoning map on a City's website that can be updated regularly with ease, not only with new property information but new layers such as Planned Unit Development designations and Renaissance Zones, which is a State program that incentivizes development in certain areas via tax credits. Given that the interactive GIS map contains much more information and is up to date, it would be advantageous to eliminate the May 2017 PDF zoning map from the website entirely to avoid confusion.

4.2.2 Predictability and Clearer Thresholds in the PUD Approval Process

Many stakeholders commented on the unpredictability of the PUD approval process for both developers and residents. Some residents contend that the use of PUDs is too widespread and that they are not being implemented with the neighborhood context in mind. Residents also assumed that PUDs are a tool for developers to be able to build what they want, without having to follow the standards in the established base zoning district. Some of the recent PUDs were approved after lengthy negotiations with neighborhood groups, but this important part of the process is not reflected in the LDC. On the other hand, some developers said that the PUD allows them to build denser, mixed-use developments with abundant on-site parking, and that the approval process is lengthy, contentious, and political. Both groups agreed that the process does not work for either side; residents feel that PUDs erode their neighborhood character while developers see it as the only tool to build denser residential or mixed-use buildings outside of the UMU and DMU districts. Despite disagreement on the use of PUDs, both sides agree that the process is inherently unpredictable and there are no discernable thresholds within the LDC when utilizing the PUD process as a zoning tool.

4.2.3 Consistency in Implementation of Residential Protection Standards

Like PUD's, stakeholders identified the Residential Protection Standards as needing more clarity, not only in the approval process but also with enforcement. Residents stated that the standards are not being followed and developers regularly obtain waivers for some standards.

On the other hand, developers said that the standards are not clear enough, which presents issues with interpreting the regulations, and they do not have enough built-in flexibility.

Section 20-0704 (Residential Protection Standards) of the LDC lays out all the additional standards for non-residential properties adjacent to residential zoning districts. These standards serve as buffers between the residential and non-residential properties in addition to the setback required by the property's base zoning district. The Residential Protection Standards consist of requirements for additional setbacks, visual screening of dumpsters and outdoor storage areas, building height, landscape buffers, additional light and odor provisions, and reduced operating hours for refuse and loading. Each standard has a level of specificity that would make it difficult for every project to be fully compliant without a waiver. For example, "Residential Protection Landscape Buffers must be installed or preserved along lot lines adjacent to any SR-, MR-, or MHP-zoned property. Plantings in Residential Protection Landscape Buffers are not counted toward the plant unit requirements of the Open Space Landscaping Requirements of Section 20-0705.C." The Landscape Buffer standards, in addition to the Landscaping Requirements, may make compliance difficult due to several limiting factors including lot sizes, lot occupation, setbacks, and cost. As a result, an applicant is forced to abide by two sets of standards, which opens the door for inconsistency in implementation. The Residential Protection Standards make the base zoning district standards seem inadequate or irrelevant in many parts of the City. In addition, if waivers are being granted on a consistent basis, it is indicative that many of these standards cannot be practically applied in the way they were intended.

4.2.4 Transparency with the Creation and Management of Conditional Overlays

Conditional Overlays (CO) are a zoning tool intended to provide additional protections to properties to ensure compatibility among incompatible uses, ease the transition between zoning districts, address sites or uses with special requirements, and to aid development in unique circumstances. While COs can act as a safety-net for some projects, many stakeholders feel that the process to approval is arduous and can yield some unwanted results. Section 20-0303 contains six specific standards for which restrictions and conditions could be imposed:

- Prohibiting otherwise permitted or conditional uses and accessory uses or making a permitted use a conditional use;
- Decreasing the number or average density of dwelling units that may be constructed on the site or limiting the size of nonresidential buildings that may be placed on a site;
- Increasing minimum lot size or lot width;
- Increasing minimum yard and setback requirements;

- Restricting access to abutting properties and nearby roads; and
- Creating and enhancing design standards, landscaping requirements, and pedestrian and vehicular traffic guidelines and standards for development within the district.

As part of the approval of a Conditional Overlay, a new allowable use that was otherwise prohibited may not be allowed nor can a CO reduce dimensional standards, such as a setback; Similarly through a CO, standards may only be increased and not decreased. Additionally, the Section 20-0303.C clearly states that “requirements of a C-O district are in addition to and supplement all other applicable standards and requirements of the underlying zoning district”. The concern with Conditional Overlays is that they inherently treat similarly situated properties differently and it can be hard to find a rational basis for the variation in applied standards. Conditional Overlays are often included as part of a negotiation between a property owner/developer and nearby residents in a zoning case in which the property owner receives the rezoning in return for agreeing to certain conditions, such as a prohibition of certain uses or a height limit on the building(s).

Despite how specific standards in a CO may be, many stakeholders felt a sense of an overall lack of transparency with how the CO standards are created and how they are enforced once a project is completed. In addition, CO's are sometimes a request made by the City to an applicant, usually to implement design standards in commercial districts. According to City staff, most design standards are created without any references to the Code or based on any approved guidelines.

Typical best practices suggest that when a tool such as a CO is used to establish, for example, design standards in commercial districts, then it is preferred to adopt design standards for those commercial districts and to include them in the Code. Under this approach, all developments in commercial districts would be subject to the same standards and the need for COs would be eliminated, with the added benefits of reducing costs to both the City and developers, providing certainty for all parties, and consistency in the application of design standards.

4.2.5 Clear Thresholds for Discretionary Review

Both City staff and stakeholders expressed concern with unclear review processes, particularly with vague language embedded into approvals. One example is that Historic Overlay approvals frequently contain vague conditions such as, “... [buildings] must match the original building in design, dimension, detail, texture, and pattern.” None of the terms listed are defined in an objective way and are enforced subjectively as a result. The approval of a building in this

Historic Overlay could become confusing for an applicant given there are no specifically defined parameters for approval.

Similarly, many of the CO districts contain subjective design language that is difficult to enforce and vague for any potential applicant. For example, "All primary buildings shall be constructed or clad with materials that are durable, economically maintained, and of a quality that will retain their appearance over time...". Terms such as 'durability' and 'quality' are subjective in nature and can only be determined by the Planning Director or his/her designee, leading to project approvals based on opinion-driven design decisions. Similarly, attempts to dictate the color of buildings by saying, "Color schemes shall tie building elements together, relate pad buildings within the same development to each other, and shall be used to enhance the architectural form of a building" are inherently subjective. This regulation attempts to address cohesion and a unified rhythm to a building façade but without any sort of dimensional requirement or enforceable provision. While the idea of the Conditional Overlay is to provide more protections where they are necessary, they frequently result in widespread subjective approvals that are unlikely to be enforced later due to vague regulatory language.

4.2.6 Availability of Information

Official Zoning Map

As noted above, the City's discrepancy between the PDF Zoning Map and the GIS Zoning Map could potentially be a source of confusion for applicants given that the PDF version has not been updated with the same regularity as the GIS version.

The location of the two Zoning Maps on the City website is also a noted issue for applicants or other members of the public. Ordinarily, zoning maps are located on the Planning Department page due to their departmental relevance. The City of Fargo's website has a dedicated page labeled as "City Maps" that is meant to be a one-stop-shop for all City maps. Once on that page, it is not immediately clear where the zoning map would be located. A user must first assume that it would be found in the "PDF Maps" page and then find a link labeled "Fargo Property Zoning". In addition, there are no other external links to the Zoning Map within the other pages of the website, and it can only be accessed through the City Maps page which is only on the front page of the website. City staff have mentioned the amount of public inquiries they receive regarding the location of the Zoning Map, which is likely due to its unapparent location within the website.

Site Plan Application

The internal practice of “Site Plan Applications” within the Planning Department is a crucial missing piece in information available to the public on processes and procedures. While, in Section 20-09 (Development Review Procedures), the LDC calls out Site Plan Review as one facet of the City’s Development Review Procedures, the Site Plan Application form is not available on the Land Use & Zoning Applications & Requests page. In addition, there is no physical Site Plan Application that is processed by the Planning Department as Site Plan Review is based on Building Permit Applications routed to the Planning Department after a discretionary decision that the application requires Site Plan Review. Although the LDC does establish thresholds for applications that require Site Plan Review in Section 20-0910 (Site Plan Review), it is unclear whether these are strictly adhered to. This is just one example of an established internal process that is not reflected in the LDC or any other available public document.

Subdivision Parkland Dedication

The Subdivision Park District dedication practice is another example of a process that is not codified. The subdivision regulations within the LDC do not require parkland dedication for each approval yet staff as an internal practice recommends the applicant negotiate with the Fargo Park District, which is a separate taxing entity not affiliated with the City, to dedicate parkland. An average of 8 percent of land ends up dedicated to parkland. In addition, an uncoded option allows an applicant to pay an in-lieu fee for parkland dedication.

Section 5 Legal Compliance

A review of the LDC, supplemented by information provided by City staff (Memorandum: Legal Considerations for Fargo Land Development Code Diagnostic, February 5, 2020) yielded some potential legal concerns relevant to the LDC Diagnostic Report. Important topic areas are identified in the narrative below that warrant further review and discussion with the City Attorney's office to ensure any update to the LDC is consistent with state and federal law.

5.1.1 Compliance with *Reed v. Town of Gilbert*

The City's sign regulations are located in [Article 20-13 \(Fargo Sign Code\)](#). In June 2015, the U.S. Supreme Court decision in *Reed v. Town of Gilbert* (No. 135 S.Ct. 2218, 2015) affirmed that sign regulations generally must be "content-neutral" to survive a legal challenge. Content-based regulations are subject to what is called a "strict scrutiny" standard – that is, a compelling governmental interest must be demonstrated, and regulations must be narrowly tailored to serve that interest.

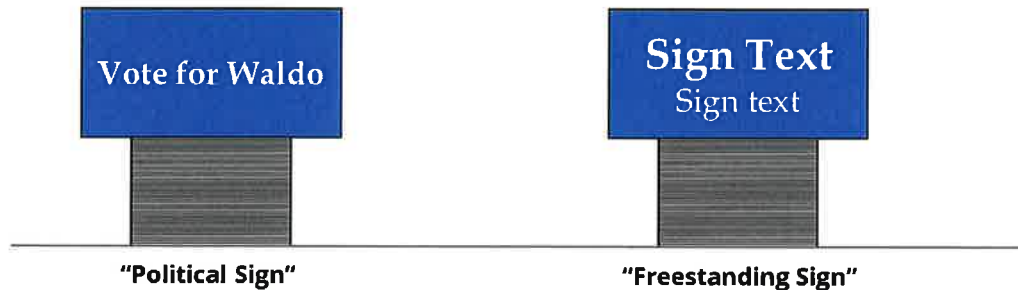
Since the *Reed* decision, several lower courts have invalidated content-based regulations of noncommercial speech, particularly those relating to political signs (*Marin v. Town of Southeast*). The lower courts have also upheld several examples of content-neutral time, place, and manner regulations, including restrictions on painted wall signs (*Peterson v. Village of Downers Grove*), murals (*Kersten v. City of Mandan*), and a New York City prohibition on illuminated signage extending more than 40 feet above curb level (*Vosse v. City of New York*). In *Central Radio, Inc. v. City of Norfolk*, the lower court looked unfavorably at incomplete exemptions for artwork, and flags of certain jurisdictions.

"Time, place, and manner" restrictions, as the name suggests, limit the length of time, the manner, and place or location of a sign. As an example, well-written sign regulations may include a limitation on the length of time the sign may be displayed, especially for portable or temporary signs, such as A-frames or banner signs; restrictions on the total area, maximum height, or illumination of a sign; and where the sign may be placed (i.e. so as not to encroach within the public right-of-way)

Content-Based Regulations vs. Content-Neutral Regulations

- What does sign say?
- Message determines if it stays up or down, or applicable regulations

- Time
- Place
- Manner



The Distinction Between a Content-Based and Content-Neutral Sign

5.1.2 Conditional Overlays

See Section 4.2 (Diagnosis and Findings) for more on Conditional Overlays.

Conditional Overlays are used in a number of US cities of all sizes, yet there is growing concern that while conditional overlays are a tool to promote development, and potentially to allow surrounding property owners to be involved in the development to ensure they too benefit from it.

It is recommended that further discussions with City staff and the City Attorney's office should be conducted to determine how best to address those Conditional Overlays that are already approved and in place, and whether Conditional Overlays should be allowed in the future.

5.1.3 Exactions for the Dedication of Parklands

See Section 4.2 (Diagnosis and Findings) for more on Exactions for the Dedication of Parklands.

It is recommended that the LDC include a new section that specifically authorizes and establishes procedures for the dedication of parkland and circumstances and procedures for the payment of in-lieu fees.

5.1.4 Increasing the Notification Boundary Beyond 300 Feet

The LDC (e.g. [Article 20-09.F \(Notices\)](#)) requires that letters be sent to owners of property within 300 feet of the boundary of a new development that may be subject to, for example, development review, conditional use permit approval, or a zone change. Like most jurisdictions, City staff will increase this boundary when deemed appropriate to ensure that additional property owners are notified, especially in rural locations where the parcel size is large or when a development application is expected to be controversial so that as many people as possible may be informed.

It is recommended that the noticing section of the LDC include specific language that grants the Director of Planning & Development authority to expand the notification boundary subject to specific conditions and/or criteria. This is a typical best practice utilized by many planning jurisdictions across the country.

5.1.5 Telecommunications Regulations

The Telecommunications Act of 1996 as amended (47 U.S.C. § 332(c)(7)(B)) limits state or local governments' authority to regulate the placement, construction, and modification of personal wireless service facilities. State or local governments must not unreasonably discriminate against the providers of functionally equivalent services and not prohibit or effectually prohibit the use of personal wireless devices. Further, state or local governments must not regulate the placement, construction, and modification of personal wireless service facilities based on the environmental effect of radio frequency emissions, to the extent that such facilities comply with FCC regulations. With regard to development applications for telecommunication facilities, state or local governments must act on applications within a reasonable time. If the application is denied, the reason(s) for the denial must be in writing supported by substantial evidence.

It is recommended that a thorough review of the LDC existing provisions for telecommunications facilities ([Section 20-0402.N \(Telecommunications Facilities\)](#)) be conducted to ensure that all new requirements are included in the Code, including for example, for small cell wireless (which may be located in the City's Public Works or Engineering Standards instead) and any updated notification procedures.

5.1.6 Zoning of State and Federal Land

In most US states, local zoning regulations, such as the City's LDC, do not apply to land owned and managed by the state or the federal government. It is our understanding that this is also true in North Dakota. Therefore, while agreements may be established between federal agencies such as the US Post Office or state agencies such as North Dakota State University, that permit the City to apply all or a portion of its zoning regulations on these properties, technically they are exempt from zoning regulation.

The applicability chapter of the LDC should include a statement(s) clarifying the applicability of the City's zoning regulations on federal and state lands.

5.1.7 Overly Vague Language in Conditional Overlays

City staff have identified some provisions in the Historic Overlay and Conditional Overlay Districts that are overly vague, subjective, and difficult to apply. This is typical of many older zoning codes like the Fargo LDC that has received many incremental updates over time. And as noted previously, one of the concerns with Conditional Overlays is that they may impose similar yet varying requirements (e.g. design standards) from one property to another.

5.1.8 Overly Vague Language in Historic Districts

It is recommended that all design standards must be reviewed and updated using established best practices to ensure that they are written as objectively as possible. Statements like "...additions over XX square feet must match the original building ..." can be rewritten as "...additions over XX square feet must be designed using the same materials, form, window treatments, and architectural details of the original building ...

Section 6 Economic and Fiscal Implications

6.1.1 Introduction

As part of the overall analysis of the LDC, LWC has been asked to provide information on economic and fiscal implications of the existing development code. As specific recommendations for modifications to the Code will be provided after the diagnostic phase of this assignment, it is useful to contextualize the economic and fiscal implications of the typologies that are identified in *Go2030* and its implementing documents. This section provides overview information about the economic performance of urban design standards and the creation of walkable mixed-use developments and districts from a general perspective.

6.1.2 Benefits of Urban Design

A comprehensive and balanced approach to urban design can produce a number of benefits for a community. In general, spaces that are conducive to longer term use and convivial public life can create several economic benefits, namely, the desire for people to congregate in pleasing and comfortable spaces leads to an increased length of stay within a district. The extended stay results in economic premiums for businesses and residents located within these areas. Overall, desirable spaces create economic returns. Beyond increased rents, land values and economic activity, many other kinds of 'value', both tangible and intangible, can be considered including environmental, social, or cultural benefits. The benefits of good urban design often accrue to the wider community; therefore, many stakeholders have an interest in what takes place at both the scale of an individual project and the scale of the community's over all distribution of land use. This logic is supportive of the goals of the North Dakota Main Street Program that seeks to assist economic competitiveness by creating spaces in communities that will be attractive to new investment and employment.

Experience in communities throughout the United States and internationally lead to some broad conclusions that are relevant for Fargo. Examples that illustrate the opportunities and benefits that can come from integrated mixed-use approaches are described below.

The Aksarben village neighborhood in Omaha, NE was developed between 2006 and 2010. This mixed-use neighborhood integrates a variety of residential typologies along with commercial uses. The community was an infill project that reused the site for a former horse racing track.

Aksarben Village has evolved into a major employment center and is the locations of the headquarters for Blue Cross Blue Shield of Nebraska, First Data, a leading Omaha based technology firm, and several other key professional service companies. Within the village itself



Askarben Village - Mixed-Use Buildings and Public Plaza (Credit: Lamp Rynearson)

Aksarben Village has evolved into a major employment center and is the locations of the headquarters for Blue Cross Blue Shield of Nebraska, First Data, a leading Omaha based technology firm, and several other key professional service companies. Within the village itself there are multifamily residential buildings that are integrated into the overall site plan of the district. Other amenities within the Arksarben development include a Marriott Hotel, and a multiplex cinema. The University of Nebraska-Omaha is also a major presence within the neighborhood having contributed a student housing and an arena to the site. The development has been an important catalyst in the overall growth and development of Omaha.

Stapleton, CO in Denver, is seen as a national model for an integrated, mixed-use approach to community development. Located on the site of Denver's former international airport, the community's design standards focused on creating a walkable mix of energy-efficient residential neighborhoods, retail districts, schools, offices connected by a network of parks and open spaces. Stapleton has seen some of the fastest appreciation for real estate in the metropolitan area since its development and has served as a model for Denver's approach of integrated neighborhood development.



Stapleton, CO - Walkable, Mixed-Use Development (Credit: Great American Country)

The experience of developments such as Aksarben and Stapleton have illustrated the following general themes:

- Good urban design integrates a mix of uses. This can offer significant benefits to the community in terms of economic returns, stability and improved adjacencies and synergies.
- Integrated mixed-use development approaches can sometimes require greater capital investment than conventional development. While this may be true at the level of the individual building, often it is a matter of intelligently considering the placement of structures on a development site, considering the relationships to the street and neighboring buildings or simply thinking creatively about the use of space within a project. In general, a well-produced project will generate better returns over the long run that will offset some initial costs that may be incurred. In addition, careful consideration of how sites are used can lead to a reduction in long-term costs.
- Communities tend to value the better quality of life that good urban design can deliver.

- Urban design can help make communities safer and more secure by creating active public spaces.

Urban design that promotes a higher density of buildings and public spaces (in conjunction with other conditions, such as mixed use, good building design and adequate open space) can:

- Provide cost savings in terms of land, infrastructure requirements and energy use.
- Reduce opportunity costs associated with congestion and additional vehicle trips.
- Support spaces for higher value economic activities, including retail districts and higher value employment spaces.
- Promote social connectedness and vitality.

Synergies can be created that offer increasing returns and create premium rents and land values stemming from increased economic performance. The performance increase can come through internalizing consumer expenditures within a mixed-use district from residents, employees, and visitors.

LDC issues

The current LDC does not allow Fargo to take advantage of the economic benefits that accrue from good urban design. The LDC's base zoning districts, other than DMU and UMU, do not include any reference to design standards. The approach of including design standards in a flexible and strategic manner can be an important feature that would be supportive towards the implementation of the goals that are included in *Go2030*. These development standards, when clearly articulated, can serve to support economic development by promoting higher quality development that is best suited to produce external benefits to the district and community at large while producing space that meets the requirements of the development program on site.

6.1.3 Benefits of Walkable Mixed-Use Districts

Walkable and mixed-use districts in urban centers have repeatedly been shown to lower some costs of local government associated with capital costs for infrastructure and service delivery. Mixed use and denser walkable cores are almost always linked to greater land values due to fundamental land use economics. When zoning allows for more programming to be placed in the same space, the underlying value of the land increases. The increase can establish a self-reinforcing system where higher land costs encourage greater density and compact development within urban nodes.



Typical Walkable, Mixed-Use Neighborhood (Credit: PlaceMakers)

Since the 1970s, significant research has studied the relationship between compact development and infrastructure costs. A series of reports by the federal government, including the seminal Cost of Sprawl report published in 1974 by the Real Estate Research Corporation, found that water, sewer, and road infrastructure cost was reduced on a per capita basis in denser developments. Later independent research has corroborated these findings. In general, a consensus has developed that compact development patterns substantially reduce infrastructure costs across a range of services including transportation capital investment, utilities, and infrastructure maintenance. Maintenance of existing infrastructure is also reduced in a compact development scenario.

Walkable Mixed-Use Centers can have the following benefits:

- Dense development lowers infrastructure costs because each mile of road or sewer line serves more development. Mixing uses also creates infrastructure efficiencies because it eliminates the need to provide parallel infrastructure systems to residential and nonresidential areas.
- In addition to lower infrastructure costs, dense, mixed-use development generates more revenue and fewer costs for the City budget. Multifamily housing produces more tax

revenue and requires less infrastructure and service costs per unit. Denser retail and office developments also produce more property and sales tax revenue.

- Dense development consumes less land and saves open space for agriculture and habitat. Studies from around the country have found that dense development alternatives consume between 10-40 percent less land.
- Higher density, mixed use areas are more aesthetically pleasing than homogenous, low density areas. Walkable mixed-use centers support promoting and cherishing places with distinct identities, character, and appearance.
- It has been well documented that a community viewed as having a high quality of life will attract and retain population and households within the City, which is in line with the goals of the North Dakota Main Street initiatives. Additionally, walkable mixed-use centers provide a greater range of local services and amenities and encourage people to walk, shop, and consume a meal.
- Denser areas are better able to support entertainment uses or cultural institutions. Savings on infrastructure and development costs leave more resources to invest in public art and cultural amenities.
- Dense, mixed use areas have more eyes on the street, which reduced opportunities for crime.

LDC Issues

Within the current LDC, mixed-use development is only envisioned as occurring within the Downtown Mixed-Use (DMU) and University Mixed Use (UMU) zones. This kind of space can also be produced through the use of Planned Unit Developments (PUD), Conditional Overlays (CO) and Conditional Use Permits (CUP). However, the application of these two tools have the possibility of creating irregular and uneven development standards and can introduce additional uncertainties and costs for a project. The lack of certainty within the LDC serves to disincentivize the production of walkable mixed-use projects.

6.1.4 Potential Economic Barriers

Although popular with many stakeholders and increasingly common in cities across the US, there are certain barriers to implementation for walkable mixed-use developments. Some of these barriers are related to inadequate or antiquated land use regulations but others are result of the financial and investment climate. The financing of mixed-use development can be more complicated than if each individual program element was to be developed independently. Lenders have been slow to accept the important change in the design and approach to mixed-use development especially in secondary markets, although an established track record of success can lead to increased investor interest. Lending institutions typically tend to overlook the unique circumstances of pedestrian-friendly projects and for these institutions, high parking requirements are typically a precondition of financing. Further

complicating this is the tendency for developers to concentrate on specific programs. For example, residential developers are often unfamiliar with the requirements for commercial projects and the same is true for developers who specialize in commercial projects. Similarly, a division exists between developers and investors who favor new greenfield sites as opposed to those comfortable working in an infill or redevelopment context. The recruitment and attraction of experienced developers can be a significant impediment to the successful implementation of walkable mixed-use projects.

Related to financing, capital construction costs can also be an issue. The main savings from the investment side in producing a mixed-used development project comes from the reduction in parking requirements. Structured parking, which is often required when projects are developed at urban destinies, can be prohibitively expensive. Shared parking programs, internal trip capture, and a reduction in off street parking requirements are often required as part of any strategy to produce mixed use projects. Other capital costs can increase as projects become denser. Projects that need to shift to from a modified Type V construction to Type I construction can be difficult to develop due to increased construction costs. When projects are developed at on an infill or redevelopment site, retrofitting of existing infrastructure or off-site improvements may be required. These costs can add to the complexity of successfully developing these projects. However, costs for new infrastructure improvements to the public realm and off-site requirements can be mitigated through public private partnerships and development agreements where there are opportunities for appropriate public investments.

Finding an appropriate tenant mix can also be a challenge within mixed-use development projects. Correctly sizing the retail and commercial mix to overall market demand can be a critical factor of success with these projects. Often, development codes can require more retail space than can be supported by the market. Allowing flexibility in programming within development codes can serve as an incentive for developers by allowing them to react more specifically to highly local conditions or in reaction to the competitive market. Development codes that focus on the form and performance of mixed-use developments tend to yield better results than codes that are focused on specific targets or requirements of specific program elements. For example, ground-floor retail requirements have been found to inhibit successful implementation of mixed-use projects particularly in contexts with height limitations or for projects that are located away from commercial areas. Smaller amounts of retail development can be successful in these contexts when they largely serve to amenitize the residential component. Codes that allow for live/workspace, commercial office, or other types of program on the ground floor can help encourage the production of mixed-use projects.

Related to issues of program mix within projects, is the need to identify suitable sites for walkable mixed-use projects. These projects typically require sites with high visibility and accessibility. Often, the best sites for these types of projects and districts require a redevelopment approach. This approach can include the need to assemble parcels to establish a site with enough scale to support a meaningful walkable mixed-use development project redistrict or an infill approach to insert the project within the existing urban fabric. This is less of an issue in greenfield development sites on the margins of an urban area, however frequently the most attractive locations for these types of projects require a level of urban intensity that is associated with existing commercial corridors and districts. The ability to assemble large enough sites to develop supportable projects along with the need to coordinate development with the needs of complex field of existing stakeholders and neighbors can also serve as an impediment towards implementation.

6.1.5 Summary and conclusions

The desire to create walkable mixed-use urban projects and districts within Fargo is likely to produce an increase in economic vitality, reduction in service delivery costs, and increasing returns on investment for successful projects. In order to realize these benefits, it is important to develop supportive policies that leverage the inherent advantage of mixed-use development programs within Fargo's development codes. Potential policies could include a strategy that recognizes the need to reduce the provision of structured parking spaces, opportunities to increase overall site density and flexibility on program within the building envelope. Additional supportive policies can include public-private partnerships for the provision of infrastructure and improvements to the public realm and where appropriate assistance with site assembly or redevelopment of existing property.

Developers face challenges with walkable mixed-use projects due to the complex nature and program mix. Communities generally find it is not enough to change development codes to attract this kind of investment. Additional supportive policies are a critical factor in success for implementation of these types of projects. Appropriate sites and districts must be identified that are suitable for higher intensity development with land use controls that allow for flexible and dynamic approach to market in order to attract the interest of investors.

The existing LDC can be modified to address the regulatory impediments to producing mixed use projects. Areas of particular concern include limited locations where these projects are clearly allowed as of right and the need to engage in an uncertain or lengthened process for CO or PUD based approvals. Beyond land use designations, future revisions to the Code should allow for value capture that can come from this type of development via reduced infrastructure costs—particularly for parking. Shared parking and reduced parking

requirements that recognize internal trip capture can serve as an incentive to develop these types of projects. Amending the LDC to provide a dependable and favorable regulatory framework will be required in order to allow for the production of the types of projects identified in *Go2030*.

Section 7 Conclusion

This Diagnostic Report evaluates the City of Fargo's Land Development Code and highlights problem areas. Diagnostic reports serve as a foundation for short-term and long-term revisions to the LDC, not only to fix issues that are uncovered, but also they provide a framework for updating and modernizing regulatory standards. Overall, the LDC fails to implement the goals of the *Go2030* Comprehensive Plan in certain key areas. For example, the goal of creating walkable, mixed-use centers is only possible in a small portion of the City whereas *Go2030* strives to make this possible in areas outside of downtown.

Moving forward, LWC and City staff will work together to create a list of alternative actions to address the issues identified within the LDC. In coordination with the City planning staff, Planning Commission, Board of City Commissioners, residents, and stakeholders, LWC will create preferred alternatives for how the LDC may be updated, as well as a work plan for implementation.

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR *NC*

DATE: AUGUST 6, 2020

RE: YWCA CASS CLAY EMERGENCY SHELTER COVID-19 QUARANTINE RENOVATIONS – RED RIVER VALLEY COVID-19 TASK FORCE - QUARANTINE SUPPORT

In response to limited quarantine options for people who are homeless, the YWCA women's shelter located at 3000 S University Dr. is planning renovations that will add 6 private bathrooms to existing private rooms. These rooms will be available for use by use by any female person who is homeless and needs to quarantine. Currently, there are only 7-9 units available throughout the entire shelter network that can be used for quarantine. Completing the private rooms at the YWCA will add to that number and alleviate any costs associated with hotel quarantining (i.e., hotel fees, added staff and nurse, transportation, etc.). Additionally, adding these rooms will allow for added medical respite options in the future, which are currently limited to the same 7-9 quarantine spaces that are available because those spaces are the existing medical respite spaces.

As part of the Planning Department's work through it's Community Development Division and as the education and awareness and quarantine support committee work on the Red River Valley COVID-19 Task Force, staff have been coordinating weekly with shelter leaders, the FM Homeless Coalition, the State of North Dakota, and Clay County among others about metro-wide system responses in regards to at-risk populations for COVID. Staff believes this rehab work will allow for a reduced demand on hotel use. Attached for reference is the scope of work and a narrative provided by YWCA.

The Red River Covid-19 Task Force is recommending \$350,000 from its budget to assist the YWCA in completing the quarantine renovations as soon as possible.

Recommended Motion: To authorize the Mayor to execute a recipient agreement with the YWCA, subject to technical review by the Public Health Director and City Attorney.

YWCA Pandemic Renovation

YWCA Cass Clay Emergency Shelter has been providing safety and security to women and children facing violence and homelessness for over 40 years. YWCA Emergency Shelter remains the largest shelter serving women and children facing violence and homelessness in North Dakota and northwest Minnesota. During this unprecedented health crisis, YWCA has continued to accept women and children in our community and region seeking safety and the opportunity to rebuild their lives.

COVID-19 has impacted the daily operations in multiple ways:

- The emergency shelter continues to serve but at a decreased capacity during this time to follow Centers for Disease Control (CDC) best practices on social distancing while serving those in communal living environments.
- Our team and shelter residents have taken extra safety precautions by wearing personal protective equipment in public areas and have participated in weekly and biweekly mass testing events as recommended by our local health partners Fargo Cass Public Health (FCPH).
- YWCA team members have worked weekly rotating shifts since March to lessen the exposure to the virus and help ensure YWCA has trained professionals to serve those escaping violence and homelessness 24 hours a day 365 days a year.
- On May 15, 2020, YWCA Emergency Shelter residents were evacuated to a remote offsite location because of a COVID-19 positive case. Through the assistance of the North Dakota Department of Human Services (ND DHS), FCPH, City of Fargo Transportation Center and others, YWCA was able to provide around the clock support services during the evacuation.

YWCA remains committed to standing alongside women and children who are experiencing homelessness. DHS recently informed local public health, city leaders and shelter providers that their agency intends to step back from leading centralized coordination of statewide homeless shelter COVID response efforts. ND DHS has tasked each local community with devising a plan to isolate and quarantine those facing homelessness in their communities. Cass County partners have been meeting over the course of the past month to determine appropriate next steps and have encountered challenges with finding a safe alternative location that meets the needs of individual rooms with private restrooms. Hotel options utilized earlier in 2020 are less available as hotels begin to return to normal occupancy levels and have previously required an entire wing or floor to be secured each night regardless of the number of people occupying rooms. This approach was costly and placed a strain on local service providers from the Gladys Ray Shelter who managed their shelter while providing supports at the COVID specific shelter.

At the height of the COVID sheltering in Cass County, 27 rooms were occupied at the COVID shelter and another 28 for the YWCA evacuation. DHS indicates a total of 133 people from Cass County were sheltered at the two COVID sites at a significant cost of \$553,000 for security, hotel stay, food and shelter management.

Plausible solutions include quarantining COVID positive residents in hotel settings and staffing them to the best of our collective ability or alternatively increasing quarantine capacity at existing shelters that are already staffed 24 hours a day. Today, New Life Center indicates their organization has five rooms for this purpose, YWCA currently has one large room that meets the criteria that could house a woman and her children or two women at the same time. Our local service provider group knows this is not enough space.

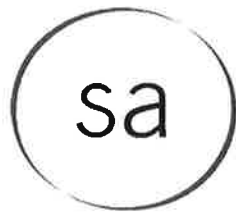
The local Cass County group has set an internal goal of identifying 30 spaces for this purpose. YWCA has private sleeping rooms but no sleeping rooms with adjoining restroom facilities. The restrooms are all communal except for one room mentioned above. YWCA is exploring a Pandemic Preparation Renovation initiative within their existing shelter. The plan includes modifications to three existing sleeping rooms, two multipurpose rooms and four storage rooms to create six new sleeping rooms with restrooms within the sleeping space. Four of the units will include handicap accessible restrooms while two would include bathtubs for large families with small children. The attached rendering from Shultz + Associates (S+A) architects depicts the renovation and net capacity gain. This modification has many benefits both short and long term:

- Utilizes existing 24-hour staffing already onsite and provides efficiency in service delivery;
- Increases overall capacity of shelter from 67 beds to 72 beds;
- Provides response to COVID-19 , influenza season and respite care needs by increasing capacity of quarantine/isolation from the current 1 room (3 beds for a mother with two children or two single women) to 7 rooms (13 beds with multiple configuration options of single women and women with children).

YWCA has added additional safety protocols to our feeding program. Our kitchen manager prepares an evening meal for every women and child sheltered at YWCA. Prior to COVID-19, individual women and families would utilize a buffet style serving in our dining area. Since COVID-19 the YWCA Kitchen Coordinator individually packages every meal and places them in a refrigerator. The refrigerator capacity of YWCA is lacking to meet this need but adding more refrigerators is not possible today because the wiring to that area of the building is already maximized. The proposal to increase electric capacity to add refrigerators totals \$4,000. This is the wiring only, not the purchase of the refrigerators.

YWCA has long worked with the S+A who designed the shelter building in 2003. Since that time, S+A designed modifications to the security and functionality of the YWCA Emergency Shelter including bullet resistant materials and glass at the front entry, renovations to serve survivors of human trafficking and security upgrades to lights, cameras and other surveillance equipment. S+A estimates the modification to the second floor and additional wiring described above will cost \$350,000. S+A cost estimate is attached. S+A predicts four months of construction and two months of lead time for publication and bidding, depending on the funding source and the nuances attached to the source.

YWCA envisions the Pandemic Renovation as part of an overall community solution to serve those facing homelessness with dignity and respect while maximizing efficiency of existing staff in current space. The net effect of six isolation/quarantine rooms able to serve another 10 people is a significant unmet need in the community. YWCA wants to be part of the community's response and solution both today and into the future.



SHULTZ+ASSOCIATES
ARCHITECTS

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Fargo, ND 58103

Phone: 701.476.0714
Fax: 701.476.0709

www.TheArchitectFirm.com

Project Estimate

Project: YWCA Shelter Living Space COVID Improvements
Phase: Pre-Design

Project #: 2013
Date: 20.08.03

Scope	Quantity	Rate	Subtotals	Totals
Interior Remodeling - 2nd Floor / Related				
Toilet Rooms - General Construction	6 EA	\$ 12,000.00	\$ 72,000.00	
Related 2nd Floor Remodeling - Storage/Office	1 LS	\$ 15,000.00	\$ 15,000.00	
First Floor Remodeling - Plumbing Access	1 LS	\$ 25,000.00	\$ 25,000.00	
Electrical - 2nd Floor	1 LS	\$ 20,000.00	\$ 20,000.00	
Plumbing	18 FX	\$ 4,200.00	\$ 75,600.00	
Fire Sprinkler Reconfiguration	1 LS	\$ 6,000.00	\$ 6,000.00	
Mechanical Ventilation	6 EA	\$ 1,800.00	\$ 10,800.00	
				\$ 224,400.00
Other COVID Improvements				
Electrical - Food Storage for Portioning	4 EA	\$ 1,000.00	\$ 4,000.00	
				\$ 4,000.00
Subtotal				\$ 228,400.00
Contractor O&P		12.00%	\$ 27,408.00	\$ 27,408.00
Federal Funding / Bidding		10.00%	\$ 22,840.00	\$ 22,840.00
Contingency		15.00%	\$ 34,260.00	\$ 34,260.00
Subtotal				\$ 312,908.00
A/E Compensation		12.00%	\$ 37,400.00	\$ 37,400.00
TOTAL - Estimated Project Cost				\$ 350,308.00



NET APTMT ADD +3
YWCA SHELTER
Second Floor Plan - OPTION 1
1/8" = 1'-0" July 24, 2020



Summary of Covid-19 Needs in Fargo Moorhead Area

City of Fargo Planning & Development Department

Tia Braseth

August 2020

Covid-19 Summary of Community Needs

As part of the work of the Red River Valley Covid-19 Task Force Education and Outreach subcommittee, several organizations that work with special and low-income populations were contacted. They were asked how covid-19 has impacted their organizations, how they were responding, and what gaps they were seeing and hearing from employees, partners, and clients. The following is a summary of the gaps, needs, and concerns heard, as well as a brief summary of each organization's current status in terms of covid.

Gaps, Needs, & Concerns Heard

1. **Homeless quarantine/triple wave may hit homeless community** – evictions, increase in coronavirus cases, and winter. With the potential of rising cases this fall and limited isolation options, where are people going to safely isolate? Churches United, the only shelter in the metro that takes families (unless single parent fleeing domestic violence – goes to YWCA), is already at their winter overflow numbers. The others are up and down with capacity. Only 5-9 quarantine rooms in all shelters, 5 of which are in New Life's medical respite unit. All shelters have had positive cases since March. Other shelters at lower numbers partially because people are afraid to go to shelters in the midst of covid-19. Several have noted that this is not a shelter issue, this is a public health issue. Shelters feeling the weight to take on things that should be addressed by public health. Once the shelters take on public health items, they are likely to remain in the shelter's responsibility permanently.

Possible solutions heard?

- Drop-in/isolation center – Would need metro-wide effort to fit-up old Family Fare building in Moorhead as a drop-in, isolation, and overflow strategy. Also has a kitchen.
 - Hotels – buy building, rent floor or rooms, but problematic for staffing (linear architecture constraints – hard to staff) and costly.
 - Housing – get more people housed or keep them housed.
2. **Evictions and lack of funding for housing assistance and homeless prevention** – despite additional awards of funding. State of ND's Rent Bridge program has helped, but also hearing that not everyone can access, not easy for landlords to navigate or sign up, and the number of applications significantly outweighs the funding available.

Possible solutions heard?

- More housing assistance funding needed (for direct assistance and added staff) for rent, mortgages, and utilities
3. **Homeless healthcare** – mobile healthcare outreach is desperately needed to ensure that people who are homeless are being treated, addressing chronic disease, getting prescriptions, being tested if needed.

Possible solutions heard?

- Buy mobile outreach unit equipped with medical, dental, covid-testing, and PPE. Find people who are unsheltered.
- 4. Food insecurity uncertainties** – without knowing the corona forecast, it's possible that food levels may drop. Pantry unable to have two of its major spring food drives and is already at the lower food supply months they see in the fall.

Possible solutions heard?

- Additional funding may be needed for food. Contactless food drive?
- 5. New American/refugee needs** – in addition to housing assistance, other major needs heard include financial assistance for businesses, childcare, employment searching services, education/outreach services on coronavirus (e.g., signage in different languages, over the phone education, food delivery, PPE), and remote communication tools like phones, computers, and internet. Also hearing that community is experiencing a lot of stigma and fear. Members of the community do not want to get tested for coronavirus as a result. Some also related to being afraid of citizenship questions and the fear of being deported.

Possible solutions heard?

- Additional funding for direct expenses and educational outreach.
- 6. PPE/added cleaning expenses** – while not everyone is in need of additional PPE, some agencies have dwindling supplies, with limited funds to add more, including the food pantry, New American/refugee community, Adult Learning Center, Arbors at McCormick, and Youthworks. Also, every agency is spending additional time and funds on cleaning routines, whether it is hired out or in-house between supplies and staff time.

Possible solutions heard?

- Additional funding or reimbursement from City to organizations building their own PPE kits.

Other Information Heard

- 1. Mass testing** – State of ND and Family Health are pulling away from it and it never really made it to Moorhead in Minnesota. NDSU will be doing mass testing 8/18-8/23 for students, staff, and faculty.
- 2. Masks/face coverings** – NDSU, everyone required to wear one when in class. Not mandated yet, but definitely in classroom for face to face teaching. State of Minnesota mandated mask wearing. City of Fargo has citywide mask recommendation.

3. **Clay County Public Health & Moorhead** – Clay Health is working on building trust in New American/refugee community and other marginalized people. Doing overall staff training on historical trauma.
4. **Lutheran Social Services** – Received ORR \$30,000 grant, most of which will go to PPE and they are willing to partner with others if there are needs.
5. **City of Moorhead and State of ND** – EDA grants for small businesses.

Organization Discussion Summaries – July 2020

Arbors & McCormick (formerly Community Homes) – Cleaning routines have been amplified in the common areas of apartment buildings (gloves are \$1/pair, very costly and hard to come by), had to hire outside cleaning service (unbudgeted expense), only emergency maintenance is being performed in units (i.e., toilets, fixtures, kitchen appliances, etc.), PPE is not readily available for tenants, office still closed (open by appointment only), currently working on partnership with ESHARA to deliver onsite, outdoor covid education to residents. No one will lose their apartment due to loss of income or employment. Office staff busy with income change reporting. Set up hotline for residents for information on basic services (i.e., childcare, food, employment, healthcare, testing, rental assistance, etc.).

Needs: PPE for residents; gloves for maintenance staff; funding for outside cleaning service; A/C system cleanout for air quality, education for residents (planning in progress).

Point of Contact:

Sarah Bagley, ED of Chisom Housing Group, sbagley@chisomhousing.org, (202) 422-0947

Great Plains Food Bank – Nationwide food supply chain, safety measures, and decrease of volunteers and food drives have substantially impacted the food bank. Having to purchase semi-loads of food to meet demand (25k per truck, needed 12 so far). Unexpected costs, limited food storage options, inability to continue food choice model for beneficiaries because of social distancing requirements (had to pre-pack boxes). Through August, people are able to get a produce box at Fargo Dome without income verification (drive-thru service). This is a partnership with the USDA's Farmers to Families program for people in need as a result of covid-19. Overall lull at moment, expecting surge after added stimulus and food benefits end on July 31. Increase in first timers (25%) and 44-79% increase in clientele at partner food pantries and the GPFB Mobile Food Pantry. Hired temporary staff. Not sure how much the need will be, but anticipating a surge after July 31.

Needs: Funding for food, supplies, truck, trailer, lift gate, and possible temp staff.

Point of Contact:

Marcia Paulson, CDO, mpaulson@greatplainsfoodbank.org, (701) 476-9101

Family Health & Homeless Health – Had to change to new model of care for patients, particularly with telehealth. Response has been entirely on covid itself. Just now getting back to somewhat normal operations. Dentists are on full, other health providers coming back slowly. It will be several months before all providers are back on site. Over a million dollars in lost revenue because there was a hold on patients with chronic disease management. Homeless Health was closed to be used as an isolation triage location for patients with covid symptoms and unsure when Homeless Health will be available again. Nurses are in shelters and mobile medical/dental/testing outreach is being considered. Unsure where people who are homeless are now and if they are still getting their needed treatment, especially with all the general gathering spaces closed and social distancing requirements. Red River Task Force doing covid testing onsite and disseminating care kits for those in quarantine.

Needs: Homeless mobile outreach (including funding for ongoing supplies to stock), funding to make up for revenue loss.

Point of Contact:

Patrick Gulbranson, CEO, pgulbranson@famhealthcare.org, (701) 239-2285

Churches United – Already at their winter overflow numbers. Shelter full every night, many women, guests with serious, untreated mental illness with really problematic behaviors that take a lot staff supervision and time. With potential of increase in covid cases, winter, and evictions, it's likely that both homelessness and covid could increase. Ideally, there would be a drop-in/overflow/quarantine option, could be a metro-wide effort to purchase and fit-up existing building or build new. Unsheltered people need access to warm food, water, laundry, showers, toilets, and other resources. Currently, passing out 90 sack lunches per day because kitchen closed (was 150/month pre-covid). Some bottled water donated. Overall, already stretched to the maximum.

Needs: Homeless quarantine/winter overflow/drop-in center, homeless prevention assistance (via service providers, to help people stay housed and out of shelters), legislative needs include mass testing capabilities in MN and keeping eviction moratorium in place, funding (hiring temp. staff, lack of volunteers), needs two HVAC units replaced.

Point of Contact:

Sue Kosterman, ED, pastorsue@churches-united.org, (218) 236-0372 #238

Youthworks – Access to emergency beds and housing (for youth over 18) is more limited during this time. Youth shelter (under 18) is at 35-40% full, trying to keep distance between youth. Not uncommon being at 40% in the summer. Shelter is likely to see uptick if schools open this fall. Greatest challenges are the distance guidelines (for health safety) to meet with youth face to face, the need to provide a lot of education on covid, and the extra staff hours needed to implement additional procedures in place (i.e., temps, screening, cleaning, extra outreach shifts, staffing for separate quarantine shelter, etc.). Drop-in process has been modified and was moved outside. Offering drop-in services 3 days a week for food, hygiene supplies, flip phones for safety, and services (grocery drop-off upon request). With no school, accessing services has been more difficult for youth. Some hotel vouchers through federal funding. Quarantine shelter space available for youth under 18.

Needs: Funding for hotel vouchers, to hire more PT staff, to offer hazard pay to street outreach team and shelter staff, and to get more PPE and cleaning supplies.

Point of Contact:

Jessica Fleck, Assistant Executive Director, jfleck@youthworksnd.org, (701) 232-8558

Emergency Food Pantry – Doing curbside model in parking lot. Unable to do food choice option as used in past, pre-packed boxes. Concerns about food waste with people not selecting their own food. Serving about 800-1000 families each month, down from 1000-1500 families pre-covid. Concerned that after benefits end July 31, there will be a surge. Early on, pantry was able to give more food so clients could go longer between food pick-ups. Pantry plans to do this again when clients or covid cases increase. Decrease in volunteers, concerned about volunteers moving forward. Providing masks to volunteers (required to wear) and offer to clients. Would like to install pager/intercom system so fewer people would need to be working a shift (many in parking lot checking people in, plus inside prepping food orders and sorting deliveries). Technology could streamline. Missed two spring food drives, supply already at fall levels, which is less than summer. Food supply line is taking longer than usual. If client is positive for covid-19, food baskets are delivered to door step as coordinated with client.

Needs: Funding for technology and pager/intercom system, food, toilet paper, soap, PPE.

Point of Contact:

Stacie Loegering, ED, stacie@emergencyfoodpantry.com, (701) 237-9337

FM Coalition to End Homelessness – Policy action and organizing people to call governor on eviction moratoriums. Staying on top of what's going on in MN & ND. Finding new ways of building relationships, not being a direct service provider, found ways to alleviate workload of direct providers (i.e., coordinating, planning, organizing meetings, calls, etc.). State of ND moved all homeless quarantine response to local control, hotel is offline but could be brought back quickly if needed. Shelter facilities are ill-suited for pandemics, architecturally and operationally. Shelters thinking about how they can be better suited to quarantine in the future. Helpful that it is summer so people can be outside, but winter is a concern, particularly with evictions coming.

Needs: Funding to add staff and adapt training online, generally secure funding (fundraising events have not happened), and to identify how to help partners with gaps and how to prepare for the future.

Point of Contact:

Cody Schuler, ED, cody@fmhomeless.org, (701) 936-7171

Lakes & Prairies Community Action Partnership – Limited face to face visits with clients, generally outdoors. Provided phones and phone cards, food, toilet paper, and other hard to find items to clients. Also offering client delivery. Seniors still getting commodity boxes. For housing program, advocates going to units and showing clients remotely or have rental manager show remotely. Homeless/prevention program completely over the phone. Homeless outreach is outdoors or over the phone if in a shelter. Expecting surge in callers with evictions. Many new callers/first time crisis situations; unaware of how to access emergency resources. Seeing very high bills and rents due because people are so far behind. About 50% of callers are in crisis resulting from covid-19. Two summer classroom for children (limited access based on numbers to space out). Families also facing childcare needs. Just started senior rural bus route program to get seniors to medical appointments for example.

Rainbow Bridge running again. Added whole family resource navigator position, which knows a little about every program, integrated with front desk. Adding two more staff to the Homework Starts with Home program for Moorhead schools.

Needs: Flexible direct assistance for housing/utility bills, transportation, childcare, deposits, etc., navigating technology, long term to connect people with living wage jobs.

Point of Contact:

Emma Schmit, Housing Director, emmas@caplp.org, (218) 512-1564

SENDCAA – Not as busy as expected, likely due to Rent Bridge and unemployment stimulus still in effect. This is now changing as eviction notices and utility disconnections are being issued. In addition, households who have already exhausted rent bridge but are still in need are now applying. People in poverty are in limbo and need help applying for unemployment, getting help with rent, getting food and assistance with childcare. Navigating needs through the phone has been difficult. Existing utility, weatherization, rental assistance, childcare, housing/homeless, and case management have all ramped up. Contracted with 211 to screen callers, a lot of first time callers. Have delivered food to seniors, but not those who are covid-19 positive. Salvation Army and Presentation Partners in Housing are doing their best but are facing the same issues as SENDCAA.

Needs: Direct assistance on basic necessities (i.e., rent, food, utilities, transportation, etc.), additional capacity.

Point of Contact:

Sarah Hasbargen, Self-Sufficiency Coordinator, sarahh@sendcaa.org, (701) 232-2452

Lutheran Social Services – Ended all in person interactions with clients (i.e., counseling, group sessions, gambling, New American), some suspended and some online. Some online programming has been successful, while some has been marginally successful. Phased reopening process will begin soon. Covid has impacted refugee services and basically their entire support system. The impact is both on the business and family side and is likely contributing to mental health issues. Concerned about this and abuse at home. Relationships between employers and employee are a concern, trust issues. Covid has been a stigma for refugees. For businesses, not able to access payroll protection program because of bank partnership requirements. Additionally, programs for loans and services, interest is an issue for Muslim culture. Struggle assisting remotely with internet or device set-ups for people who have not been using the technology. Remote counseling services does not work for kids under a certain age. School support online, but not as effective as in-person. Some of the clients struggling with technology will be able to call ahead and get services/access. Doing home visits on special occasions. Doing contact tracing in partnership with health department, connecting directly with families, close contacts, employers for the past two months. ESHARA and quarantine support is great for response. Also, it may be indirect, but on a global scale, refugees not coming to communities. Not sure how long that will be, only on emergency basis right now or for reunification.

Needs: Funding in general, becoming more efficient in program delivery, and PPE.

Point of Contact:

Dan Hannaher, Interim Director, New American Services, danh@lssnd.org, (701) 271-1604

New Life Center – Increased staffing. Have isolation dorm for covid-positive guests. All staff and guests getting covid tested every week onsite by National Guard. Greatest uncertainty is homeless quarantine. This is a public health problem, not a shelter problem. Performing contact tracing to best of their ability, while working closely with Cass Public Health. Had to close thrift store, loss of \$35,000 a month as a result. Not sure if they can hold fall fundraiser in October, \$150,000 revenue budgeted for that event. Access to more mental health counseling for employees in this field would be ideal.

Needs: Funding for increased staff, handwashing station, and supplies (doing okay with PPE).

Point of Contact:

Rob Swiers, ED, rob.swiers@fargonlc.org, (701) 532-4441

Presentation Partners in Housing –

Housing Navigation Program: Services have not changed, just how they are provided. Mostly everything virtual, limited face to face. Internet and telephones provided to clients, with updated minutes each month. Assisted with prescription fills so they clients could stay home, delivered a lot of food in beginning, food cards and bus passes were also provided early on.

Financial Assistance Program: This service is being provided virtually and via phone. Many working poor people with 1-2 minimum wage jobs, denied unemployment. Single parent households had to quit work to homeschool, fallen behind on many months of rent. First Link referring clients, as well as Dakota Medical Foundation and local news at times. In June, 48% of applicants were first time applicants. There has been a drop in people applying, but the level of need people have is much higher. People are much farther behind on rents than in the past. Need to get prevention/diversion program up and running to get people housed. Unsheltered homeless will be the focus. Much funding has gone to shelters, food, and covid.

Needs: Funding for staff on front end prevention, direct assistance to clients (i.e., housing, rents, utility bills, food, communication devices, transportation, etc.), and more PPE.

Point of Contact:

Cheri Gerken, ED, cheri@fmppih.org, (701) 730-4556

YWCA – No volunteers onsite, lost revenue from thrift store, unable to take in-kind donations. There are a lot of added processes, at one point staffed a hotel site for quarantined people who were homeless and fleeing domestic violence. Need new quarantine space because State of North Dakota is backing away from engagement and need to come up with community solution. Has some quarantine space at shelter, but not with private showers and toilets. Uptick in domestic violence reports because people are stuck at home together, up 19% from same time period as last year. At quarantine capacity with CDC guidelines and expecting surge. Unable to do fundraising events. Offering food baskets and added pop up food pantries in West Fargo and Fargo. Offering transportation and boredom kits for kids and adults.

Needs: Quarantine space for homeless, storage space for apartment furnishings, exploring private bathroom/shower renovations to provide better quarantine options, increase capacity, funding to staff non-YWCA properties with case managers.

Point of Contact:

Erin Prochnow, CEO, eprochnow@ywcacassclay.org, (701) 232-2547

United Way – Has a coronavirus response fund. Raised 80k, all going to homeless diversion and prevention initiative. This is a partnership between CAP agencies and Presentation Partners in Housing. Proactively working on ways to ensure to share work with the community. If people do not go back to work or there is another shutdown, wants to ensure they can still share message and impact with people across community. Developing ways to engage companies with digital fundraising content. Goal is to prevent and divert families from homelessness and support the nonprofit community overall-a long term shut down will ripple effects in this sector, especially in terms of fundraising and nonprofits' ability to deliver services (i.e., health services, after school programming, homelessness, senior programs, food, etc.). ESHARA partners are helpful. General education for New Americans is lacking in response to covid. Concerned about shelters and winter overflow with Churches United at capacity now. Concerned about added benefits (federal unemployment, eviction moratoriums) ending and the impact it will have on individuals potentially experiencing homelessness.

Needs: Add staffing positions to the homeless prevention and diversion programs. Prevent onslaught of crisis. Employment, childcare, etc. Incentivize Landlord Risk Mitigation Fund.

Point of Contact:

Thomas Hill, VP Community Impact, THill@unitedwaycassclay.org, (701) 237-5050

Lake Agassiz Regional Council – concerned about smaller communities operating in a more “back to normal” way (i.e., open bars and restaurants, little PPE and mask wearing, etc.). Things are a lot different than in Fargo. This could lead to spikes in covid. Overall, agency is focusing on small business loans. Businesses that really need the funds are not the ones getting it due to access issues. They are trying to help those owners through loan processes. They see an uptick in people seeking their

programs. Added one staff member and plan to add another depending on a grant. Eventually wants to partner on micro lending for New American/refugee businesses.

Needs: Unrestricted loan funds, add staff member.

Point of Contact:

Amber Metz, ED, Amber@lakeagassiz.com, (701) 235-1197

City of Moorhead – Agency impact, relied on typical FEMA model as a response, but unsure if it was effective in getting the work done that needed to be done for a pandemic. Covid is not a cyclical problem like a flood, so planning and response was different than a previously experienced emergency. A covid command team was developed and it meets weekly. The team and those that updated the team on a regular bases include Moorhead Public Service, Downtown Moorhead Inc., Emergency Management, department leadership, and the City Manager. Trying to figure out how to re-open City Hall. Architectural barriers making it difficult (i.e., 2 elevators, high rise, small lobbies, small Chambers, etc.). Installing counter shields, supplying face masks, sanitation stations, sanitation services, etc.

In a public comment period until August 3 for CARES Act funding. Proposing 2 million of it goes to small business and community/non-profit organization support. Also seeing areas of need in childcare, housing payments, and food insecurity. Using CDBG-CV for housing assistance through Lakes & Prairies CAP and broadband access in partnership with Clay County HRA.

Did an emergency ordinance to house more than 4 unrelated in duplex next to Dorothy Day House operated by Churches United. More vulnerable populations were housed in duplex, not necessarily those with symptoms. Services next door at Dorothy Day. Churches United was able to send some guests needing quarantine to a hotel in Moorhead. City of Moorhead Police Department worked with the organization and security measures at the hotel.


Needs: Business support and re-opening City Hall.

Point of Contact:

Joshua Huffman, CD Program Administrator, joshua.huffman@cityofmoorhead.com, (218) 299-5375

(18)

TO: Board of City Commissioners

FROM: Jill Minette 
Director of Human Resources

RE: City of Fargo COVID-19 Temporary Employment Policy – Annual Leave (Vacation)
Maximum Accrual

DATE: August 6, 2020

The COVID-19 Pandemic has created significant challenges related to staffing and workload in certain departments over the last several months. In some cases, City of Fargo employees have not been able to utilize their annual leave (vacation) as they would in a typical year.

City of Fargo Employment Policy 500-001 Annual Leave establishes that employees may carry over annual leave balances of up to 256 hours (508.5 hours for fire suppression) each year. Hours that exceed these limits are forfeited.

Due to the impacts of COVID-19 on annual leave usage, City of Fargo COVID-19 Temporary Employment Policy – Annual Leave (Vacation) Maximum Accrual has been drafted and is attached for your approval. The temporary policy increases the carryover limits by 80 hours (96 hours for fire suppression). The increased limit will minimize the potential forfeiture of annual leave by employees who are unable to take vacation due to circumstances beyond their control.

RECOMMENDED MOTION:

To approve the City of Fargo COVID-19 Temporary Employment Policy – Annual Leave (Vacation) Maximum Accrual

City of Fargo
Temporary Employment Policy
COVID-19
Annual Leave (Vacation) - Maximum Accrual

Effective: August 10, 2020 through December 31, 2020

Due to impacts of COVID-19, the City of Fargo recognizes that employees may not have the opportunity to use their annual leave (vacation) accrual as they would in a typical year. Some departments and employees have been impacted by higher workloads that do not allow for normal vacation usage. While supervisors are encouraged to work with employees to schedule vacation to the extent possible this year, the City of Fargo is increasing the 2020 vacation carry-over limits.

City of Fargo Employment Policy 500-001 Annual Leave establishes that employees may carry over annual leave balances of up to 256 hours (508.5 hours for fire suppression) each year. The annual leave balance, including all hours accrued by the end of the 26th pay period, minus any annual leave hours used on or before December 31 determines the year-end annual leave accrual. Normally, any hours over 256 are forfeited.

Due to the impacts of COVID-19, on December 31, 2020, employees will be able to carry over an additional 80 hours of annual leave (96 additional hours for fire suppression). The annual maximum carry over balance will be 336 hours (604.5 for fire suppression) for 2020. Any hours in excess of these new limits will be forfeited. In 2021, the maximum accrual will return to the levels established by City of Fargo Employment Policy 500-001 Annual Leave unless otherwise modified.

Department heads may submit a request for exemption from the temporarily increased maximum accrual for instances where the employee is unable to use their annual leave even at the increased limit due to circumstances beyond their control. The requests will be reviewed on a case-by-case basis by the Director of Human Resources.



MATBUS
Administrative Offices
650 23rd Street North
Fargo, ND 58102
Phone: 701.241.8140 | Fax: 701.241.8558
www.MATBUS.com

July 27, 2020

(19)

City Commission
225 N 4th Street
Fargo, ND 58102

Dear Committee:

Background:

Due to the COVID-19 pandemic, Transit has seen a reduction of ridership since March of 2020. Overall, ridership is down approximately 18.90% since January of 2020, ridership is down 31.48% since April 1, 2020.

As COVID-19 has caused several businesses to adjust their operating hours, staff has been reviewing ridership data. Businesses such as Wal-Mart and West Acres are closing by 8:30pm daily and act as a transfer hub for several of our routes throughout the metro area.

Additionally, it has been especially difficult to find qualified candidates to operate the system and those who are being hired and trained are waiting anywhere from 1 - 3 weeks for a written or behind the wheel test to obtain their CDL license.

Request:

Currently, Transit operates until 11:15pm Monday through Saturday. Transit is recommending temporary reduction of service hours Monday through Saturday to 9:45pm, beginning August 17, 2020 until December 31, 2020. This reduction would be temporary and allow transit to reduce spending for the remainder of the 2020 calendar year and provide time to hire and train qualified employees.

Recommended Motion:

Approve the Transit to end service at 9:45pm Monday through Saturday through the end of 2020 calendar year and resume normal operating hours (until 11:15pm) beginning January 1, 2021.

Sincerely,

Matthew G. Peterson

Matthew G. Peterson
Assistant Transit Director



Phone: 701.241.8140 | Fax: 701.241.8558
www.MATBUS.com

MATBUS

Administrative Offices
650 23rd Street North
Fargo, ND 58102

August 10, 2020

City Commission
225 N 4th Street
Fargo, ND 58102

Dear Commission:

Background:

The City's existing five-year contract with First Transit for transit management, drivers, and dispatcher services expires December 31, 2020.

Staff has updated the previously approved Request for Proposal (RFP) from 2015 to incorporate all changes and requirements for the 2021-2025 contract. An Evaluation Team consisting of ten members of the MAT Coordinating Board, Metro COG and transit staff will review proposals which are due September 23, 2020. The RFP reflects the following recommendations:

1. An emphasis on safety
2. Minimum wages and benefits for Contractor's bus operators (Appendix 15)
3. Existing conditions for Contractor's organizational structure, plus projected needs and responsibilities for the next five years
4. Potentially an employee incentive/bonus program(s)
5. Projected service/revenue hours by City and service for 2021-2023
6. Performance metrics
7. MAT Paratransit operations
8. Facility operations at the Ground Transportation Center and the Metro Transit Garage and Contractor's related duties
9. Local, state and federal requirements, (i.e. an approved Drug & Alcohol Program)
10. Cities' oversight of Contractor as required by the Federal Transit Administration (FTA)

The proposals received will be reviewed and ranked by the Evaluation Team. Evaluation points are pre-established in the RFP (Appendix 8) with top points for price, firm's past experience and performance, safety program and safety record, Project Manager's experience and qualifications, organizational structure and personnel resource plan, and management approach, philosophy, innovation and employment prices. Minor points were established for service implementation plans/schedules and employee health insurance plan and cost for employees.



MATBUS
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Fargo, ND 58102
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www.MATBUS.com

This procurement will result in two separate contracts, one between the contractor and the City of Fargo and one between the contractor and the City of Moorhead. Any contract resulting from this procurement will be brought forward to the Fargo City Commission or Moorhead City Council for approval at a future meeting. The RFP will also be distributed to the North Dakota Department of Transportation and Minnesota Department of Transportation for review.

The services provided under this RFP would begin in January 2021, which does not have an approved budget, however, staff has projected possible changes in the budget and have requested them through the budget team during the regular budget meetings. The minimum bus operator wages included in Appendix 15 for 2020 project an increase in various steps and years of service overall of 2.69% when compared to existing 2020 wages.

Similar to the last contract, the management fees will be divided between the two cities based on their pro rata share of the total revenue hours of service. Fixed Route bus operator costs will be split based on the percentage of total fixed route revenue hours. Paratransit costs will be split based on the percentage of total passengers. GTC operating costs are split two-third Fargo and one-third Moorhead per the current Joint Powers Agreement.

Request:

Staff is requesting City Commission to approve the release of the Driver Services RFP in conjunction with City of Moorhead for the period of January 1, 2021 through December 31, 2020.

Recommended Motion:

Authorize transit staff to finalize the draft RFP and release on August 17, 2020.

Sincerely,

Matthew G. Peterson

Matthew G. Peterson
Assistant Transit Director

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(22)

Improvement District No. PN-18-C1 Type: Negative Final Balancing Change Order #4

Location: Laverne's Addition Date of Hearing: 8/3/2020

Routing

City Commission

PWPEC File

Project File

Date

8/10/2020

X

Jason Satterlund

The Committee reviewed the accompanying correspondence from Project Manager, Jason Satterlund, regarding Negative Final Balancing Change Order #4 in the amount of -\$15,436.13, 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 #4 in the amount of -\$15,436.13, bringing the total contract amount to \$1,776,575.13.

On a motion by Kent Costin, seconded by Steve Dirksen, the Committee voted to recommend approval of the Negative Final Balancing Change Order #4 to Northern Improvement.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #4 in the amount of -\$15,436.13, bringing the total contract amount to \$1,776,575.13 to Northern Improvement.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: 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

Tim Mahoney, Mayor
 Nicole Crutchfield, Director of Planning
 Steve Dirksen, Fire Chief
 Bruce Grubb, City Administrator
 Ben Dow, Director of Operations
 Steve Sprague, City Auditor
 Brenda Derrig, City Engineer
 Kent Costin, Finance Director

Present	Yes	No	Unanimous
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


 Brenda E. Derrig, P.E.
 City Engineer

Improvement District No	PN-18-C1	Change Order No	4
Project Name	PC Concrete Paving & Incidentals		
Date Entered	7/31/2020	For	Northern Improvement Co

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE: Final Balancing

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Miscellaneous	1	Mulching Type 1 - Hydro	SY	21,000.00	0.00	21,000.00	-537.80	20,462.20	0.34	-182.85
	2	Mulching Type 2 - Straw	SY	21,000.00	0.00	21,000.00	-13,575.00	7,425.00	0.12	-1,629.00
	3	Seeding Type C	SY	42,000.00	0.00	42,000.00	-14,112.80	27,887.20	0.31	-4,374.97
	7	Inlet Protection - New Inlet	EA	23.00	0.00	23.00	1.00	24.00	130.00	130.00
Miscellaneous Sub Total (\$)										-6,056.82
Paving	8	Remove Pavement All Thicknesses All Types	SY	330.00	0.00	330.00	10.00	340.00	5.15	51.50
	9	Fill - Contractor Supply	CY	6,000.00	0.00	6,000.00	1,588.00	7,588.00	7.50	11,910.00
	10	Remove Curb & Gutter	LF	70.00	0.00	70.00	5.00	75.00	4.50	22.50
	11	Excavation	CY	8,000.00	0.00	8,000.00	-2,572.00	5,428.00	2.85	-7,330.20
	12	Subcut	CY	7,700.00	0.00	7,700.00	-5,633.00	2,067.00	3.60	-20,278.80
	13	Subgrade Preparation	SY	23,065.00	0.00	23,065.00	-214.00	22,851.00	1.00	-214.00
	14	F&I Woven Geotextile	SY	23,065.00	0.00	23,065.00	-214.00	22,851.00	1.10	-235.40
	15	F&I Class 5 Agg - 10" Thick	SY	23,065.00	0.00	23,065.00	5.27	23,070.27	8.25	43.48
	16	F&I Edge Drain 4" Dia PVC	LF	9,160.00	0.00	9,160.00	-43.40	9,116.60	5.30	-230.02
	17	F&I Curb & Gutter Standard (Type II)	LF	9,160.00	0.00	9,160.00	-2.30	9,157.70	16.50	-37.95
	18	F&I Pavement 10" Thick Doweled Conc	SY	18,730.00	0.00	18,730.00	32.00	18,762.00	50.00	1,600.00
	19	F&I Driveway 7" Thick Reinf Conc	SY	370.00	0.00	370.00	21.50	391.50	43.25	929.88

Fargo
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For Contractor

Title

VICE PRESIDENT

Department Head

Mayor

Attest

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(23)

Improvement District No. BN-18-F2 Type: Negative Final Balancing Change Order #5

Location: Madelyn's Meadow

Date of Hearing: 8/3/2020

RoutingDate

City Commission

8/10/2020

PWPEC File

X

Project File

Jason Leonard

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, regarding Negative Final Balancing Change Order #5 in the amount of -\$43,679.69, 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 -\$43,679.69, bringing the total contract amount to \$1,985,636.63.

On a motion by Kent Costin, seconded by Steve Dirksen, the Committee voted to recommend approval of the Negative Final Balancing Change Order #5 to Northern Improvement.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #5 in the amount of -\$43,679.69, bringing the total contract amount to \$1,985,636.63 to Northern Improvement.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: CRWUD & Special Assessments

Developer meets City policy for payment of delinquent specials

Yes No

Agreement for payment of specials required of developer

N/A

Letter of Credit required (per policy approved 5-28-13)

N/A

N/A

COMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☐☐☐

Nicole Crutchfield, Director of Planning

☒☒☐

Mark Williams

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

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Ben Dow, Director of Operations

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Steve Sprague, City Auditor

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Brenda Derrig, City Engineer

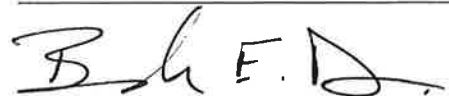
☒☒☐

Kent Costin, Finance Director

☒☒☐

ATTEST:

C: Kristi Olson



Brenda E. Derrig, P.E.

City Engineer

Memorandum

To: PWPEC

From: Jason Leonard, Project Engineer

Date: July 30, 2020

Re: Improvement District No. BN-18-F2 – Final Balancing Change Order #5

Background:

Improvement District No. BN-18-F2 is for the new construction of underground utilities, asphalt pavement, street lights and incidentals on 72nd Avenue South, 73rd Avenue South, 26th Street South, 30th Street South and Madelyn Way South.

Northern Improvement Company is the Contractor for this project.

The attached Negative Final Balancing Change Order #5 in the amount of \$-43,679.69, reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

The original contract bid price for this project was \$1,828,498.38 and this Negative FBCO #5 will bring the project final amount to \$1,985,636.63 (8.59% Increase). This Improvement District is 100% Special Assessed.

Recommended Motion:

Approve Negative Final Balancing Change Order # in the amount of \$-43,679.69 to Northern Improvement Company.

JTL\KLO
Attachments



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Improvement District No	BN-18-F2	Change Order No	5
Project Name	Sanitary Sewer, Water Main, Storm Sewer, Concrete Curb & Gutter, Asphalt Pavement, Site Grading, Str		
Date Entered	7/30/2020	For	Northern Improvement Co

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE: FINAL BALANCING CHANGE ORDER

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Miscellaneous	2	Mulching Type 1 - Hydro	SY	25,223.00	0.00	25,223.00	-8,608.00	16,615.00	0.37	-3,184.96
	3	Mulching Type 2 - Straw	SY	6,364.00	0.00	6,364.00	-6,364.00	0.00	0.10	-636.40
	4	Seeding Type C	SY	31,587.00	0.00	31,587.00	-14,972.00	16,615.00	0.31	-4,641.32
	7	Sediment Control Log 6" to 8" Dia	LF	6,150.00	0.00	6,150.00	-4,131.00	2,019.00	2.15	-8,881.65
	9	Inlet Protection - Existing Inlet	EA	5.00	0.00	5.00	2.00	7.00	130.00	260.00
	110	Topsoil - Spread	LS	6,108.00	0.00	6,108.00	1,782.00	7,890.00	3.55	6,326.10
	111	Excavation	CY	10,286.00	0.00	10,286.00	-1,586.00	8,700.00	3.95	-6,264.70
Miscellaneous Sub Total (\$)										-17,022.93
Sanitary Sewer	10	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	2,322.00	0.00	2,322.00	-2,252.00	70.00	2.05	-4,616.60
	13	F&I Pipe SDR 26 - 6" Dia PVC	LF	1,921.00	0.00	1,921.00	87.00	2,008.00	20.50	1,783.50
	15	F&I Pipe SDR 26 - 12" Dia PVC	LF	771.00	16.00	787.00	-13.00	774.00	41.25	-536.25
Sanitary Sewer Sub Total (\$)										-3,369.35
Cass Rural Water District Water Main	16	F&I Fittings C153 Ductile Iron	LB	949.00	0.00	949.00	-42.00	907.00	4.65	-195.30
	20	F&I Pipe C900 DR 18 - 8" Dia PVC	LF	2,471.00	0.00	2,471.00	46.00	2,517.00	26.75	1,230.50
Cass Rural Water District Water Main Sub Total (\$)										1,035.20
Storm Sewer	26	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	417.00	0.00	417.00	-417.00	0.00	1.05	-437.85
	27	F&I 1-1/4" Trench Found Rock 14" thru 24" Dia	LF	1,201.00	0.00	1,201.00	-1,201.00	0.00	1.05	-1,261.05



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Storm Sewer	28	F&I 1-1/4" Trench Found Rock 27" thru 36" Dia	LF	1,123.00	0.00	1,123.00	-1,123.00	0.00	1.05	-1,179.15
	29	F&I 1-1/4" Trench Found Rock 42" thru 54" Dia	LF	1,701.00	0.00	1,701.00	-1,701.00	0.00	5.15	-8,760.15
	40	F&I Pipe 12" Dia Reinf Conc	LF	135.00	0.00	135.00	9.00	144.00	24.75	222.75
	42	F&I Pipe 18" Dia Reinf Conc	LF	607.00	0.00	607.00	6.00	613.00	29.00	174.00
	43	F&I Pipe 21" Dia Reinf Conc	LF	342.00	0.00	342.00	20.00	362.00	36.00	720.00
	45	F&I Pipe 27" Dia Reinf Conc	LF	315.00	0.00	315.00	10.00	325.00	53.50	535.00
	49	F&I Pipe 42" Dia Reinf Conc	LF	756.00	0.00	756.00	1.00	757.00	118.50	118.50
	51	F&I Pipe 54" Dia Reinf Conc	LF	537.00	0.00	537.00	-7.00	530.00	211.25	-1,478.75
	52	Remove Pipe All Sizes All Types	LF	6.00	0.00	6.00	-6.00	0.00	5.15	-30.90
	53	F&I Rip Rap Rock	CY	45.00	0.00	45.00	32.17	77.17	95.00	3,056.15
Storm Sewer Sub Total (\$)										
	60	Remove Pavement All Thicknesses All Types	SY	11.00	176.22	187.22	-71.83	115.39	30.00	-8,321.45
Paving	66	Subgrade Preparation	SY	9,501.00	245.02	9,746.02	-174.11	9,571.91	1.20	-208.93
	67	F&I Woven Geotextile	SY	9,501.00	204.22	9,705.22	-133.31	9,571.91	1.35	-179.97
	68	F&I Class 5 Agg - 8" Thick	SY	9,501.00	0.00	9,501.00	-47.72	9,453.28	7.75	-369.83
	69	F&I Edge Drain 4" Dia PVC	LF	4,573.00	102.00	4,675.00	-213.27	4,461.73	6.50	-1,386.26
	70	F&I Curb & Gutter Mountable (Type I)	LF	4,445.00	0.00	4,445.00	35.00	4,480.00	14.40	504.00
	71	F&I Curb & Gutter Standard (Type II)	LF	128.00	102.00	230.00	-76.00	154.00	24.00	-1,824.00
	72	Remove Curb & Gutter	LF	135.00	102.00	237.00	-85.76	151.24	7.00	-600.32
	73	F&I Sidewalk 4" Thick Reinf Conc	SY	825.00	0.00	825.00	-74.99	750.01	40.00	-2,999.60
	74	F&I Sidewalk 6" Thick Reinf Conc	SY	139.00	0.00	139.00	8.01	147.01	46.00	368.46
	75	Remove Sidewalk 4" Thick Conc	SY	48.00	0.00	48.00	-12.57	35.43	12.00	-150.84
	76	F&I Det Warn Panels Cast Iron	SF	274.00	0.00	274.00	-22.00	252.00	40.00	-880.00
	77	F&I Aggregate for Asph Pavement FAA 43	TON	2,767.00	0.00	2,767.00	60.29	2,827.29	44.50	2,682.91
	78	F&I Asphalt Cement PG 58-34	GAL	39,818.00	0.00	39,818.00	-3,298.75	36,519.25	3.00	-9,896.25
	82	Casting to Grade - no Conc	EA	4.00	0.00	4.00	20.00	24.00	400.00	8,000.00
	85	F&I Sign Assembly & Anchor	EA	12.00	0.00	12.00	-2.00	10.00	97.85	-195.70



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Paving	102	F&I Class 5 Agg - 12" Thick	SY	204.22	0.00	204.22	12.69	216.91	22.50	285.53
	103	F&I Pavement 10" Thick Doweled Conc	SY	176.22	0.00	176.22	-60.83	115.39	115.00	-6,995.45
Paving Sub Total (\$)										-16,001.16

Summary**Source Of Funding**

Net Amount Change Order # 5 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

-43,679.69
200,817.94
1,828,498.38
1,985,636.63

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

CONTRACT TIMECurrent Substantial
Completion Date

06/15/2020

Current Final Completion
Date

06/15/2020

Additional Days Substantial
Completion

0.00

Additional Days Final
Completion

0.00

New Substantial
Completion Date

07/15/2019

New Final Completion
Date

06/15/2020

Description**APPROVED**

For Contractor

Title

Vice President

APPROVED DATE

Department Head

Mayor

Attest

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(24)

Improvement District No. PN-18-C1

Type: Change Order #3

Location: Laverne's Addition

Date of Hearing: 8/3/2020

RoutingDate

City Commission

8/10/2020

PWPEC File

X

Project File

Jason Satterlund

The Committee reviewed the accompanying correspondence from Project Manager, Jason Satterlund, regarding Change Order #3 in the amount of \$10,350.00, for additional work requested by Engineering.

Staff is recommending approval of Change Order #3 in the amount of \$10,350.00, bringing the total contract amount to \$1,792,011.26.

On a motion by Kent Costin, seconded by Steve Dirksen, the Committee voted to recommend approval of Change Order #3 to Northern Improvement.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #3 in the amount of \$10,350.00, bringing the total contract amount to \$1,792,011.26 to Northern Improvement.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: Special Assessments

Yes No

Developer meets City policy for payment of delinquent specials

N/A

Agreement for payment of specials required of developer

N/A

Letter of Credit required (per policy approved 5-28-13)

N/A

COMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☐☐☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☐☐☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☐☐☐

Brenda Derrig, City Engineer

☒☒☐

Kent Costin, Finance Director

☒☒☐

ATTEST:

C: Kristi Olson

Brenda E. Derrig, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Jason Satterlund, Project Manager
Date: July 29, 2020
Re: Improvement District No. PN-18-C1 – Change Order #3

Background:

Improvement District No. PN-18-C1 is for new construction concrete paving for Laverne's Addition on 43rd Street North between 19th and 28th Avenue North, 24th Avenue North between 41st and 43rd Street North, and an extension of 41st Street North up to 24th Avenue North.

Northern Improvement Co. is the Contractor for this project.

Change Order #3 includes an Engineering initiated request for installation of an additional storm sewer run with an inlet to alleviate disruption of existing drainage patterns due to development (\$10,350.00).

City of Fargo was not made aware of the drainage issue until spring of 2020. Northern Improvement achieved substantial completion in the fall of 2019, therefore no additional contract days are requested for the inlet run.

Recommended Motion:

Approve Change Order #3 in the amount of \$10,350.00 for the additional work as requested by Engineering.

Attachments



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Improvement District No	PN-18-C1	Change Order No	3
Project Name	PC Concrete Paving & Incidentals		
Date Entered	7/6/2020	For	Northern Improvement Co

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: Drainage Restoration
Installation of additional storm run due to blocked drainage.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Paving	39	Mobilization	LS	0.00	0.00	0.00	1.00	1.00	3,300.00	3,300.00
	40	Connect Pipe to Exist Structure	EA	0.00	0.00	0.00	1.00	1.00	825.00	825.00
	41	F&I Pipe 12" Dia PVC	LF	0.00	0.00	0.00	28.00	28.00	75.00	2,100.00
	42	F&I Inlet - Round (RD) Reinf Conc	EA	0.00	0.00	0.00	1.00	1.00	4,125.00	4,125.00
Paving Sub Total (\$)									10,350.00	

Summary

Source Of Funding

Special Assessments

Net Amount Change Order # 3 (\$)

10,350.00

Previous Change Orders (\$)

26,915.00

Original Contract Amount (\$)

1,754,746.26

Total Contract Amount (\$)

1,792,011.26

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

CONTRACT TIME

Current Substantial Completion Date

09/23/2019

Current Final Completion Date

10/23/2019

Additional Days Substantial Completion

0.00

Additional Days Final Completion

0.00

New Substantial Completion Date

09/23/2019

New Final Completion Date

10/23/2019

Description



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

APPROVED

W. M. M. Improvement Company
For Contractor

Title

VICE PRESIDENT

APPROVED DATE

Department Head

Mayor

Attest

B. L. F. D.

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(25)

Improvement District No. BN-20-C1 Type: Amendment #1 Joint Powers Agreement
Southeast Cass Water Resource District

Location: Drain 53 & 64th Avenue South

Date of Hearing: 8/3/2020

<u>Routing</u>	<u>Date</u>
City Commission	8/10/2020
PWPEC File	X
Project File	Jody Bertrand

The Committee reviewed a communication from Division Engineer, Jody Bertrand, regarding Amendment #1 to the Joint Powers Agreement with Southeast Cass Water Resource District (SE Cass WRD) for Drain 53 improvements.

During negotiations with affected landowners, a request was proposed to acquire additional clay material from adjacent lots for their LOMR work and the remnant lots would be deeded to the City/SE Cass WRD for use on this project and the next phase of drain improvements. As part of the bid package to be assembled by Moore Engineering, two alternatives will be offered for the construction documents for the excess material to be excavated. The first alternative will be for the excavated material to be placed and compacted by the contractor to satisfy LOMR-F requirements. The second will be to stockpile on site for use by the developer at a future date. For both alternatives, the Developer is responsible for the costs of the selected process. A separate agreement will be developed between the City and the Developer covering the alternatives listed above.

Staff is recommending approval of Amendment #1 to the Joint Powers Agreement.

On a motion by Tim Mahoney, seconded by Ben Dow, the Committee voted to recommend approval of Amendment #1 to the Joint Powers Agreement with Southeast Cass Water Resource District for Drain 53 improvements.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Amendment #1 to the Joint Powers Agreement with Southeast Cass Water Resource District for Drain 53 improvements.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: None

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)

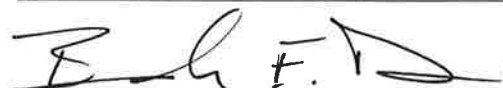
Yes	No
	N/A
	N/A
	N/A

COMMITTEE

Tim Mahoney, Mayor
Nicole Crutchfield, Director of Planning
Steve Dirksen, Fire Chief
Bruce Grubb, City Administrator
Ben Dow, Director of Operations
Steve Sprague, City Auditor
Brenda Derrig, City Engineer
Kent Costin, Finance Director

Present	Yes	No	Unanimous
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:



Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC

From: Jody Bertrand, PE, CFM
Division Engineer Storm Sewer Utility

Date: August 3, 2020

Subject: Approval of Amendment 1 to the Joint Powers Agreement with SE Cass for Drain #53 Lowering and Widening Project – Addition of Construction Material Alternatives (LOMR)

Background:

The City of Fargo has approved a Joint Powers Agreement with SE Cass Water Resource District for the sharing of costs for the improvement of Drain #53, south of 64th Avenue South. During negotiations with a couple of the affected landowners, a request was proposed by the owners to acquire additional clay material from adjacent lots for their LOMR work and the remnant lots would be deeded to the City/SE Cass WRD for use on this project and the next phase of drain improvements.

As part of the bid package to be assembled by Moore Engineering, two alternatives will be offered for the construction documents for the excess material to be excavated. The first alternative will be that the excavated material will be placed and compacted by the contractor, to satisfy LOMR-F requirements. The second alternate will be for material to be stockpiled on site for use by the developer at a future date. For both alternatives, the developer is responsible for the costs of the selected process. A separate agreement will be developed between the City and the developer covering the alternatives listed above.

We have attached a copy of the Amendment 1 for the Joint Powers Agreement for your review.

Recommended Motion:

Approval of an Amendment to the Joint Powers Agreement between the City of Fargo and Southeast Cass Water Resource District for construction of the Drain #53 improvements to include construction bidding alternatives to be paid outside of the present cost share distribution between the City and SE Cass WRD.

Attachments

**FIRST AMENDMENT TO JOINT POWERS AGREEMENT
DRAIN 53 IMPROVEMENT PROJECT NO. 2019-01**

THIS FIRST AMENDMENT is by the Southeast Cass Water Resource District, a North Dakota political subdivision (the "District"); and the City of Fargo, North Dakota, a North Dakota municipal corporation (the "City").

RECITALS

A. In accordance with Section 54-40.3-01 of the North Dakota Century Code, the District and the City previously entered into a Joint Powers Agreement effective January 14, 2020 (the "JPA"), in which the parties agreed to various obligations regarding the design and construction of certain improvements to Cass County Drain No. 53 ("Drain 53").

B. Under the JPA, the District agreed to design, construct, and fund the drainage improvement components of the project, a project the District refers to as DRAIN 53 IMPROVEMENT PROJECT NO. 2019-01 (the "Drain Project"); the District also agreed to acquire all right of way necessary to accommodate the Drain Project.

C. Under the JPA, the City agreed to fund the flood protection components of the Drain Project; in addition, the parties agreed to fund, and the City agreed to design and construct the installation of two 8'x 8' box culverts to improve the 64th Avenue South crossing over Drain 53 (the "Crossing Project"), a project the City refers to as Project #BN-20-C1; the City also agreed to acquire all right of way necessary to accommodate the Crossing Project.

D. The City has negotiated with landowners and developers in the vicinity of the projects, and those parties have agreed to various land exchanges and other arrangements that will obviate the necessity for the District to acquire certain right of way necessary for the Drain Project.

E. The District and the City wish to execute this First Amendment to modify some of the parties' obligations under the JPA.

In consideration of the mutual covenants contained in this First Amendment, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **Interpretation.** This First Amendment modifies and supplements the JPA. Wherever a conflict exists between this First Amendment and the Agreement, the provisions of this First Amendment will control. Except as modified and supplemented in this First Amendment, the JPA is in full force and effect.

*First Amendment to Joint Powers Agreement
Southeast Cass Water Resource District
City of Fargo
Drain 53 Project*

Page 2

2. **Excavated Material.** The City has entered into an agreement with a developer and landowner adjacent to the Drain Project (the "Madelyn Developer") regarding excess excavated material from the Drain Project. More specifically, the adjacent landowner has agreed to convey certain parcels necessary for the Drain Project and the Crossing Project to the City, in exchange for excess excavated material from the Drain Project. The District's design of the Drain Project will include two alternatives regarding the excess excavated material, as follows:

Alternative 1: The District's design of the Drain Project will include an alternative whereby the District's contractor will haul and spread excess excavated material from the Drain Project on property designated by the City and owned by the Madelyn Developer, an area the Madelyn Developer plans to plat and develop as Madelyn's Meadows Third Addition, as necessary for the developer to obtain a FEMA Letter of Map Revision Based on Fill ("LOMR-F").

Alternative 2: The District's design of the Drain Project will include an alternative whereby the District's contractor will haul and stockpile excavated material on property designated by the City, and owned by the Madelyn Developer.

The City will cooperate with the District during the District's design of the Drain Project to ensure the District's design includes Alternative 1 and Alternative 2. The District will include both alternatives when the District advertises for bids for the Drain Project. Following bid opening for the Drain Project, the City will confer with the Madelyn Developer, and the City will ultimately notify the District which alternative to select within five business days following the District's Drain Project bid opening. The District will award a construction contract or contracts to the lowest responsible bidder or bidders with the alternative selected by the City. The District has no contractual privity with, and no legal obligations regarding, the Madelyn Developer.

3. **Right of Way Acquisition.** Under separate agreements with the Madelyn Developer and other area landowners, the City will acquire, in fee, the properties described in **Exhibit A** to accommodate the Drain Project (the "Drain Properties"), at the City's expense. Following the City's acquisition of the Drain Properties, the City will convey fee ownership of the Drain Properties to the District. The District will acquire the remaining right of way necessary to accommodate the Drain Project, at the District's expense. As required under the JPA, the City will acquire the right of way necessary to accommodate the Crossing Project.

*First Amendment to Joint Powers Agreement
Southeast Cass Water Resource District
City of Fargo
Drain 53 Project*

Page 3

4. **Drainage Project Funding Obligations.** Under the JPA, the parties agreed the District would fund and otherwise be responsible for all costs associated with the drainage improvement components of the Drain Project, and the City would fund and otherwise be responsible for all costs associated with the flood protection components of the Drain Project. The JPA included a cost estimate for the Drain Project, including each party's estimated cost responsibilities. In light of the additional alternatives the District will include in the design of the Drain Project under this First Amendment, the parties have updated the cost estimate for the Drain Project; attached as **Exhibit B** is an updated cost estimate for the Drain Project, including each party's updated estimated cost responsibilities. The parties understand and agree **Exhibit B** is simply an estimate, and that each party will be responsible for their pro-rata share of the final costs associated with their respective cost obligations regarding the Drain Project. The parties do not anticipate any modifications to the cost estimate for the Crossing Project attached to the JPA.

5. **Severability.** If any court of competent jurisdiction finds any provision or part of this First Amendment or the JPA is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this First Amendment and the JPA will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this First Amendment or the JPA is invalid, illegal, or unenforceable.

6. **Entire Agreement.** This First Amendment and the JPA, together with any additional future amendments, constitutes the entire agreement between the parties regarding the matters described in this First Amendment and the JPA, and this First Amendment and the JPA supersede any previous oral or written agreements between the parties.

7. **Amendments.** Any modifications or amendments of this First Amendment or the JPA must be in writing and signed by both parties to this First Amendment.

8. **Interpretation.** This First Amendment and the JPA will be construed as if prepared by both parties.

9. **Applicable Law.** This First Amendment and the JPA will be construed in accordance with and governed by North Dakota law.

10. **Assignment.** Neither party may transfer or assign this First Amendment or the JPA, nor any rights or obligations under either, without the express written consent of the other party.

11. **Headings.** Headings in this First Amendment are for convenience only and will not be used to interpret or construe its provisions.

*First Amendment to Joint Powers Agreement
Southeast Cass Water Resource District
City of Fargo
Drain 53 Project*

Page 4

12. **Termination.** This First Amendment and the JPA will terminate when any bonds issued to finance the Drain Project have been paid in full. However, the District's obligations to own, operate, and maintain the Drain Project and Drain 53 will survive termination of this First Amendment and the JPA. Similarly, the City's obligations to own, operate, and maintain the Crossing Project and the Crossing will survive termination of this First Amendment and the JPA.

13. **Cooperation.** The parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this First Amendment and the JPA and to accomplish the purposes of this First Amendment and the JPA.

14. **Effective Date.** This First Amendment will become effective on the date of execution by the last party to sign.

(Signatures appear on the following pages.)

*First Amendment to Joint Powers Agreement
Southeast Cass Water Resource District
City of Fargo
Drain 53 Project*


Page 5

SOUTHEAST CASS WATER
RESOURCE DISTRICT

By:


Dan Jacobson, Chair

ATTEST:


Carol Harbeke Lewis
Secretary-Treasurer

Date: May 12, 2020

*First Amendment to Joint Powers Agreement
Southeast Cass Water Resource District
City of Fargo
Drain 53 Project*

Page 6

CITY OF FARGO

By: _____
Dr. Timothy Mahoney, Mayor

ATTEST:

Bruce Grubb
City Administrator

Date: _____, 2020

*First Amendment to Joint Powers Agreement
Southeast Cass Water Resource District
City of Fargo
Drain 53 Project*

Page 7

EXHIBIT A

LEGAL DESCRIPTIONS OF THE DRAIN PROPERTIES

*First Amendment to Joint Powers Agreement
Southeast Cass Water Resource District
City of Fargo
Drain 53 Project*

Page 8

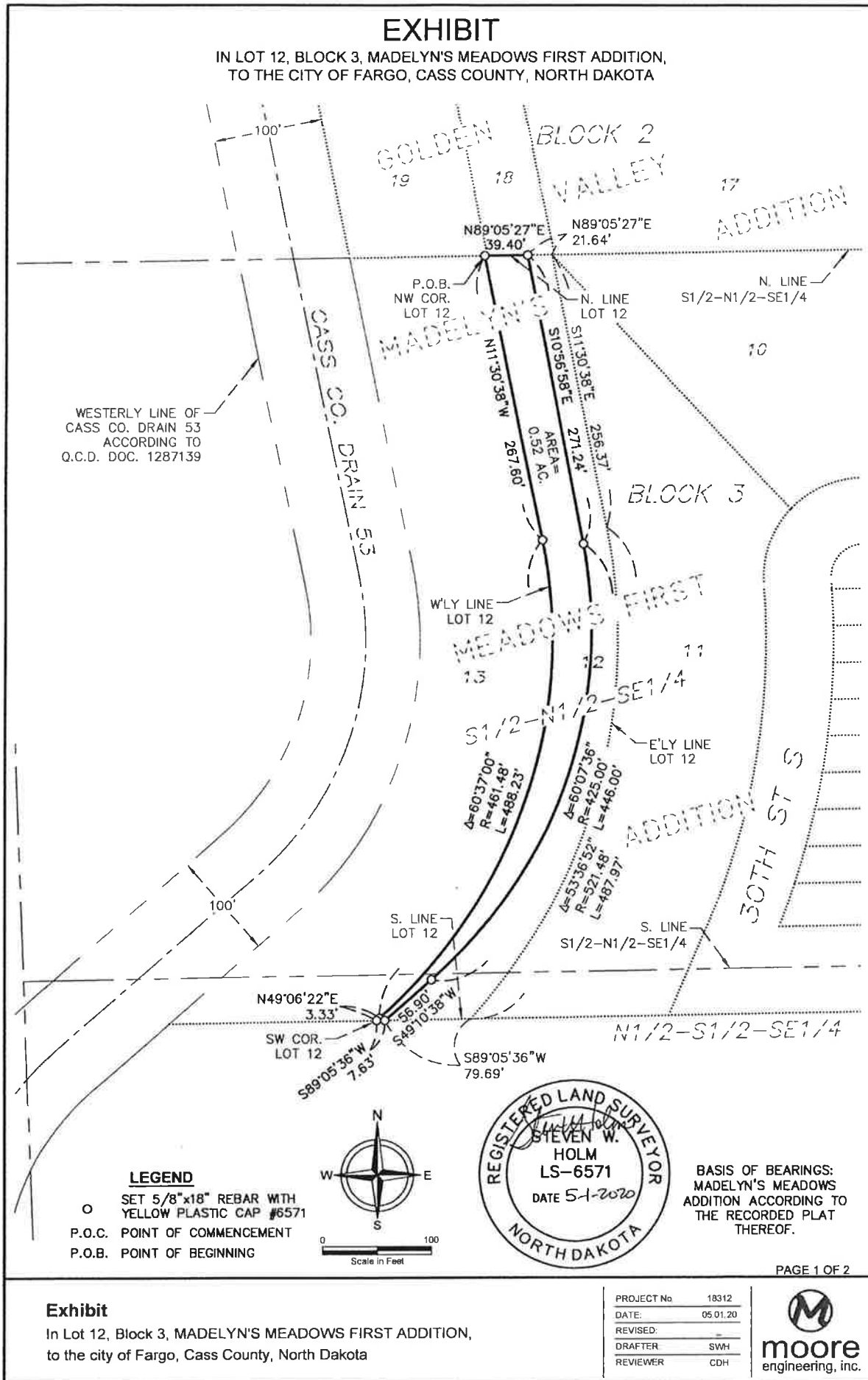
EXHIBIT B

DRAIN PROJECT COST ESTIMATE

(1 page attached)

EXHIBIT

A



EXHIBIT

IN LOT 12, BLOCK 3, MADELYN'S MEADOWS FIRST ADDITION,
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DESCRIPTION

That part of Lot 12, Block 3, MADELYN'S MEADOWS FIRST ADDITION, according to the recorded plat thereof, on file and of record in the office of the Recorder, Cass County, North Dakota, described as follows:

Beginning at the northwest corner of said Lot 12; thence North 89 degrees 05 minutes 27 seconds East on a record bearing along the north line of said Lot 12 for a distance of 39.40 feet; thence South 10 degrees 56 minutes 58 seconds East for a distance of 271.24 feet; thence 446.00 feet southerly on a tangential curve concave to the west, having a radius of 425.00 feet and a central angle of 60 degrees 07 minutes 36 seconds; thence South 49 degrees 10 minutes 38 seconds West for a distance of 56.90 feet to the south line of said Lot 12; thence South 89 degrees 05 minutes 36 seconds West along the south line of said Lot 12 for a distance of 7.63 feet to the southwest corner of said Lot 12; thence North 49 degrees 06 minutes 22 seconds East along the westerly line of said Lot 12 for a distance of 3.33 feet; thence 488.23 feet northerly continuing along the westerly line of said Lot 12 on a tangential curve concave to the west, having a radius of 461.48 feet and a central angle of 60 degrees 37 minutes 00 seconds; thence North 11 degrees 30 minutes 38 seconds West continuing along the westerly line of said Lot 12 for a distance of 267.60 feet to the point of beginning.

Said tract contains 0.52 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

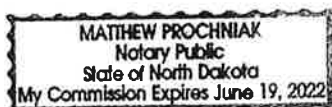

Steven W. Holm, R.L.S.

N.D. License No. LS-6571

Date: 5-1-2020

State of North Dakota)
County of Cass)

On this 1st day of May, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.




Notary Public, Cass County, North Dakota



PAGE 2 OF 2

Exhibit

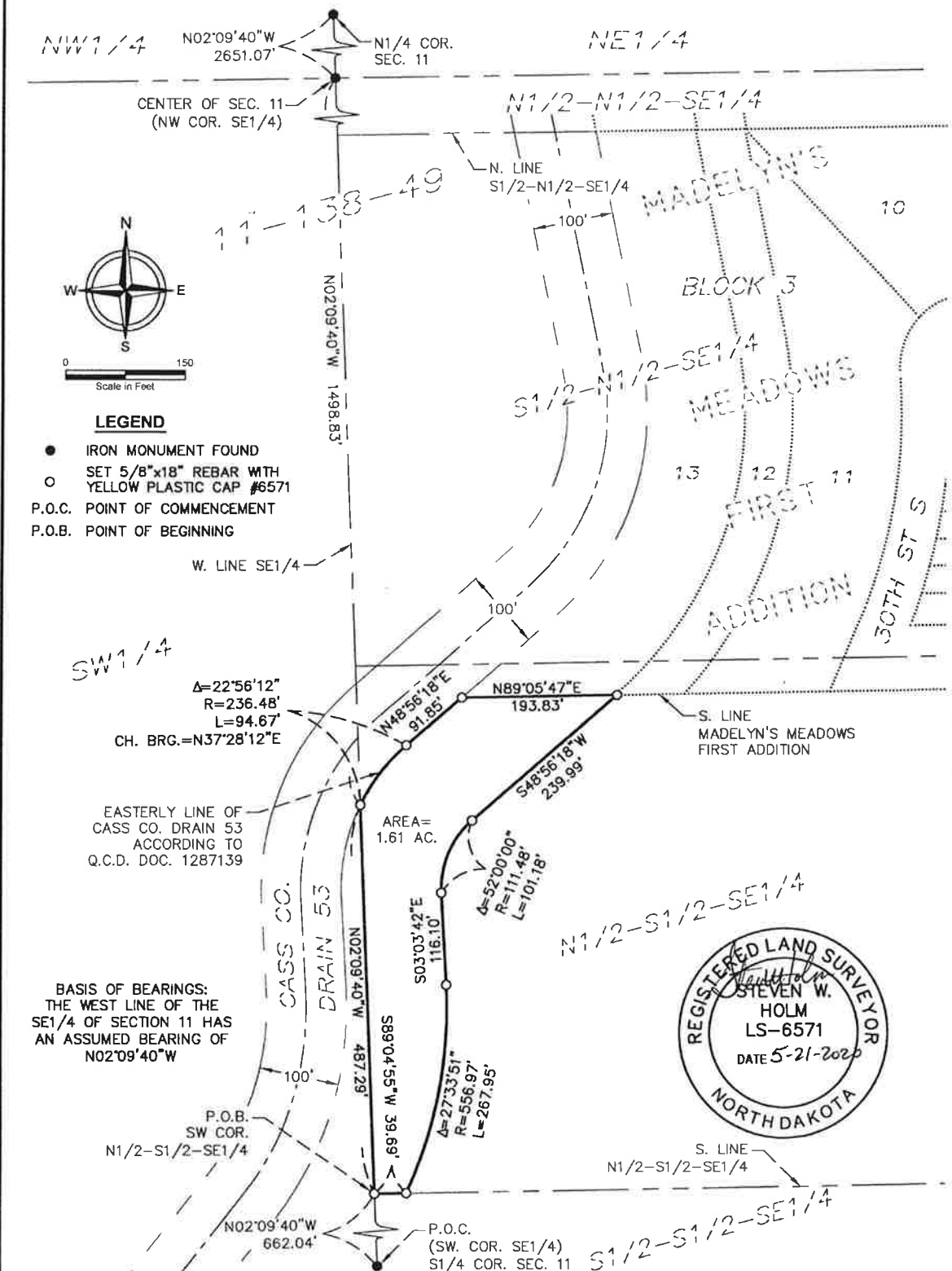
In Lot 12, Block 3, MADELYN'S MEADOWS FIRST ADDITION,
to the city of Fargo, Cass County, North Dakota

PROJECT No. 18312
DATE: 05.01.20
REVISED:
DRAFTER: SWH
REVIEWER: CDH



EXHIBIT

PART OF THE N1/2-S1/2-SE1/4 OF SECTION 11, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE
FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA



PAGE 1 OF 2

Exhibit

Part of the N1/2-S1/2-SE1/4 Sec. 11-138-49
Cass County, North Dakota

PROJECT No	18312
DATE:	05 21 20
REVISED	
DRAFTER	SWH
REVIEWER:	CDH



EXHIBIT

PART OF THE N1/2-S1/2-SE1/4 OF SECTION 11, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE
FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA

DESCRIPTION

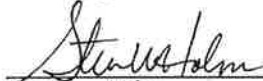
That part of the North Half of the South Half of the Southeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 662.04 feet to the southwest corner of said North Half of the South Half of the Southeast Quarter, the point of beginning; thence continuing North 02 degrees 09 minutes 40 seconds West along the west line of said Southeast Quarter for a distance of 487.29 feet to the easterly line of Cass County Drain No. 53 according to Quit Claim Deed Document No. 1287139, recorded January 29, 2010, on file and of record in the office of the Recorder, said County; thence 94.67 feet northeasterly along the easterly line of said Cass County Drain No. 53 on a non-tangential curve concave to the southeast, having a radius of 236.48 feet, a central angle of 22 degrees 56 minutes 12 seconds and a chord bearing of North 37 degrees 28 minutes 12 seconds East; thence North 48 degrees 56 minutes 18 seconds East, tangent to said curve and continuing along the easterly line of said Cass County Drain No. 53 for a distance of 91.85 feet to the south line of MADELYN'S MEADOWS FIRST ADDITION, according to the recorded plat thereof, on file and of record in the office of said Recorder; thence North 89 degrees 05 minutes 47 seconds East along the south line of said MADELYN'S MEADOWS FIRST ADDITION for a distance of 193.83 feet; thence South 48 degrees 56 minutes 18 seconds West for a distance of 239.99 feet; thence 101.18 feet southwesterly on a tangential curve concave to the southeast, having a radius of 111.48 feet and a central angle of 52 degrees 00 minutes 00 seconds; thence South 03 degrees 03 minutes 42 seconds East for a distance of 116.10 feet; thence 267.95 feet southerly on a tangential curve concave to the west, having a radius of 556.97 feet and a central angle of 27 degrees 33 minutes 51 seconds to the south line of said North Half of the South Half of the Southeast Quarter; thence South 89 degrees 04 minutes 55 seconds West along the south line of said North Half of the South Half of the Southeast Quarter for a distance of 39.69 feet to the point of beginning.

Said tract contains 1.61 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

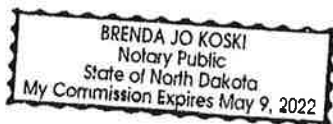
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.


Steven W. Holm, R.L.S.
N.D. License No. LS-6571

Date: 5-21-2020

State of North Dakota)
County of Cass)

On this 21st day of May, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.


BRENDA JO KOSKI
Notary Public
State of North Dakota
My Commission Expires May 9, 2022


Notary Public, Cass County, North Dakota



PAGE 2 OF 2

Exhibit

Part of the N1/2-S1/2-SE1/4 Sec. 11-138-49
Cass County, North Dakota

PROJECT No.	18312
DATE:	05.21.20
REVISED:	
DRAFTER:	SWH
REVIEWER:	CDH


moore
engineering, inc.

EXHIBIT

PART OF THE N1/2-S1/2-SE1/4 OF SECTION 11, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE
FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA

DESCRIPTION

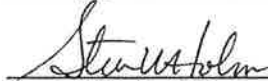
That part of the North Half of the South Half of the Southeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 1149.33 feet to the easterly line of Cass County Drain No. 53 according to Quit Claim Deed Document No. 1287139, recorded January 29, 2010, on file and of record in the office of the Recorder, said County; thence 94.67 feet northeasterly along the easterly line of said Cass County Drain No. 53 on a non-tangential curve concave to the southeast, having a radius of 236.48 feet, a central angle of 22 degrees 56 minutes 12 seconds and a chord bearing of North 37 degrees 28 minutes 12 seconds East; thence North 48 degrees 56 minutes 18 seconds East, tangent to said curve and continuing along the easterly line of said Cass County Drain No. 53 for a distance of 91.85 feet to the south line of MADELYN'S MEADOWS FIRST ADDITION, according to the recorded plat thereof, on file and of record in the office of said Recorder; thence North 89 degrees 05 minutes 47 seconds East along the south line of said MADELYN'S MEADOWS FIRST ADDITION for a distance of 193.83 feet to the point of beginning; thence South 48 degrees 56 minutes 18 seconds West for a distance of 239.99 feet; thence 101.18 feet southwesterly on a tangential curve concave to the southeast, having a radius of 111.48 feet and a central angle of 52 degrees 00 minutes 00 seconds; thence South 03 degrees 03 minutes 42 seconds East for a distance of 116.10 feet; thence 267.95 feet southerly on a tangential curve concave to the west, having a radius of 556.97 feet and a central angle of 27 degrees 33 minutes 51 seconds to the south line of said North Half of the South Half of the Southeast Quarter; thence North 89 degrees 04 minutes 55 seconds East along the south line of said North Half of the South Half of the Southeast Quarter for a distance of 135.35 feet to a point on a line 175.00 feet easterly of, as measured at a right angle to and parallel with the west line of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West along said parallel line for a distance of 337.09 feet; thence 291.22 feet northeasterly on a tangential curve concave to the southeast, having a radius of 325.00 feet and a central angle of 51 degrees 20 minutes 29 seconds; thence North 49 degrees 10 minutes 49 seconds East for a distance of 41.57 feet to the south line of said MADELYN'S MEADOWS FIRST ADDITION, thence South 89 degrees 05 minutes 47 seconds West along the south line of said MADELYN'S MEADOWS FIRST ADDITION for a distance of 4.19 feet to the point of beginning.

Said tract contains 1.01 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.


Steven W. Holm, R.L.S.

N.D. License No. LS-6571

Date: 5-21-2020

State of North Dakota)
County of Cass)

On this 21st day of May, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.

BRENDA JO KOSKI
Notary Public
State of North Dakota
My Commission Expires May 9, 2022


Notary Public, Cass County, North Dakota



PAGE 2 OF 2

Exhibit

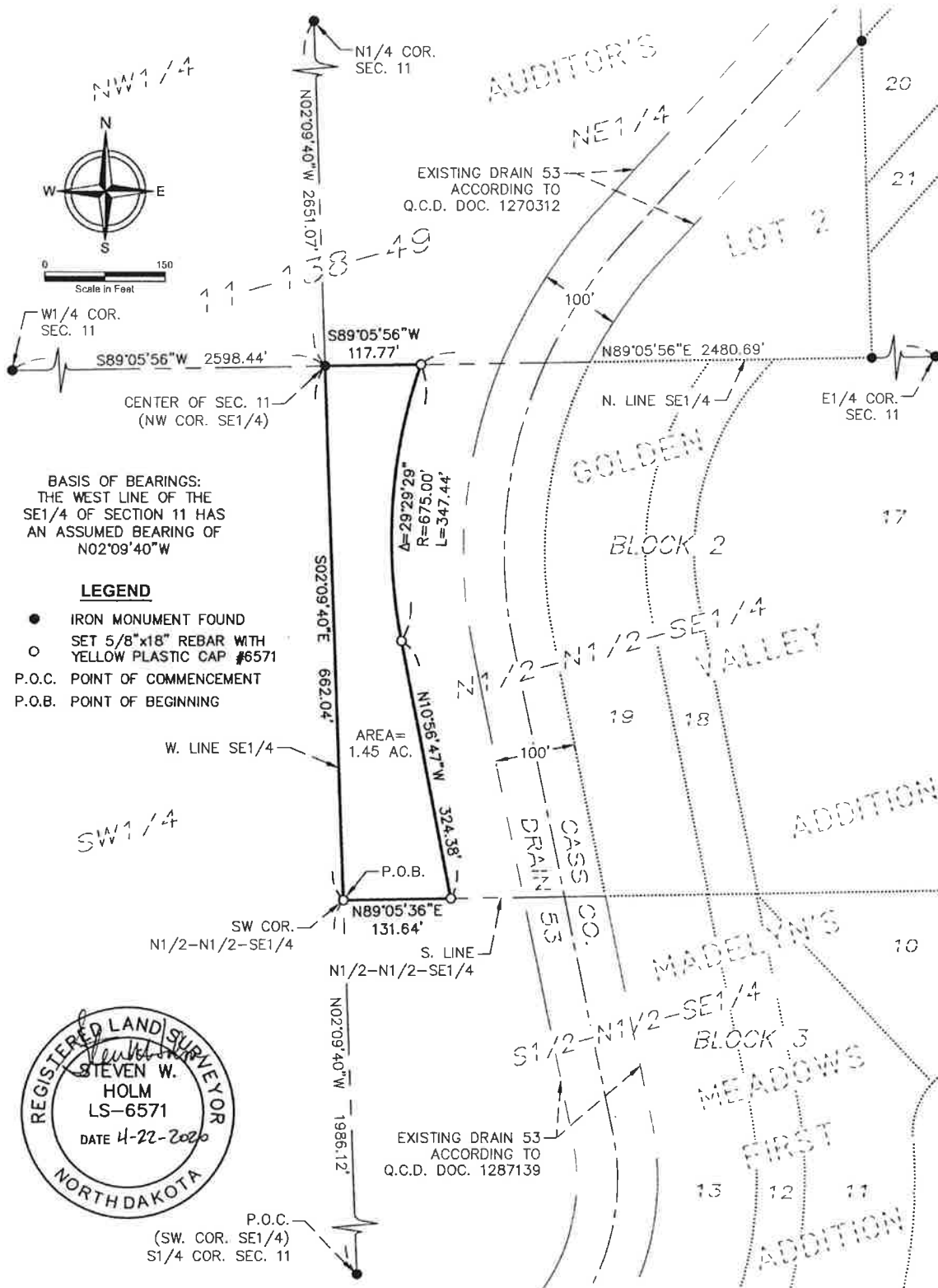
Part of the N1/2-S1/2-SE1/4 Sec. 11-138-49
Cass County, North Dakota

PROJECT No. 18312
DATE: 05.21.20
REVISED:
DRAFTER: SWH
REVIEWER: CDH


moore
engineering, inc.

EXHIBIT

PART OF THE N1/2-N1/2-SE1/4 OF SECTION 11, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE
FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA



PAGE 1 OF 2

Exhibit

Part of the N1/2-N1/2-SE1/4 Sec. 11-138-49
Cass County, North Dakota

EXHIBIT

PART OF THE N1/2-N1/2-SE1/4 OF SECTION 11, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE
FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA

DESCRIPTION

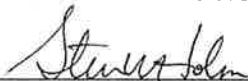
That part of the North Half of the North Half of the Southeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 1986.12 feet to the southwest corner of said North Half of the North Half of the Southeast Quarter, the point of beginning; thence North 89 degrees 05 minutes 36 seconds East along the south line of said North Half of the North Half of the Southeast Quarter for a distance of 131.64 feet; thence North 10 degrees 56 minutes 47 seconds West for a distance of 324.38 feet; thence 347.44 feet northerly on a tangential curve concave to the east, having a radius of 675.00 feet and a central angle of 29 degrees 29 minutes 29 seconds to the north line of said Southeast Quarter; thence South 89 degrees 05 minutes 56 seconds West along the north line of said Southeast Quarter for a distance of 117.77 feet to the northwest corner of said Southeast Quarter; thence South 02 degrees 09 minutes 40 seconds East along the west line of said Southeast Quarter for a distance of 662.04 feet to the point of beginning.

Said tract contains 1.45 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

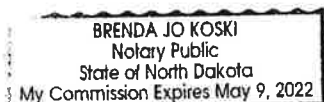

Steven W. Holm, R.L.S.

N.D. License No. LS-6571

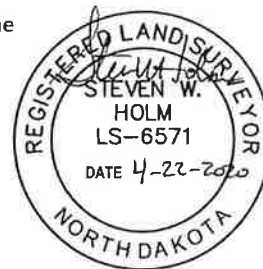
Date: 4-22-2020

State of North Dakota)
County of Cass)

On this 22nd day of April, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.


BRENDA JO KOSKI
Notary Public
State of North Dakota
My Commission Expires May 9, 2022


Notary Public, Cass County, North Dakota



PAGE 2 OF 2

Exhibit

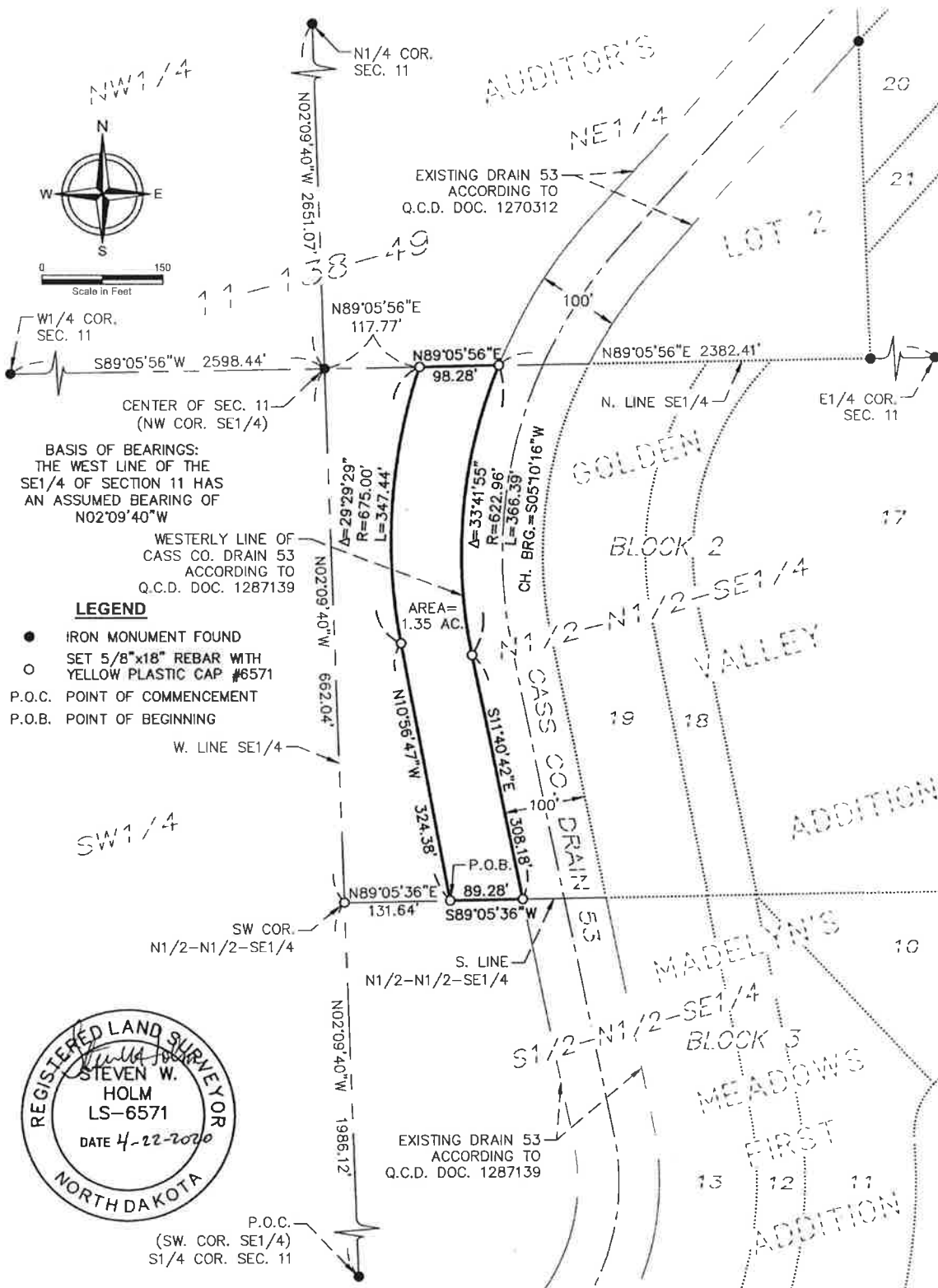
Part of the N1/2-N1/2-SE1/4 Sec. 11-138-49
Cass County, North Dakota

PROJECT No. 18312
DATE: 04.22.20
REVISED:
DRAFTER: SWH
REVIEWER: CDH


moore
engineering, inc.

EXHIBIT

PART OF THE N1/2-N1/2-SE1/4 OF SECTION 11, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE
FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA



PAGE 1 OF 2

Exhibit

Part of the N1/2-N1/2-SE1/4 Sec. 11-138-49
Cass County, North Dakota

PROJECT No.	18312
DATE:	04.22.20
REVISED:	-
DRAFTER:	SWH
REVIEWER:	CDH



EXHIBIT

PART OF THE N1/2-N1/2-SE1/4 OF SECTION 11, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE
FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA

DESCRIPTION

That part of the North Half of the North Half of the Southeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 1986.12 feet to the southwest corner of said North Half of the North Half of the Southeast Quarter; thence North 89 degrees 05 minutes 36 seconds East along the south line of said North Half of the North Half of the Southeast Quarter for a distance of 131.64 feet to the point of beginning; thence North 10 degrees 56 minutes 47 seconds West for a distance of 324.38 feet; thence 347.44 feet northerly on a tangential curve concave to the east, having a radius of 675.00 feet and a central angle of 29 degrees 29 minutes 29 seconds to the north line of said Southeast Quarter; thence North 89 degrees 05 minutes 56 seconds East along the north line of said Southeast Quarter for a distance of 98.28 feet to the westerly line of Cass County Drain No. 53 according to Quit Claim Deed Document No. 1287139, recorded January 29, 2010, on file and of record in the office of the Recorder, said County; thence 366.39 feet southerly along the westerly line of said Cass County Drain No. 53 on a non-tangential curve concave to the east, having a radius of 622.96 feet, a central angle of 33 degrees 41 minutes 55 seconds and a chord bearing of South 05 degrees 10 minutes 16 seconds West; thence South 11 degrees 40 minutes 42 seconds East, tangent to said curve, continuing along the westerly line of said Cass County Drain No. 53 for a distance of 308.18 feet to the south line of said North Half of the North Half of the Southeast Quarter; thence South 89 degrees 05 minutes 36 seconds West along the south line of said North Half of the North Half of the Southeast Quarter for a distance of 89.28 feet to the point of beginning.

Said tract contains 1.35 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

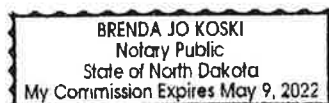


Steven W. Holm, R.L.S.
N.D. License No. LS-6571

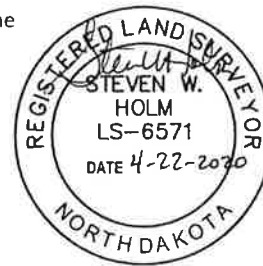
Date: 4-22-2020

State of North Dakota)
County of Cass)

On this 22nd day of April, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.




Notary Public, Cass County, North Dakota



PAGE 2 OF 2

Exhibit

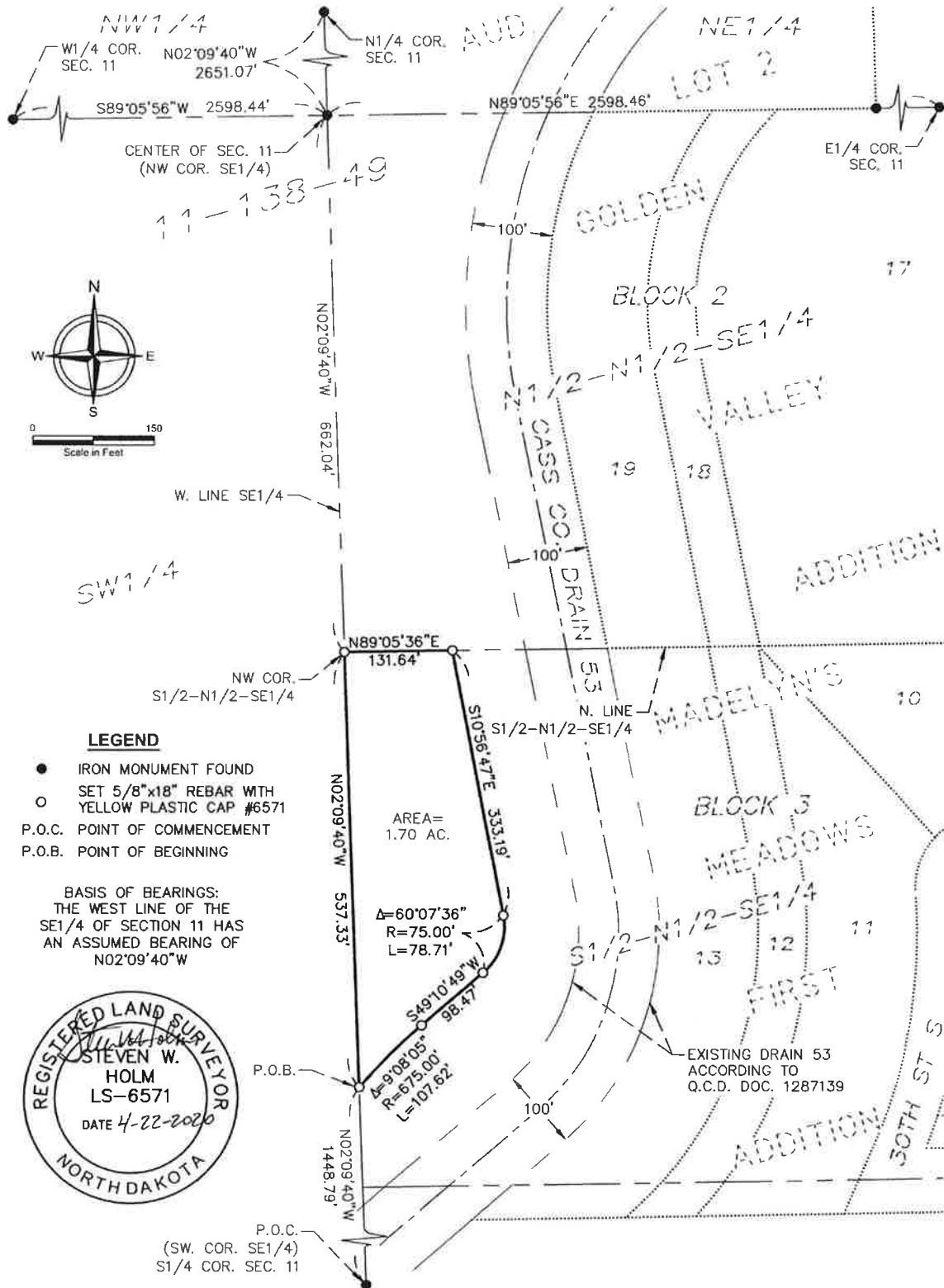
Part of the N1/2-N1/2-SE1/4 Sec. 11-138-49
Cass County, North Dakota

PROJECT No.	18312
DATE:	04.22.20
REVISED:	
DRAFTER:	SWH
REVIEWER:	CDH



EXHIBIT

PART OF THE S1/2-N1/2-SE1/4 OF SECTION 11, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE
FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA



PAGE 1 OF 2

Exhibit

Part of the S1/2-N1/2-SE1/4 Sec. 11-138-49
Cass County, North Dakota

PROJECT No 18312
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REVISED:
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REVIEWER: CDH

moore
engineering, inc.

EXHIBIT

PART OF THE S1/2-N1/2-SE1/4 OF SECTION 11, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE
FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA

DESCRIPTION

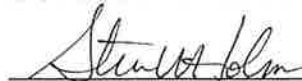
That part of the South Half of the North Half of the Southeast Quarter of Section 11, Township, 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 1448.79 feet to the point of beginning; thence continuing North 02 degrees 09 minutes 40 seconds West along the west line of said Southeast Quarter for a distance of 537.33 feet to the northwest corner of said South Half of the North Half of the Southeast Quarter; thence North 89 degrees 05 minutes 36 seconds East along the north line of said South Half of the North Half of the Southeast Quarter for a distance of 131.64 feet; thence South 10 degrees 56 minutes 47 seconds East for a distance of 333.19 feet; thence 78.71 feet southerly on a tangential curve concave to the west, having a radius of 75.00 feet and a central angle of 60 degrees 07 minutes 36 seconds; thence South 49 degrees 10 minutes 49 seconds West for a distance of 98.47 feet; thence 107.62 feet southwesterly on a tangential curve concave to the southeast, having a radius of 675.00 feet and a central angle of 09 degrees 08 minutes 05 seconds to the point of beginning.

Said tract contains 1.70 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

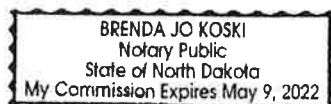


Steven W. Holm, R.L.S.
N.D. License No. LS-6571

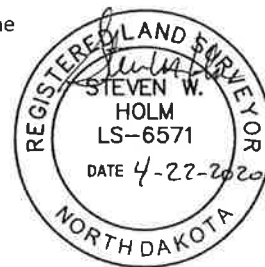
Date: 4-22-2020

State of North Dakota)
County of Cass)

On this 22nd day of April, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.




Notary Public, Cass County, North Dakota



PAGE 2 OF 2

Exhibit

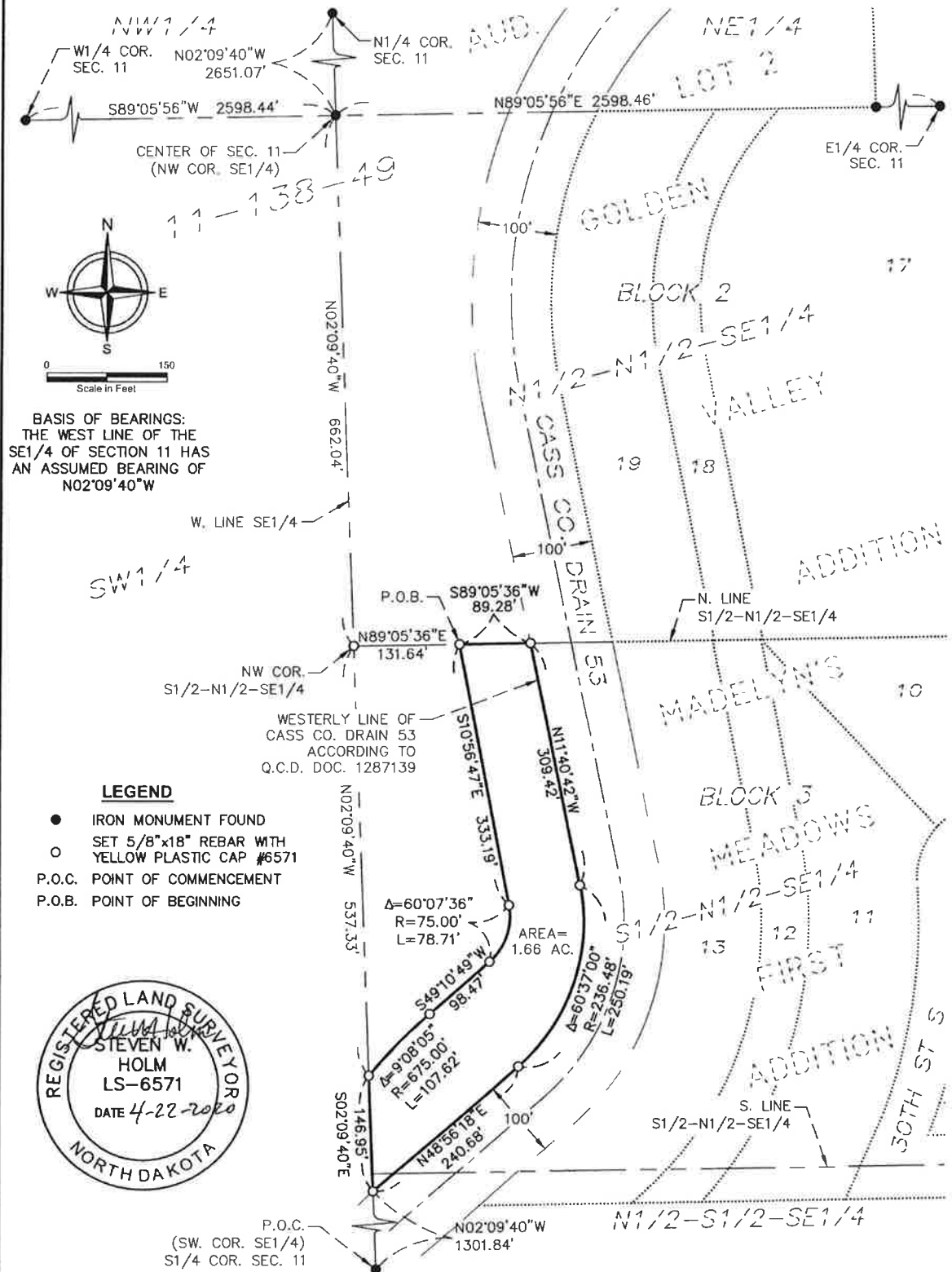
Part of the S1/2-N1/2-SE1/4 Sec. 11-138-49
Cass County, North Dakota

PROJECT No.	18312
DATE:	04.22.20
REVISED:	
DRAFTER:	SWH
REVIEWER:	CDH



EXHIBIT

PART OF THE S1/2-N1/2-SE1/4 AND PART OF THE N1/2-S1/2-SE1/4, ALL IN SECTION 11, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA



PAGE 1 OF 2

Exhibit

Part of the S1/2-N1/2-SE1/4 and part of the N1/2-S1/2-SE1/4,
all in Sec. 11-138-49
Cass County, North Dakota

PROJECT No. 18312
DATE: 04.22.20
REVISED:
DRAFTER: SWH
REVIEWER: CDH



EXHIBIT

PART OF THE S1/2-N1/2-SE1/4 AND PART OF THE N1/2-S1/2-SE1/4, ALL IN SECTION 11, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA

DESCRIPTION

That part of the South Half of the North Half of the Southeast Quarter and that part of the North Half of the South Half of said Southeast Quarter, all in Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 1986.12 feet to the northwest corner of said South Half of the North Half of the Southeast Quarter; thence North 89 degrees 05 minutes 36 seconds East along the north line of said South Half of the North Half of the Southeast Quarter for a distance of 131.64 feet to the point of beginning; thence South 10 degrees 56 minutes 47 seconds East for a distance of 333.19 feet; thence 78.71 feet southerly on a tangential curve concave to the west, having a radius of 75.00 feet and a central angle of 60 degrees 07 minutes 36 seconds; thence South 49 degrees 10 minutes 49 seconds West for a distance of 98.47 feet; thence 107.62 feet southwesterly on a tangential curve concave to the southeast, having a radius of 675.00 feet and a central angle of 09 degrees 08 minutes 05 seconds to the west line of said Southeast Quarter; thence South 02 degrees 09 minutes 40 seconds East along the west line of said Southeast Quarter for a distance of 146.95 feet to the westerly line of Cass County Drain No. 53 according to Quit Claim Deed Document No. 1287139, recorded January 29, 2010, on file and of record in the office of the Recorder, said County; thence North 48 degrees 56 minutes 18 seconds East along the westerly line of said Cass County Drain No. 53 for a distance of 240.68 feet; thence 250.19 feet northerly, continuing along the westerly line of said Cass County Drain No. 53 on a tangential curve concave to the west, having a radius of 236.48 feet and a central angle of 60 degrees 37 minutes 00 seconds; thence North 11 degrees 40 minutes 42 seconds West continuing along the westerly line of said Cass County Drain No. 53 for a distance of 309.42 feet to the north line of said South Half of the North Half of the Southeast Quarter; thence South 89 degrees 05 minutes 36 seconds West along the north line of said South Half of the North Half of the Southeast Quarter for a distance of 89.28 feet to the point of beginning.

Said tract contains 1.66 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

Steven W. Holm

Steven W. Holm, R.L.S.
N.D. License No. LS-6571

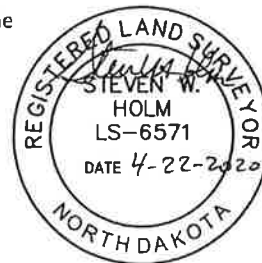
Date: 4-22-2020

State of North Dakota)
County of Cass)

On this 22nd day of April, 2020, before me, a Notary Public in and for said county and state, personally appeared Steven W. Holm, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.

BRENDA JO KOSKI
Notary Public
State of North Dakota
My Commission Expires May 9, 2022

Brenda Jo Koski
Notary Public, Cass County, North Dakota



PAGE 2 OF 2

Exhibit

Part of the S1/2-N1/2-SE1/4 and part of the N1/2-S1/2-SE1/4,
all in Sec. 11-138-49
Cass County, North Dakota

PROJECT No. 18312
DATE: 04.22.20
REVISED:
DRAFTER: SWH
REVIEWER: CDH



EXHIBIT

B

Drain 53 Improvement Project No. 2019-01
Southeast Cass Water Resource District
Cass County, North Dakota

Engineer's Preliminary Opinion of Probable Cost - Levee Project

BID ITEM NO. & FARGO SPECIFICATION & DESCRIPTION			UNIT	QUANTITY	UNIT PRICE	TOTAL	CITY OF FARGO	LOCAL
1.	SIB	Mobilization	LS	1	\$30,000.00	\$30,000.00	\$15,000.00	\$15,000.00
2.	2000	Topsoil - Strip & Spread	CY	128,744	\$0.50	\$64,372.00	\$32,186.00	\$32,186.00
3.	2000	Excavation	CY	149,944	\$2.80	\$419,843.20	\$209,921.60	\$209,921.60
4.	2000	Embankment	CY	66,873	\$4.50	\$300,928.50	\$150,464.25	\$150,464.25
5.	3600	Inspection Trench	CY	6,518	\$3.00	\$19,554.00	\$9,777.00	\$9,777.00
6.	SIB	F&I Rip Rap Rock	CY	140	\$70.00	\$9,800.00	\$4,900.00	\$4,900.00
7.	1500	Salvage Rip Rap Rock	LS	1	\$8,400.00	\$8,400.00	\$4,200.00	\$4,200.00
8.	SIB	Rip Rap Filter Blanket	SY	360	\$2.50	\$900.00	\$450.00	\$450.00
9.	1200	Remove Pipe All Sizes All Types	LF	52	\$8.00	\$416.00	\$208.00	\$208.00
10.	3100	Seeding Type A	SY	147,620	\$0.20	\$29,524.00	\$14,762.00	\$14,762.00
11.	3100	Mulch Type 2 - Straw	SY	147,620	\$0.07	\$10,333.40	\$5,166.70	\$5,166.70
12.	SIB	Rock Check - Temporary	EA	1	\$2,000.00	\$2,000.00	\$1,000.00	\$1,000.00
13.	3300	Stormwater Management	LS	1	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00
14.	3300	Temp Construction Entrance	EA	1	\$2,500.00	\$2,500.00	\$1,250.00	\$1,250.00
15.	*014000	Material Testing	Invoice	1	\$25,000.00	\$25,000.00	\$12,500.00	\$12,500.00
16.	4100	Traffic Control - Minor	LS	1	\$2,000.00	\$2,000.00	\$1,000.00	\$1,000.00
<u>Alternate 1 - LOMR-F Madelyn Meadows 3rd Addition</u>								
A1.	Plan Sheet	LOMR-F	CY	42,600	\$5.00	\$213,000.00	\$213,000.00	\$0.00
A2.	2000	Topsoil - Strip & Spread	CY	102,608	\$0.50	\$51,304.00	\$51,304.00	\$0.00
<u>Alternate 2 - Stockpile Material for Madelyn Meadows 3rd Addition</u>								
A1.	Plan Sheet	Stockpiling	CY	42,600	\$1.00	\$42,600.00	\$42,600.00	\$0.00
A2.	2000	Topsoil - Strip & Spread	CY	5,600	\$0.50	\$2,800.00	\$2,800.00	\$0.00
Construction Subtotal without Alternative						\$935,571.10	\$467,785.55	\$467,785.55
Construction Subtotal with Alternative 1						\$1,199,875.10	\$732,089.55	\$467,785.55
Construction Subtotal with Alternative 2						\$980,971.10	\$513,185.55	\$467,785.55
Engineering - Preliminary						\$50,000.00	\$25,000.00	\$25,000.00
Engineering - Design						\$83,310.00	\$41,655.00	\$41,655.00
Engineering - Construction						\$83,310.00	\$41,655.00	\$41,655.00
Permitting						\$2,000.00	\$1,000.00	\$1,000.00
Legal						\$5,000.00	\$2,500.00	\$2,500.00
Bond Issuance / Financing						\$0.00	\$0.00	\$0.00
Owner Administration Expenses						\$1,000.00	\$500.00	\$500.00
Advertising & Publishing						\$1,000.00	\$500.00	\$500.00
Right-of-Way Acquisition						\$6,294.00	\$3,147.00	\$3,147.00
Right-of-Way Negotiations						\$3,000.00	\$1,500.00	\$1,500.00
Land Surveying						\$15,000.00	\$7,500.00	\$7,500.00
Utility Relocations						\$20,000.00	\$10,000.00	\$10,000.00
Utility Relocation Coordination						\$2,000.00	\$1,000.00	\$1,000.00
Soil Borings & Geotechnical Report						\$15,000.00	\$7,500.00	\$7,500.00
Project Contingencies (15%)						\$139,428.90	\$69,714.45	\$69,714.45
TOTAL PROJECT COST WITHOUT ALTERNATIVE						\$1,361,914.00	\$680,957.00	\$680,957.00
TOTAL PROJECT COST WITH ALTERNATIVE 1						\$1,626,218.00	\$945,261.00	\$680,957.00
TOTAL PROJECT COST WITH ALTERNATIVE 2						\$1,407,314.00	\$726,357.00	\$680,957.00

26

August 5, 2020

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. AN-20-A1

Dear Commissioners:

Bids were opened at 11:45 AM on Wednesday, August 5, 2020, for PC Concrete Alley Paving & Incidentals, Improvement District No. AN-20-A1, located at 9th Avenue to 10th Avenue South between 4th Street and 5th Street South.

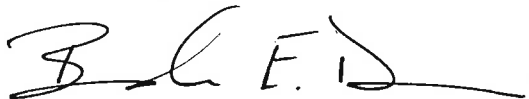
The bids were as follows:

Key Contracting	\$133,460.00
Dakota Underground Company	\$144,372.00
Engineer's Estimate	\$122,856.00

The special assessment escrow is not required.

One protest was received amounting to 6% of the Improvement District. We recommend that the protest be declared insufficient and the contract be awarded to Key Contracting, Inc. in the amount of \$172,586.00 as the lowest and best bid.

Sincerely,



Brenda E. Derrig, PE
City Engineer

BED/jmg

ENGINEER'S STATEMENT OF ESTIMATED COST**IMPROVEMENT DISTRICT # AN-20-A1****PC Concrete Alley Paving & Incidentals**

9th Ave to 10th Ave S between 4th St and 5th St S.

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 Brenda E. Derrig, 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:

PC Concrete Alley Paving & Incidentals Improvement District # AN-20-A1 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
Storm Sewer					
1	F&I Manhole 4' Dia Reinf Conc	EA	1.00	5,500.00	5,500.00
2	F&I Inlet - Round (RDI) Reinf Conc	EA	2.00	2,100.00	4,200.00
3	Connect Pipe to Exist Structure	EA	1.00	1,500.00	1,500.00
4	F&I Pipe w/GB SDR 35 - 10" Dia PVC	LF	262.00	75.00	19,650.00
Storm Sewer Total					30,850.00
Paving					
5	Excavation	CY	450.00	14.00	6,300.00
6	Subgrade Preparation	SY	1,052.00	4.00	4,208.00
7	Remove Pavement All Thicknesses All Types	SY	18.00	55.00	990.00
8	Remove Driveway All Thicknesses All Types	SY	70.00	18.00	1,260.00
9	Rem & Repl Curb & Gutter	LF	8.00	100.00	800.00
10	F&I Pavement 6" Thick Reinf Conc	SY	1,000.00	76.00	76,000.00
11	F&I Driveway 6" Thick Reinf Conc	SY	52.00	76.00	3,952.00
12	F&I Pavement 7" Thick Asph	SY	18.00	100.00	1,800.00
13	Casting to Grade - w/Conc	EA	4.00	500.00	2,000.00
14	Mulching Type 1 - Hydro	SY	200.00	5.00	1,000.00
15	Seeding Type B	SY	200.00	5.00	1,000.00
16	Inlet Protection - Existing Inlet	EA	4.00	300.00	1,200.00
17	Inlet Protection - New Inlet	EA	2.00	300.00	600.00
18	Traffic Control - Type 1	LS	1.00	1,200.00	1,200.00
19	F&I Rock Mulch	TON	10.00	30.00	300.00
Paving Total					102,610.00
Total Construction in \$					133,460.00
Engineering					10.00 % 13,346.00
Legal & Misc					3.00 % 4,003.80
Contingencies					10.00 % 13,346.00
Administration					4.00 % 5,338.40
Interest					4.00 % 5,338.40
Total Estimated Costs					174,832.60
Special Assessments					174,832.60
Unfunded Costs					0.00

ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # AN-20-A1

PC Concrete Alley Paving & Incidentals

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

Date: 08/05/2020



Brenda E. Derrig

City Engineer

