

## FARGO CITY COMMISSION AGENDA

Monday, August 12, 2019 - 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, July 29, 2019).

### CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Receive and file the following Ordinances:
  - a. Relating to Ordinance Violations.
  - b. Amending Ordinance No. 5140 which Rezoned Certain Parcels of Land Lying in Diamond Willow Addition, A Replat of Portions of Douglas Addition.
- 2. 2nd reading and final adoption of the following Ordinances; 1st reading, 7/29/19:
  - a. Relating to the International Building Code.
  - b. Relating to the International Residential Code.
  - c. Relating to the International Existing Building Code.
  - d. Relating to the International Energy Conservation Code.
  - e. Relating to the International Mechanical Code.
  - f. Relating to the International Fuel Gas Code.
  - g. Relating to the International Property Maintenance Code.
  - h. Relating to Fire Protection and Prevention.
- 3. Applications for property tax exemptions:
  - a. Sheila R. Remboldt, 1001 5th Street South (5 year).
  - b. Larry Chesley, 906 30th Street North (5 year).
  - c. Prudence A. Olson, 1115 7th Street South (5 year).
  - d. Richard A. and Beverly Leverson, 31 Meadowlark Lane North (5 year).
  - e. Julie A. Baker, 2314 Lilac Lane North (5 year).
  - f. Darin A. Luebke and Jennifer L. Lovell-Luebke, 1641 12th Avenue South (5 year).
- 4. Applications for Games of Chance:
  - a. Red River Children's Advocacy Center for a raffle and raffle board from 9/1/19 to 9/12/19.
  - b. Fargo Air Museum for a raffle on 9/14/19.
  - c. Fargo Davies HS for a calendar raffle from 11/11/19 to 2/18/20.
  - d. Fargo Davies HS for a calendar raffle from 8/22/19 to 5/19/20.
  - e. Scottish Rite Holding Company for a raffle on 11/5/19.
  - f. Sts. Anne & Joachim Catholic Church for a raffle on 11/10/19.
  - g. YWCA Cass Clay for a raffle on 9/5/19.
  - h. Spartan Boosters Inc. for a raffle from 9/6/19 to 9/20/19.

- i. Legacy Children's Foundation for a raffle on 8/19/19; Public Spirited Resolution,
  - j. ND CPA Society Foundation for a raffle on 9/24/19.
  - k. St. John Paul II Catholic Schools for a raffle from 9/1/19 to 4/25/20.
5. Use of the stamped or embossed City seal as the official seal of the City of Fargo, as presented.
6. Receive and file General Fund – Budget to Actual through July 2019 (unaudited).
7. Change Order No. 1 for an increase of \$49,660.80 for Project No. SL-19-A1.
8. Change Order No. 3 for an increase of \$25,122.00 and time extension to 10/14/19 for Project No. SN-18-C2.
9. Change Order No. 1 for an increase of \$82,140.00 for Project No. SR-19-A1.
10. Change Order No. 2 in an amount not to exceed \$15,770.00 for Project No. UR-19-A1.
11. Amendment (Third) to Developer and Road Use Agreement with Block 9 Partners, LLC.
12. Financial Award from the ND Department of Commerce to the Gladys Ray Shelter for a ND Homeless Grant.
13. Bid award for SWAT Team ballistic helmets and tactical communication headsets.
14. Interlocal Agreement with Cass County and allocation of the 2019 Edward Byrne Memorial Justice Assistance Grant (JAG) Program, as described within the agreement.
15. Bid award for one loader mounted snow blower (RFP19128).
16. Bid award for 2020 spring tree order (RFP19120).
17. Amendment No. 4 to Agreement between City of Fargo and First Transit.
18. ND Department of Transportation State Aid for Public Transit Agreement (Contract No. 38191046).
19. Bills.
20. Change Order No. 6 for an increase of \$22,227.90 and a 7-day time extension for Improvement District No. BN-17-A1.
21. Negative Final Balancing Change Order No. 4 in the amount of -\$142,417.74 for Improvement District No. BN-18-A1.
22. Change Order No. 1 for an increase of \$2,200.00 and a 6-day time extension for Improvement District No. BN-19-B1.
23. Change Order No. 27 for an increase of \$1,726.62 and No. 28 for an increase of \$17,192.22 for Improvement District No. BR-18-B1.
24. Negative Final Balancing Change Order No. 3 in the amount of -\$55,623.62 for Improvement District No. BR-18-G2.

25. Task Order No. 1 in the amount of \$250,000.00 with Moore Engineering for Improvement District No. NN-19-A0.
26. Change Order No. 1 for a 15-calendar day time extension for Improvement District No. PN-18-C1.
27. Change Order No. 1 for a 7-calendar day extension for Improvement District No. PR-19-G1.
28. Negative Final Balancing Change Order No. 2 in the amount of -\$1,755.76 for Improvement District No. TN-18-A1.
29. Final Balancing Change Order No. 1 for an increase of \$6,648.90 for Improvement District No. SN-16-C1.
30. Change Order No. 1 for an increase of \$8,240.00 and 14-day time extension for Improvement District No. UN-18-C1.
31. Settlement Agreement and Mutual Release of Claims with Master Construction Co., Inc. for the rehabilitation of 43 1/2 Street North between 3rd and 7th Avenues North (Improvement District No. BR-19-B1).
32. Bid award for Improvement District No. NR-19-A1.
33. Contract and bond for Improvement District No. BN-19-F1.

**REGULAR AGENDA:**

34. Request from the Police Department requesting the City Attorney prepare amendments to the Fargo Municipal Code relating to marijuana and marijuana paraphernalia, bringing it into alignment with State law:
  - a. Waive requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of an Ordinance Relating to Marijuana and Marijuana Paraphernalia.
35. Public Hearings - 5:15 pm:
  - a. Special assessment of nuisance abatement fees.
  - b. Amendments to the 2019 Community Development Block Grant (CDBG) & HOME Investment Partnerships Programs.
  - c. CONTINUED to 8/26/19 - Renaissance Zone Project for Great Plains 1001 Holdings, LLC for a new construction project located at 1001 and 1011 Northern Pacific Avenue North; 28 10th Street North; 1016 1st Avenue North and 11 11th Street North; continued from the 7/15/19 Regular Meeting.
  - d. CONTINUED to 8/26/19 - Renaissance Zone Project for DFI Kesler LLC and DFI BJ LLC for a new construction project located at 617 and 621 1st Avenue North, and 624 2nd Avenue North.
  - e. Renaissance Zone Project for Volare, LLC, for a commercial lease project located at 235 Roberts Street North.
  - f. CONTINUE to 8/26/19 - Right-of-Way Vacation of the alley between Lots A, B, C, D, E, F, T and U, the vacated 10 foot alley adjacent to Lots T and U, Hagaman's

Subdivision of part of Block 2, Roberts Addition (624 2nd Avenue North and 613, 617, and 621 1st Avenue North); approval recommended by the Planning Commission on 4/2/19; continued from the 7/15/19 Regular Meeting.

- g. CONTINUE to 8/26/19 - Right of Way Vacation of a portion of 5th Street North between Blocks 21 and 22 Keeney and Devitt's Second Addition and lying North of 4th Avenue North and South of Lot B, Block 1, Great Northern Depot Addition (410 5th Street North).
- h. CONTINUE to 8/26/19 - Alley Vacation of the alley between Lot 12, Block 26 and a part of Lot 7 and all of Lots 8-12, Block 25, Roberts Second Addition (1001 NP Avenue North and 28 10th Street North); approval recommended by the Planning Commission on 7/2/19.
- i. Zoning Change from LC, Limited Commercial to MR-3, Multi-Dwelling Residential on a portion of Lot 2, Block 1, 42nd Street Addition (3700 42nd Street South); approval recommended by the Planning Commission on 7/2/19:
  - 1. 1st reading of rezoning Ordinance.
- j. Application filed by Aldevron for a payment in lieu of tax exemption (PILOT) for a project located at Lot 3, Block 1, Woodhaven Plaza Addition which the applicant will use in the operation of constructing a state of the art biologics manufacturing facility to produce therapeutic products and reagents.
- k. Application filed by Tzadik Sioux Falls Portfolio III, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 1222 4th Avenue North which the applicant will use in the operation of leasing residential apartments and commercial space.
- l. Application filed by Tzadik Sioux Falls Portfolio III, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 315 University Drive North which the applicant will use in the operation of leasing residential apartments and commercial space.
- m. Application filed by Block 9 Hotel, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 215 Broadway North which the applicant will use in the operation of a 125 room hotel.
- n. Application filed by Block 9 RDO, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 215 Broadway North which the applicant will use in the operation of the Corporate headquarters for R.D. Offutt Company and RDO Equipment Company.
- o. Application filed by DFI Block 9 Retail, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 215 Broadway North which the applicant will use in the operation of Block 9 Project with 27,000 sf of new retail space on the ground floor.
- p. Application filed by Block 9 SRO, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 215 Broadway North which the applicant will use in the operation of Speculative office space within the Block 9 Project.

36. Request to approve the Guaranteed Maximum Price of \$1,499,848.00 and Amendment to the Contract with McGough Construction Co., LLC for construction management services for the Civic Plaza, Area 1.
37. Recommendation to approve the Mayor's 2020 Preliminary Budget and set the Public Hearing date for September 9, 2019 at 6:00 p.m.

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

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



# FARGO POLICE DEPARTMENT

222 Fourth Street North, Fargo, North Dakota 58102

David E. Todd, Chief of Police



July 30, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

RE: Ordinance Amendment – Marijuana and Paraphernalia

Dear Commissioners,

I seek your permission to direct the City Attorney to draft amendments to the City of Fargo Marijuana and Marijuana Paraphernalia ordinances. The City of Fargo should update their marijuana and marijuana paraphernalia ordinances to mirror the amendments the state legislature made in 2017 and 2019 (effective Aug. 1, 2019).

In 2017, the North Dakota legislature legalized medical marijuana (NDCC 19-24.1). The current marijuana and marijuana paraphernalia city ordinances do not allow for use or possession of marijuana or paraphernalia, even if the marijuana or paraphernalia is legally prescribed by a doctor and allowable under state law.

The 2019 Legislature reduced marijuana possession from a Class B Misdemeanor to an infraction for possession of less than a half an ounce. Possession of more than ½ ounce of marijuana (but less than 500 grams) is a Class B Misdemeanor, while more than 500 grams is a Class A Misdemeanor. In addition, ingestion of marijuana, if under 21, is a Class B Misdemeanor. Currently, possession of one ounce or less of marijuana is a Class B Misdemeanor. The 2019 Legislature also lowered the marijuana paraphernalia violation from a Class B Misdemeanor to an infraction for all persons as long as the paraphernalia deals with personal use of marijuana. Paraphernalia associated with growing or dealing marijuana is still a Class A Misdemeanor. Under our City ordinances, currently, possession of marijuana paraphernalia associated with personal use is a Class B Misdemeanor.

The maximum punishment for an infraction is a \$1,000 fine, however no jail time may be imposed. A Class B Misdemeanor maximum punishment is 30 days in jail and/or \$1,500 fine.

**Recommended Motion:**

*Direct the City Attorney to prepare amendments to the Fargo Municipal Code related to marijuana and marijuana paraphernalia, as described, to bring it into alignment with state law.*

Sincerely,

Chief David Todd

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

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

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

NON EMERGENCY  
Phone: 701-235-4493

**Sixty-sixth Legislative Assembly of North Dakota  
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1050  
(Representatives Roers Jones, Satrom)  
(Senators Unruh, Poolman, K. Roers, Myrdal)

AN ACT to amend and reenact subsection 7 of section 12.1-32-01, section 19-03.1-22.3, subdivision d of subsection 8 of section 19-03.1-23, section 19-03.4-03, and subdivision i of subsection 5 of section 39-08-01 of the North Dakota Century Code, relating to multiple convictions of the same infraction, the possession and ingestion of marijuana, the possession of drug paraphernalia and the placement of an individual in a drug and alcohol treatment program by the department of corrections and rehabilitation; to provide for a legislative management study; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 7 of section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who has, within one year ~~prior to before~~ commission of the infraction of which the person was convicted, has been previously convicted previously at least twice of the same offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint ~~shall~~must specify that the offense is a misdemeanor.

**SECTION 2. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.**

A

1. Except as provided in subsection 2, a person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of a class B misdemeanor if the controlled substance is marijuana. Otherwise, the offense is a class A misdemeanor. This subsection does not apply to ingesting, inhaling, injecting, or otherwise taking into the body marijuana.
2. A person who is under twenty-one years of age and intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is marijuana, unless the substance was medical marijuana obtained in accordance with chapter 19-24.1, is guilty of a class B misdemeanor.
3. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused.

**SECTION 3. AMENDMENT.** Subdivision d of subsection 8 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

- d. A person who violates this subsection ~~regarding possession~~by possessing:

- (1) Marijuana in an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.
- (2) At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.
- (3) More than 500 grams of marijuana is guilty of a class A misdemeanor.

**SECTION 4. AMENDMENT.** Section 19-03.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.**

1. A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of chapter 19-03.1. ~~Any~~A person violating this subsection is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1.
2. A person may not use or possess with the intent to use drug paraphernalia to inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor. If a person previously has been convicted of an offense under this title, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony.
3. A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, ~~or repack, store, contain, or conceal~~ marijuana in violation of chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor.
4. A person may not use or possess with the intent to use drug paraphernalia to ingest, inhale, or otherwise introduce into the human body marijuana or possess with the intent to use drug paraphernalia to store or contain marijuana in violation of chapter 19-03.1. A person violating this subsection is guilty of ~~a class B misdemeanor~~ an infraction.
5. A person sentenced to the legal and physical custody of the department of corrections and rehabilitation under this section may be placed in a drug and alcohol treatment program as designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the person from imprisonment to begin any court-ordered period of probation. If the person is not subject to court-ordered probation, the court may order the person to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.
6. Probation under this section may include placement in another facility, treatment program, or drug court. If the person is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.

**SECTION 5. AMENDMENT.** Subdivision i of subsection 5 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

- i. If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the individual in an alcohol treatment program designated by the department. Upon the individual's successful completion of the alcohol treatment program, the department shall release the individual from imprisonment to begin the court-ordered period of probation. If there is not any



court-ordered period of probation, the court shall ~~shall~~ may order the individual to serve the remainder of the sentence of imprisonment on supervised probation and the terms and conditions must include participation in the twenty-four seven sobriety program and any terms and conditions of probation previously imposed by the court. Probation under this subsection may include placement in another facility or treatment program. If an individual is placed in another facility or treatment program after release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody. Individuals incarcerated under this section subsequent to a second probation revocation are not eligible for release from imprisonment upon the successful completion of treatment.

**SECTION 6. LEGISLATIVE MANAGEMENT STUDY.** During the 2019-20 interim, the legislative management shall consider studying the implications of the potential adoption of an initiated measure allowing the use of recreational marijuana. The study must consider the potential benefits and detriments of legalizing recreational marijuana with respect to:

1. The state's economy, including unemployment and homelessness rates; potential tax revenues and job opportunities; spending on public health and safety programs, including law enforcement agencies and drug treatment programs; and tourism, real estate, construction, and banking;
2. Minors, including the rate of drug usage, the effects of marijuana on developing brains, and high school dropout rates;
3. The insurance industry, including health, automobile, and life insurance;
4. The legal system, including crime rates, the prison population, and rates of usage of other drugs;
5. Workers' compensation and work-related accidents;
6. Public health and safety; and
7. The medical marijuana program.

The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1050.

House Vote:    Yeas 69            Nays 23            Absent 2

Senate Vote:    Yeas 31            Nays 15            Absent 1

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2019.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2019.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2019,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State



**Office of the City Attorney**

**City Attorney**  
Erik R. Johnson

**Assistant City Attorney**  
Nancy J. Morris

August 8, 2019

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

**RE: Ordinance Amendments—Possession of Marijuana/Marijuana Paraphernalia**

Dear Commissioners,

This letter is in conjunction with Chief Todd's letter asking your approval for amendments to our city marijuana-related laws. Enclosed are two amending ordinances, both intended to allow our city law to align with state law—essentially making penalties less severe in some circumstances. The state law changes, and the enclosed ordinances, will accomplish the following:

- Reduce the penalty for possession of small amounts (less than ½ ounce) of marijuana to an infraction;
- Identifies possession of ½ ounce to 500 grams (approx. 17.63 ounces) as a class B misdemeanor [more than 500 grams is a class A misdemeanor charged in state district court];
- Establishes a violation specifically for those under age 21 using or possessing marijuana;
- Clarifies the marijuana paraphernalia law;
- Changes the “multiple infraction within one year” enhancement to a two-prior-violation standard; and,
- Inserted appropriate exception to the above for medical marijuana (N.D.C.C. Ch. 19-24.1).

The amendments have been discussed with, and approved by the Police Department, including Chief Todd.

**SUGGESTED MOTION:** With respect to An Ordinance Amending § 10-1201, 10-1202 and 10-1204 of Article 10-12 of Chapter 10 Relating to Marijuana and Marijuana Paraphernalia and An Ordinance Amending §1-0305 of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Classification of Ordinance Violations, I move to waive the requirement of receipt and filing of said ordinances one week prior to first reading and that this be the first reading, by title, of said two ordinances, and that said ordinances be placed on the agenda at the next regular city commission meeting for second reading and final passage.



Letter to City Commission  
August 8, 2019  
Page 2

Sincerely,

*William B. Wischer*

William B. Wischer  
Assistant City Attorney

Enclosures

WBW/Imw

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

AN ORDINANCE AMENDING SECTIONS 10-1201, 10-1202  
AND 10-1204 OF ARTICLE 10-12 OF CHAPTER 10 RELATING TO  
MARIJUANA AND MARIJUANA PARAPHERNALIA

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 10-1201 of Article 10-12 of Chapter 10 of the Fargo Municipal Code is hereby  
amended to read as follows:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

1. ~~"Marijuana" shall mean all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.~~ "Marijuana" is defined as set forth in the North Dakota Uniform Controlled Substances Act, N.D.C.C. Chapter 19-03.1 including N.D.C.C. §19-03.1-01.
2. "Marijuana paraphernalia" shall mean any device used, intended for use, or designed for personal use in, storing, or containing, ~~or concealing~~ marijuana or for personal use in ingesting, inhaling, or otherwise intentionally introducing marijuana into the human body.

Section 2. Amendment.

Section 10-1202 of Article 10-12 of Chapter 10 of the Fargo Municipal Code is hereby amended to read as follows:

1. Except as may be authorized by N.D.C.C. Chapter 19-24.1, regarding medical marijuana, it shall be unlawful for any person to willfully, as defined by N.D.C.C.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

section 12.1-02-02, possess up to one ounce (28.35 grams) of marijuana of an

amount of less than one-half ounce [14.175 grams] within the corporate

jurisdictional limits of the city; such person therefore being guilty of an infraction.

2. Except as may be authorized by N.D.C.C. Chapter 19-24.1, regarding medical

marijuana, it shall be unlawful for any person to willfully, as defined by N.D.C.C.

section 12.1-02-02, possess marijuana in an amount of at least one-half ounce

[14.175 grams] but not more than 500 grams of marijuana; such person therefore

being guilty of a class B misdemeanor.

3. Except as may be authorized by N.D.C.C. Chapter 19-24.1, regarding medical marijuana,

a person who is under twenty-one years of age and intentionally ingests, inhales, injects, or

otherwise takes into the body a controlled substance that is marijuana is guilty of a class B

misdemeanor.

Section 3. Amendment.

Section 10-1204 of Article 10-12 of Chapter 10 of the Fargo Municipal Code is hereby  
amended to read as follows:

Except as may be authorized by N.D.C.C. Chapter 19-24.1, regarding medical

marijuana, it shall be unlawful for any person to use or possess with the intent to

use marijuana paraphernalia to ingest, inhale, or otherwise introduce into the

human body marijuana or to possess with the intent to store or contain marijuana

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

within the ~~corporate~~jurisdictional limits of the city.

Section 4. Penalty.

A person who violates Subsection 1 of Section 12-1202 by possessing marijuana in a quantity of less than one-half ounce [14.175 grams] is guilty of an infraction. A person who violates Subsection 2 of Section 12-1202 by possessing marijuana in a quantity of at least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor. A person who violates Subsection 3 of Section 10-1202 (under age 21 ingesting or using marijuana or marijuana paraphernalia) is guilty of a class B misdemeanor. A person who violates Section 10-1204 (possession of marijuana paraphernalia) is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a fine not to exceed \$1,500.00, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof. In addition to such fine and/or imprisonment, the court, in its discretion, may assess a fee in an amount not to exceed \$25.00 as provided in section 27-01-10, N.D.C.C. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000; the court to have power to suspend said sentence and to



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

revoke the suspension thereof.

Section 5. Effective Date.

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

Attest:

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

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

First Reading:  
Second Reading:  
Final Passage:  
Publication:

35a

# NOTICE OF HEARING FOR SPECIAL ASSESSMENT OF NUISANCE ABATEMENT FEES

The Board of City Commissioners of the City of Fargo, North Dakota, will conduct a Public Hearing on special assessments for Nuisance Abatement fees, provided in the list below, on Monday, August 12, 2019, at 5:15 o'clock p.m. in the City Commission Room, City Hall, Fargo, North Dakota.

Address	Parcel	Assessment	Reason
1410 1st Ave S	01-0700-00750-000	32,595.00	Code Enforcement
427 15th Ave S	01-0120-01070-000	200.00	Code Enforcement
18 8th Ave N	01-3260-00670-000	960.00	Code Enforcement
726 Oak St N	01-1760-00710-000	1,925.00	Dutch Elm Removal
1001 4th St S	01-4100-01040-000	200.00	Dutch Elm Removal
3044 32th St S	01-0194-00133-000	250.00	Dutch Elm Removal
813 9th St N	01-1130-00330-000	2,787.50	Dutch Elm Removal
1510 16th St S	01-2040-04680-000	210.00	Dutch Elm Removal
1319 10th St N	01-2220-02390-000	600.00	Dutch Elm Removal
1109 1st St N	01-1160-01200-000	850.00	Dutch Elm Removal
2806 64th Ave S	01-8421-00040-000	650.00	Dutch Elm Removal
1837 7th Ave S	01-1270-00500-000	900.00	Dutch Elm Removal
419 10th Ave S	01-4100-00630-000	450.00	Dutch Elm Removal
1338 4th Ave S	01-0710-00280-000	1,200.00	Dutch Elm Removal
1433 8th Ave S	01-0540-00840-000	600.00	Dutch Elm Removal
1018 7th Ave N	01-2382-03360-000	3,760.00	Dutch Elm Removal
1524 11th St S	01-0280-00190-000	2,950.00	Dutch Elm Removal
1425 11th Ave S	01-0020-00401-000	3,100.00	Dutch Elm Removal
4428 50th St S	01-7001-01400-000	225.00	Tree Planting
4371 46th St S	01-6520-00620-000	225.00	Tree Planting
310 23rd St S	01-0740-01680-000	290.00	Mowing
1450 1st Ave S	01-0980-01020-000	190.00	Mowing
1645 1st St N	01-1890-00600-000	190.00	Mowing
2402 N Broadway	01-3060-00040-000	600.00	Mowing
1021 17th St S	01-1270-01080-000	330.00	Mowing
728 1st St N	01-1760-00440-000	370.00	Mowing
6125 24th St S	01-6350-00580-000	600.00	Mowing
4239 39 1/2 Ave S	01-6600-00711-000	140.00	Mowing
1005 17th St N	01-0100-01180-000	370.00	Mowing
106 16th Ave N	01-1890-01160-000	320.00	Mowing

114 36th Ave N	01-3590-00293-000	420.00	Mowing
1964 54th Ave S	01-1060-00800-000	470.00	Mowing
3800 56th Ave S	01-8511-01130-000	2,640.00	Mowing
754 49th St S	01-3880-00490-000	190.00	Mowing
3514 47th Ave S	01-8551-00380-000	140.00	Mowing
1201 3rd St N	01-1360-01230-000	165.00	Mowing
1542 6th Ave S	01-0560-00160-000	370.00	Mowing
1418 12th Ave S	01-0020-01300-000	420.00	Mowing
310 21st Ave N	01-1100-00490-000	320.00	Mowing
2525 33rd Ave S	01-2283-00055-000	190.00	Mowing
525 23rd Ave S	01-3200-00280-000	165.00	Mowing
2113 28th Ave S	01-1115-00430-000	140.00	Mowing
2513 10 St N	01-3100-01370-000	75.00	Snow Removal
2702 9 1/2 St N	01-3100-01250-000	80.00	Snow Removal
700 College St N	01-1620-00130-000	100.00	Snow Removal
706 College St N	01-1620-00110-000	75.00	Snow Removal
902 College St N	01-1620-00660-000	290.00	Snow Removal
919 College St N	01-1620-00610-000	75.00	Snow Removal
1345 11 Ave N	01-1640-01640-000	145.00	Snow Removal
32 Birch Ln S	01-2330-00440-000	305.00	Snow Removal
1145 10 ST N	01-0440-00890-000	125.00	Snow Removal
912 12 AVE N	01-0440-00850-000	75.00	Snow Removal
1144 2 St N	01-1160-00850-000	75.00	Snow Removal
1118 2 St N	01-1160-00790-000	75.00	Snow Removal
1110 2 St N	01-1160-00770-000	75.00	Snow Removal
1501 15 St S	01-2040-04450-000	225.00	Snow Removal
1148 9 St N	01-0440-00610-000	350.00	Snow Removal
1307 Elm St	01-4200-00020-000	85.00	Snow Removal
1103 8 Ave S	01-2400-00380-000	420.00	Snow Removal
2262 58 Ave S	01-6210-01080-000	75.00	Snow Removal
1820 20 Ave S	01-2840-02501-000	75.00	Snow Removal
1201 3 St N	01-1360-01230-000	145.00	Snow Removal
2694 57 AVE S	01-8386-00657-000	170.00	Snow Removal
1014 7 Ave S	01-2400-00590-000	85.00	Snow Removal
316 University Dr S	01-2240-03040-000	105.00	Snow Removal
1129 College St N	01-1640-01590-000	75.00	Snow Removal
1422 11 St N	01-2220-03620-000	75.00	Snow Removal
1454 10 St N	01-2220-03860-000	75.00	Snow Removal
1446 9 St N	01-2220-01960-000	75.00	Snow Removal

1438 9 St N	01-2220-02000-000	75.00	Snow Removal
1101 7 St N	01-0440-00121-000	150.00	Snow Removal
1201 9 St N	01-2220-01130-000	130.00	Snow Removal
1135-1137 9 St N	01-0440-00760-000	75.00	Snow Removal
924 5 St S	01-4100-00610-000	140.00	Snow Removal
1402 15 St S	01-2040-02830-000	150.00	Snow Removal
1350 15 St S	01-2040-00880-000	150.00	Snow Removal
1747 49 St S	01-5050-00245-000	75.00	Snow Removal
1346 1 Ave N	01-2340-03310-000	290.00	Snow Removal
4319 39 Ave S	01-6600-00253-000	75.00	Snow Removal
3696 Harrison St S	01-7570-00011-000	145.00	Snow Removal
632 10 Ave N	01-8676-00011-000	200.00	Snow Removal
628 10 Ave N	01-8676-00020-000	150.00	Snow Removal
624 10 Ave N	01-8676-00010-000	200.00	Snow Removal
914 12 St N	01-2900-00080-000	235.00	Snow Removal
1013 10 Ave N	01-0440-02410-000	75.00	Snow Removal
2006 56 Ave S	01-1061-00632-000	75.00	Snow Removal
2012 56 Ave S	01-1061-00620-000	75.00	Snow Removal
1503 6 ST S	01-1400-02500-000	125.00	Snow Removal
1201 4 AVE N	01-2382-04470-000	100.00	Snow Removal
1344 1 AVE N	01-2340-03300-000	150.00	Snow Removal
1642 13 Ave S	01-2040-01800-000	140.00	Snow Removal
2313 5 Ave S	01-0740-02590-000	75.00	Snow Removal
703 Oak St N	01-1760-00850-000	75.00	Snow Removal
1015 9 Ave N	01-1140-00360-000	225.00	Snow Removal
1028 University Dr N	01-1640-01280-000	75.00	Snow Removal
808 University Dr N	01-1620-00430-000	75.00	Snow Removal
125 28 Ave N	01-0720-01040-000	140.00	Snow Removal
920 11 Ave N	01-0440-02450-000	75.00	Snow Removal
1011-1013 14 St N	01-1640-01161-000	80.00	Snow Removal
1112 9 St N	01-0440-00690-000	75.00	Snow Removal
1113 11 St N	01-0440-01120-000	75.00	Snow Removal
1117 11 St N	01-0440-01130-000	75.00	Snow Removal
1135 11 St N	01-0440-01180-000	75.00	Snow Removal
1145 12 St N	01-0440-01540-000	75.00	Snow Removal
1225 11 1/2 St N	01-2220-02720-000	75.00	Snow Removal

1331 10 Ave N	01-1640-00990-000	145.00	Snow Removal
1341 1 Ave N	01-2340-02900-000	120.00	Snow Removal
1410 11 St N	01-2220-03650-000	75.00	Snow Removal
3110 ELM St N	01-0730-00770-040	75.00	Snow Removal
1410 15 St S	01-2040-02810-000	80.00	Snow Removal
2501 Amber Valley CT S	01-6660-00701-000	130.00	Snow Removal
2501 58 Ave S	01-5930-00101-000	280.00	Snow Removal
3575 54 St S	01-8496-00420-000	110.00	Snow Removal
3582 55 St S	01-8496-00400-000	115.00	Snow Removal
4895 43 St S	01-7500-00600-000	75.00	Snow Removal
3579 54 St S	01-8496-00430-000	90.00	Snow Removal
716 1 St N	01-1760-00410-000	75.00	Snow Removal
716 3 St N	01-0580-00230-000	75.00	Snow Removal
1001 9 Ave N	01-1140-00400-000	110.00	Snow Removal
1155 12 Ave N	01-2220-05110-000	115.00	Snow Removal
1260 8 St N	01-2220-01430-000	150.00	Snow Removal
1526 4 St N	1-1280-00480-000	75.00	Snow Removal
604-606 11 ST S	01-2400-00280-000	75.00	Snow Removal
709-711 21 St S	01-1270-02890-000	80.00	Snow Removal
3900 54 St S	01-8496-00670-000	1,250.00	Snow Removal
1409 15 St S	01-2040-02350-000	75.00	Snow Removal
3607 Cordova Loop S	01-8568-00780-000	115.00	Snow Removal
5407 Justice Dr S	01-8573-00190-000	135.00	Snow Removal
6299 56 Ave S	01-8449-03910-000	135.00	Snow Removal
823 10 St N	01-1130-00140-000	120.00	Snow Removal
1101 10 Ave N	01-0440-02260-000	125.00	Snow Removal
1502 10 St N	01-0380-00950-000	145.00	Snow Removal
3854 10 St N	01-2335-00044-000	75.00	Snow Removal
1818 13 Ave S	01-1240-00110-000	75.00	Snow Removal
1801 5 St N	01-2100-00870-000	150.00	Snow Removal
620 1 St N	01-1540-03220-000	145.00	Snow Removal
517 23 Ave N	01-2080-00580-000	135.00	Snow Removal
2028 Broadway	01-3020-00060-000	80.00	Snow Removal
1517 University Dr N	01-0380-01610-000	75.00	Snow Removal
1507 University Dr N	01-0380-01620-000	85.00	Snow Removal
1505 University Dr N	01-0380-01630-000	85.00	Snow Removal
1233 11 1/2 St N	01-2220-02830-000	75.00	Snow Removal
1625 11 St N	01-0380-02280-000	75.00	Snow Removal

1118 9 St N	01-0440-00680-000	75.00	Snow Removal
5491 34 Ave S	01-8508-00860-000	150.00	Snow Removal
1021 9 Ave N	01-1140-00340-000	145.00	Snow Removal
1001 College St N	01-1640-01180-000	95.00	Snow Removal
914 9 Ave N	01-1130-00130-000	75.00	Snow Removal
924 8 St N	01-1130-00700-000	110.00	Snow Removal
1019 9 Ave N	01-1140-00350-000	75.00	Snow Removal
1236 11 St N	01-2220-02890-000	100.00	Snow Removal
1230 11 St N	01-2220-02680-000	75.00	Snow Removal
920 College St N	01-1620-00700-000	75.00	Snow Removal
609 10 St N	01-2382-01820-000	120.00	Snow Removal
803 8 St N	01-1130-00350-000	135.00	Snow Removal
3053 22 St S	01-1405-00460-000	115.00	Snow Removal
4476 66 St S	01-7020-02490-000	260.00	Snow Removal
801 Main Ave	01-9200-02240-000	280.00	Snow Removal
903 10 St N	01-1130-00900-000	75.00	Snow Removal
6781 21 St S	01-8510-01420-000	170.00	Snow Removal
821 8 St N	01-1130-00440-000	75.00	Snow Removal
1037 8 St N	01-0440-02810-000	75.00	Snow Removal
622 10 AVE N	01-0620-00110-000	80.00	Snow Removal
820 12 Ave N	01-0440-00730-000	75.00	Snow Removal
1029 36 Ave N	01-2531-00400-000	75.00	Snow Removal
1035 University Dr N	01-0440-01840-000	75.00	Snow Removal
1034 University Dr N	01-1640-01300-000	75.00	Snow Removal
501 7 St S	01-2140-00990-000	290.00	Snow Removal
1524 11 St S	01-0280-00190-000	75.00	Snow Removal
1018 College St N	01-1640-01010-000	75.00	Snow Removal
1715 49 St S	01-5050-00141-000	75.00	Snow Removal
1727 49 St S	01-5050-00183-000	75.00	Snow Removal
2511 53 Ave S	01-8437-00040-000	75.00	Snow Removal
5354 26 St S	01-8386-00190-000	650.00	Snow Removal
522 Broadway N	01-0450-00380-000	90.00	Snow Removal
4857 50 Ave S	01-8030-00800-000	75.00	Snow Removal
4332 39 Ave S	01-6600-00523-000	125.00	Snow Removal

Any person aggrieved may appeal from the action of the Board of City Commissioners by filing with the City Auditor, prior to August 12, 2019, a written Notice of Appeal stating therein the grounds upon which the appeal is based. Any person having filed such a Notice may appear before the Board of City Commissioners to present reasons why the action of the Board of City Commissioners should not be confirmed.

City Auditor's Office  
(July 22 & July 29, 2019 - Legals)

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INSTRUCTIONS TO THE FORUM

Please publish on Monday, July 22 & July 29, 2019 – Legals.

I will need an affidavit of publication.

Bill to:       CITY AUDITOR'S OFFICE  
                  ATTN MICHELLE  
                  P.O. BOX 2471  
                  FARGO ND 58108

If you have any questions, please call 241-1301.  
Steve Sprague



MEMORANDUM

**TO:** Board of City Commissioners

**FROM:** Nicole Crutchfield, Planning Director *NC*  
Tia Braseth, Community Development Planning Coordinator *TB*

**DATE:** August 8, 2019

**RE:** Public Hearing for Amendments to Community Development Block Grant (CDBG)/HOME 2019 Action Plan

The Department of Planning & Development is considering amendments to the City of Fargo's Community Development Block Grant (CDBG)/HOME 2019 Action Plan, previously approved by the Planning Commission (5/7/19), Community Development Committee (4/23/19), and the City Commission (6/17/19). Proposed amendments include:

- Identified scope, location, and budget for an activity under the previously approved Affordable Housing Development project
- Decreased budget for Affordable Housing Development project
- Identified scope, location, and budget for the previously approved Beyond Shelter, Inc. Acquisition project
- Increased budget for Beyond Shelter, Inc. Acquisition project
- Identified location for the previously approved Community Housing Development Organization (CHDO) Housing project

Each proposed amendment is detailed in the attached public notice, which was published in the July 25, 2019 Forum newspaper. This proposal was presented to and approved by the Planning Commission on August 6. It will also be presented to the Community Development Committee on August 20, 2019. The timeline for this amendment, including the 30-day public comment period, is outlined in the attached public notice. Once approved by citizens and the City, the amendment will be submitted to HUD for approval.

It is part of the City's adopted Citizen Participation Plan to present all substantial amendments to the Community Development Committee, Planning Commission, and City Commission as part of the review and approval process.

**Recommended Motion:** This meeting is for a public hearing only, no action is required at this time. Final consideration of the amendments is scheduled for August 26, 2019.

**Notice of Public Hearing & Public Comment Period**  
**Amendments to 2019 Action Plan**  
**Community Development Block Grant (CDBG)**  
**& HOME Investment Partnerships Programs**

The City of Fargo is considering amendments to its 2019 Action Plan, previously approved by City Commission on June 17, 2019. Specific locations have recently been identified for 2019 projects and must be included in the plan. Location updates are considered substantial amendments and must go through a citizen participation process. Also included in this amendment is a budget revision for two 2019 CDBG activities. The details and timeline for this process are outlined below. Upon City Commission action on August 26, 2019, a recommendation regarding these amendments will be forwarded to HUD for their consideration and approval.

**30-Day Public Comment Period:** July 25, 2019 through August 25, 2019

**Send written comments or phone:** City of Fargo  
Planning and Development Department  
Attn: Community Development Planning Coordinator  
225 4th Street North, Fargo ND 58102  
701.476.4144

**Electronic Comments:** [planning@FargoND.gov](mailto:planning@FargoND.gov)

**Public Hearing:** Monday, August 12, 2019 - 5:15 p.m.  
Fargo City Commission Chambers  
225 4th Street North, Fargo ND 58102

**Final City Commission Consideration:** Monday, August 26, 2019

**Summary of Proposed Amendments:**

**1. Amendments to 2019 CDBG Affordable Housing Development Activity**

**a. Project site/activities/budget identified – 1529 10 Avenue South (\$48,000)**

Activities include acquisition and future construction of a single-family housing unit in partnership with Lake Agassiz Habitat for Humanity. *National Objective: Low to Moderate Income Housing Benefit [570.208(a)(3)]. CDBG Matrix Codes: 01 Acquisition and \*12 Construction of Housing. Eligibility 24 CFR Part 570.201 (a) and 570.201 (m). \*CDBG funds will only be used to fund acquisition, construction of housing will be funded and performed by Lake Agassiz Habitat for Humanity.*

**b. Revise activity budget from \$284,049 to \$103,049 (reduction of \$181,000)**

An additional \$181,000 is needed for the previously approved Beyond Shelter, Inc. CDBG acquisition activity (original budget \$345,000), which will result in affordable senior rental housing. See Amendment #2(b) below.

**2. Amendments to 2019 Acquisition Activity: Beyond Shelter, Inc.**

**a. Project site/activities/budget identified – 4225 28 Avenue South (\$526,000)**

Activities include acquisition and future construction of a multi-family senior rental housing complex in partnership with HomeField 3, LLLP (previously published and noted as Beyond Shelter, Inc.). *National Objective: Low to Moderate Income Housing Benefit [570.208(a)(3)]. CDBG Matrix Codes: 01 Acquisition and \*12 Construction of Housing. Eligibility 24 CFR Part 570.201 (a) and*



570.201 (m). *\*CDBG funds will only be used to fund acquisition, construction of housing will be funded with non-CDBG funds (i.e., HOME funds, other federal and local sources).*

**b. Revise activity budget from \$345,000 to \$526,000 (addition of \$181,000)**

The appraisal of the vacant land determined fair market value was \$520,000. An additional \$6,000 is needed for acquisition-related costs. Additional funds will be drawn from the Affordable Housing Development activity, see revised budget in Amendment #1(b).

**3. Amendments to 2019 Community Development Housing Organization (CHDO Project)**

**a. Project site identified – 4225 28 Avenue South**

Activities include construction of a multi-family senior rental housing complex.

**Comments & Suggestions**

Comments and suggestions from the public are encouraged through a public comment period and/or at the public hearing. The 2019 amended draft plan and activity amendments are available online at [www.fargond.gov/planninganddevelopment/plansandstudies](http://www.fargond.gov/planninganddevelopment/plansandstudies) or by request through the Planning and Development Department. See contact information below.

The facility is accessible and can accommodate persons with disabilities. Alternative formats of this information or reasonable accommodations for persons with disabilities or limited English proficiency, including the availability of interpretation and translation services, will be made upon request (48 hours notice is required). Anyone who requires these services or an auxiliary aid to fully participate in the hearing should contact the Planning and Development Department at 701.241.1474/[Planning@FargoND.gov](mailto:Planning@FargoND.gov), or the City of Fargo's Section 504/ADA Coordinator Brock Morrison at 701.298.6966 to arrange for services. To access TDD/Relay service dial 701.241.8258. It is the policy of the City of Fargo to provide services without regard to race, color, religion, sex, disability, familial status, national origin, age, marital status, veteran status, sexual orientation, gender identity, public assistance, domestic violence, lawful activity, or condition protected by applicable federal and state laws except where a Bona Fide Occupational Qualification (BFOQ) applies. The City is an equal employment/equal housing opportunity agency.



**Notice of Public Hearing & Public Comment Period Amendments to 2019 Action Plan Community Development Block Grant (CDBG) & HOME Investment Partnerships Programs**

The City of Fargo is considering amendments to its 2019 Action Plan, previously approved by City Commission on June 17, 2019. Specific locations have recently been identified for 2019 projects and must be included in the plan. Location updates are considered substantial amendments and must go through a citizen participation process. Also included in this amendment is a budget provision for two 2019 CDBG activities. The details and timeline for this process are outlined below. Upon City Commission action on August 26, 2019, a recommendation regarding these amendments will be forwarded to HUD for their consideration and approval.

**30-Day Public Comment Period:** July 25, 2019 through August 25, 2019

Send written comments or phone: City of Fargo Planning and Development Department Attn: Community Development Planning Coordinator 225 4th Street North, Fargo ND 58102 701.476.4144

**Electronic Comments:** [planning@fargo.nd.gov](mailto:planning@fargo.nd.gov)  
**Public Hearing:** Monday, August 12, 2019 - 5:15 p.m. Fargo City Commission Chambers 225 4th Street North, Fargo ND 58102

**Final City Commission Consideration:** Monday, August 26, 2019  
**Summary of Proposed Amendments:**

**1. Amendments to 2019 CDBG Affordable Housing Development Activity**

**a. Project site/activities/budget identified - 1529 10 Avenue South (\$48,000)** Activities include acquisition and future construction of a single-family housing unit in partnership with Lake Agassiz Habitat for Humanity. **National Objective:** Low to Moderate Income Housing Benefit (570.208(a)(3)). **CDBG Matrix Codes:** 01 Acquisition and \*12 Construction of Housing. Eligibility 24 CFR Part 570.201 (i) and 570.201 (m). \*CDBG funds will only be used to fund acquisition, construction of housing will be funded and performed by Lake Agassiz Habitat for Humanity.

**b. Revise activity budget from \$284,049 to \$103,049** (reduction of \$181,000). An additional \$181,000 is needed for the previously approved Beyond Shelter, Inc. CDBG acquisition activity (original budget \$345,000), which will result in affordable senior rental housing. See Amendment #2(b) below.

**2. Amendments to 2019 Acquisition Activity: Beyond Shelter, Inc.**

**a. Project site/activities/budget identified - 4225 28 Avenue South (\$526,000)** Activities include acquisition and future construction of a multi-family senior rental housing complex in

partnership with HomeField 3, LLLP (previously published and noted as Beyond Shelter, Inc.). **National Objective:** Low to Moderate Income Housing Benefit (570.208(a)(3)).

**CDBG Matrix Codes:** 01 Acquisition and \*12 Construction of Housing. Eligibility 24 CFR Part 570.201 (i) and 570.201 (m). \*CDBG funds will only be used to fund acquisition, construction of housing will be funded with non-CDBG funds (i.e., HOME funds, other federal and local sources).

**b. Revise activity budget from \$345,000 to \$526,000** (addition of \$181,000).

The appraisal of the vacant land determined fair market value was \$520,000. An additional \$6,000 is needed for acquisition-related costs. Additional funds will be drawn from the Affordable Housing Development activity, see revised budget in Amendment #1(b).

**3. Amendments to 2019 Community Development Housing Organization (CHDO Project)**

**a. Project site identified - 4225 28 Avenue South** Activities include construction of a multi-family senior rental housing complex.

**Comments & Suggestions**

Comments and suggestions from the public are encouraged through a public comment period and/or at the public hearing. The 2019 amended draft plan and activity amendments are available online at [www.fargo.nd.gov/planning](http://www.fargo.nd.gov/planning) and/or by request through the Planning and Development Department. See contact information below.

The facility is accessible and can accommodate persons with disabilities. Alternative formats of this information or reasonable accommodations for persons with disabilities or limited English proficiency, including the availability of interpretation and translation services, will be made upon request (48 hours notice is required). Anyone who requires these services or an auxiliary aid to fully participate in the hearing should contact the Planning and Development Department at 701.241.1474.

**Plan:** [planning@fargo.nd.gov](mailto:planning@fargo.nd.gov), or the City of Fargo's Section 504/ADA Coordinator Brock Morrison at 701.238.6966 to arrange for services.

To access TDD/Relay service dial 701.241.8258. It is the policy of the City of Fargo to provide services without regard to race, color, religion, sex, disability, familial status, national origin, age, marital status, veteran status, sexual orientation, gender identity, public assistance, domestic violence, lawful activity, or condition protected by applicable federal and state laws except where a Bona Fide Occupational Qualification (BFOC) applies. The City is an equal employment/housing opportunity agency.



35e

**MEMORANDUM**

**TO:** City Commission  
**FROM:** Nicole Crutchfield, Planning Director *nc*  
**DATE:** August 12, 2019  
**RE:** Renaissance Zone Project Lease Application

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The following Renaissance Zone project application was reviewed and recommended for approval by staff per Renaissance Zone Authority Policy:

Valore, LLC (283-F) is proposing to lease commercial space located at 235 Roberts Street North. This project application met all of the State and local requirements for approval including that, the use is consistent with the goals and objectives as set forth within the Fargo Renaissance Zone Development Plan. The applicant is proposing to lease 3,999 square feet and is looking to occupy the space by September 1, 2019. The applicant estimates a \$6,696.00 income tax exemption over the 5-year term.

According to the Renaissance Zone Development Plan, the prospective tenant must be leasing a space from a building that has been approved as a Renaissance Zone project.

A Renaissance Zone application for DFI Dillard LLC (Project 262-F) was approved by the City of Fargo on August 28, 2017 and the application will be reviewed by the State for final approval. This lease application will not be reviewed by the State prior to final approval for *DFI Dillard LLC* (262-F). Kilbourne Group expects construction to be completed by September 1, 2019. At this point staff will be able to forward the lease application along with the City Commissions decision to the State.

Recommended Action: To approve the Renaissance Zone project application Valore, LLC (283-F) for a lease project at 235 Roberts Street North and to grant state income tax exemptions as recommended by staff per Renaissance Zone Authority policy, once final approval is received on DFI Dillard, LLC.

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City of Fargo Staff Report			
<b>Title:</b>	42 <sup>nd</sup> Street Addition	<b>Date:</b>	6/26/2019
		<b>Update:</b>	8/7/2019
<b>Location:</b>	3700 42 <sup>nd</sup> Street South	<b>Staff Contact:</b>	Maegin Elshaug
<b>Legal Description:</b>	A portion of Lot 2, Block 1, 42 <sup>nd</sup> Street Addition		
<b>Owner(s)/Applicant:</b>	Station 3700 Apartments LLC / Stacy Holmes, LJA	<b>Engineer:</b>	N/A
<b>Entitlements Requested:</b>	<b>Zoning Change</b> (from LC, Limited Commercial to MR-3, Multi-Dwelling Residential)		
<b>Status:</b>	City Commission Public Hearing: August 12, 2019		

Existing	Proposed
<b>Land Use:</b> Multi-Dwelling Residential	<b>Land Use:</b> unchanged
<b>Zoning:</b> LC, Limited Commercial, with a Conditional Use Permit (CUP) for residential use	<b>Zoning:</b> MR-3, Multi-Dwelling Residential
<b>Uses Allowed:</b> LC allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open space, religious institutions, safety services, offices, off premise advertising signs, commercial parking, retail sales and service, self service storage, vehicle repair, limited vehicle service.  PLUS a CUP for residential use	<b>Uses Allowed:</b> MR-3 allows detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children or adults, group living, parks and open space, religious institutions, safety services, schools, and basic utilities.
<b>Maximum Lot Coverage Allowed:</b> maximum 55% building coverage	<b>Maximum Density Allowed:</b> MR-3 allows a maximum of 24 units per acre

Proposal:
<p>The applicant is seeking a zoning change from LC, Limited Commercial to MR-3, Multi-Dwelling Residential. The property is located at 3700 42<sup>nd</sup> Street South and encompasses approximately 4.14 acres.</p> <p>A Conditional Use Permit (CUP) was approved in 2001 to allow residential use on the property. At that time, there was concern of the number of apartments located in this area along 42<sup>nd</sup> Street South. There are a number of conditions of the CUP, which relate to dimensional standards (such as density and height), design standards, and approved a site lay-out. The owner is proposing an additional structure on the property that does not match the previously approved site plan of the CUP, and is therefore proposing a zoning map amendment. Note that if the zoning change is approved, the CUP no longer applies to the site.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p><b>Surrounding Land Uses and Zoning Districts:</b></p> <ul style="list-style-type: none"> <li>• North: MR-3, Multi-Dwelling Residential with apartments;</li> <li>• East: P/I, Public and Institutional, owned by the City of Fargo;</li> <li>• South: LC, Limited Commercial with residential use;</li> <li>• West: Directly across 42<sup>nd</sup> Street South is SR-2, Single-Dwelling Residential with attached and detached homes.</li> </ul>

### Area Plans:

The subject property is located in the 2003 Southwest Future Land Use Plan. Although the plan designates this area as commercial or parks/open space, it should be noted that the areas are more diagrammatic in nature rather than providing a definitive location or boundary. Staff determined that a growth plan amendment is not necessary due to the fact that surrounding properties are already built and developed, including this location. Areas around the property have the same use, which are also within this same future land use diagrammatic area.



#### Legend

##### 2003 Southwest Future Land Use Plan

##### Land Use

Commercial	Other Office or Commercial	Office or Commercial or Medium-High Density
Commercial or Medium-High Density	Other Office or Medium-High Density Residential	Park/Open Space
Commercial or Medium-High or Park/Open Space	Industrial	Public
Commercial or Park/Open Space	Low-Medium Density Residential	Public or Commercial
Other Industrial or Commercial	Low-Medium Density or Medium-High Density	Public or Low-Medium Density
	Medium-High Density Residential	Public or Office
	Medium-High Density or Park/Open Space	Storm Drain
	Office	

### Neighborhood Context:

#### Neighborhood: Pointe West

**Schools:** The subject property is located within the boundary of the Fargo School District, specifically Kennedy Elementary, Discovery Junior High, and Davies Senior High schools.

**Parks:** Pointe West Park (3331 42<sup>nd</sup> Street South) and Edgewood Village Park (3750 45<sup>th</sup> Street South) are located about one-third of a mile from the subject property, providing amenities of playgrounds, picnic tables, and recreational trails.

**Pedestrian / Bicycle:** An off-road shared use path is located on the west side of 42<sup>nd</sup> Street South, which is a component of the metro area trail system.

### Staff Analysis:

#### Zoning

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

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

Staff is unaware of any zoning map error in regard to the subject property. Staff finds that the requested zone change is justified by a change in conditions, as the developer has a clearer picture of the type of development. The zone change is requested in order to build the next and final phase of the development. **(Criteria Satisfied)**

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

The development is served with city services (water, sewer, streets, police/fire protection, etc.) as well as other needed utility services as needed. The City Engineer and other applicable review agencies have



reviewed this proposal. No deficiencies to provide the necessary public services, facilities and programs to this development have been identified. **(Criteria Satisfied)**

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

Staff has no evidence that would suggest this proposal would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, staff has not received any phone calls or comments in response to these notices. Staff finds that the approval will not adversely affect the condition or value of the property in the vicinity. **(Criteria Satisfied)**

**4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?**

The purpose of the LDC is to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo. Staff finds that the proposal is consistent with the purposes of the LDC, the Growth Plan, and other adopted policies of the City. **(Criteria Satisfied)**

**Staff Recommendation:**

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and hereby waive the requirement to receive the Ordinance one week prior to the first reading and place the rezoning Ordinance on for first reading, and move to approve the proposed zoning change from LC, Limited Commercial to MR-3, Multi-Dwelling Residential on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC."

**Planning Commission Recommendation: July 2, 2019**

On July 2, with a 9-0 vote, with two Commissioners absent, the Planning Commission accepted the findings and recommendations of staff and recommended approval to the City Commission of the proposed zoning change from LC, Limited Commercial to MR-3, Multi-Dwelling Residential on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.

**Attachments:**

1. Zoning Map
2. Location Map



# Zone Change (LC to MR-3)

## 42nd Street Addition



THE CITY OF  
**Fargo**  
FAR MORE

### Legend

AG	LC	MHP	SR
DDML	NO	NO	SR-2
CC	MR-1	P/I	SR-3
GO	MR-2	UMI	SR-4
	MR-3		SR-5
			City Limits

200

Feet

Fargo Planning Commission  
July 2, 2019

# Zone Change (LC to MR-3)

## 42nd Street Addition

3700 42nd Street S



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

35i-1

AN ORDINANCE REZONING CERTAIN PARCELS  
OF LAND LYING IN 42<sup>ND</sup> STREET 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 42<sup>nd</sup> Street Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on July 2, 2019; and,

WHEREAS, the rezoning changes were approved by the City Commission on August 12, 2019,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot Two (2), less the south 238 feet, Block One (1) of 42<sup>nd</sup> Street Addition to the City of Fargo, Cass County, North Dakota;

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

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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



35j

August 5, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by Aldevron for a payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. The PILOT requested is for a new 180,000 square foot manufacturing facility as well as a 20,000 square foot expansion to their existing facility on the same site at 4055 41 Ave. S. The project will be a manufacturing facility to produce therapeutic products and reagents for biotechnology and pharmaceutical companies worldwide.

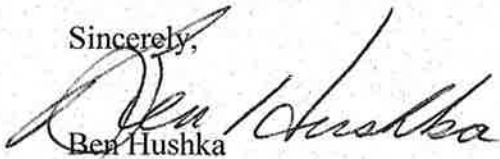
Notices to competitors have been published and the Tax Exempt Review Committee has met to consider this application. The application contains information regarding the projected value of the facility and the nature of the jobs to be created.

The committee feels that this request does meet the necessary criteria to be eligible for this payment in lieu of tax for the new building and addition to the existing building.

**SUGGESTED MOTION:**

**Approval of a 10 year, payment in lieu of tax for Aldevron for a new building and addition to existing building at 4055 41st Ave. S. based on 5 years at 100% exemption and 5 years at 50% exemption according to the attached payment schedule.**

Sincerely,



Ben Hushka

Tax Exempt Review Committee

**Payment In Lieu of Property Tax**  
**Payment Schedule**

Pursuant to N.D.C.C. Chapter 40-57.1

PROJECT OPERATOR: Aldevron

ASSUMPTIONS: **\$43,000,000**

<b>Annual Tax Growth</b>	<b>= 0%</b>
<b>Years 1-5</b>	<b>= 100%</b>
<b>Years 6-10</b>	<b>= 50%</b>

PAYMENT SCHEDULE:

<b>YEAR</b>	<b>IN LIEU PAYMENT</b>
1	\$ 0
2	\$ 0
3	\$ 0
4	\$ 0
5	\$ 0
6	\$ 310,245
7	\$ 310,245
8	\$ 310,245
9	\$ 310,245
10	\$ 310,245

**\*\*Note** - The applicant will pay property tax on the land in addition to these in lieu payments.

**Application For Property Tax Incentives For  
New or Expanding Businesses**

N.D.C.C. Chapter 40-57.1

Project Operator's Application To City of Fargo  
City or County

RECEIVED

JUL 10 2019

FARGO ASSESSOR

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a  
non-voting member in the negotiations and deliberation of this application.

**This application is a public record**

**Identification Of Project Operator**

1.	Name of project operator of new or expanding business	<u>Aldevron</u>
2.	Address of project	<u>Lot 3, Block 1, Woodhaven Plaza Addition</u>
	City	<u>Fargo</u> County <u>Cass</u>
3.	Mailing address of project operator	<u>4055 41st Ave S</u>
	City	<u>Fargo</u> State <u>ND</u> Zip <u>58104</u>
4.	Type of ownership of project	
	<input type="checkbox"/> Partnership	<input type="checkbox"/> Subchapter S corporation
	<input type="checkbox"/> Corporation	<input type="checkbox"/> Cooperative
		<input type="checkbox"/> Individual proprietorship
		<input checked="" type="checkbox"/> Limited liability company
5.	Federal Identification No. or Social Security No.	<u>45-0451327</u>
6.	North Dakota Sales and Use Tax Permit No.	<u>166066</u>
7.	If a corporation, specify the state and date of incorporation	<u></u>
8.	Name and title of individual to contact	<u>Brian Walters</u>
	Mailing address	<u>4055 41st Ave S</u>
	City, State, Zip	<u>Fargo, ND 58104</u> Phone No. <u>701-499-7314</u>

**Project Operator's Application For Tax Incentives**

9.	Indicate the tax incentives applied for and terms. Be specific. <i>PILOT based on 5 years at 100%, 5 years at 50%</i>
	<input type="checkbox"/> <b>Property Tax Exemption</b>
	<u>          </u> Number of years <u>2021</u> Beginning year <u>2030</u> Ending year
	<u>          </u> Percent of exemption <u>          </u> Amount of annual payments (attach schedule if payments will vary)
10.	Which of the following would better describe the project for which this application is being made:
	<input checked="" type="checkbox"/> New business project <input checked="" type="checkbox"/> Expansion of a existing business project

## Description of Project Property

11. Legal description of project real property

Lot 3, Block 1, Woodhaven Plaza Addition, a Replat of Block 2 of Prairie Tech Addition to the City of Fargo, Cass County, North Dakota

12. Will the project property be owned or leased by the project operator? ☒ Owned ☐ Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

☐ Yes ☐ No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? ☒ New construction ☒ Existing facility

If existing facility, when was it constructed? 2018

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application 08/15/2019

b. Description of project to be constructed including size, type and quality of construction

Aldevron will construct a 180,000 square foot, state of the art, clinical and commercial biologics

manufacturing facility. The facility will be a concrete tilt-up construction. The project will also

include a 20,000 square foot expansion to our current GMP production facility located at the same

site.

c. Projected number of construction employees during the project construction 100

14. Approximate date of commencement of this project's operations Estimated Q1 of 2021

15. Estimated market value of the property used for this project:

a. Land..... \$ 3,000,000

b. Existing buildings and structures for which an exemption is claimed..... \$ 0

c. Newly constructed buildings and structures when completed ..... \$ 43,000,000

d. Total..... \$ 46,000,000

e. Machinery and equipment ..... \$ 26,000,000

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) ..... 

b. Eligible existing buildings and structures..... \$ 0

c. Newly constructed buildings and structures when completed..... \$ 2,150,000

d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 2,150,000

e. Enter the consolidated mill rate for the appropriate taxing district ..... 288.60

f. Annual amount of the tax exemption (Line d multiplied by line e) ..... \$ 620,490



## Description of Project Business

**Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.**

17. Type of business to be engaged in: ☐ Ag processing ☒ Manufacturing ☐ Retailing  
☐ Wholesaling ☐ Warehousing ☐ Services

18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

Aldevron will construct a state of the art biologics manufacturing facility to produce therapeutic products and reagents for biotechnology and pharmaceutical companies worldwide. Products to be manufactured will include plasmid DNA, mRNA and proteins for a variety of clinical and commercial applications.

19. Indicate the type of machinery and equipment that will be installed

Aldevron will install biologics manufacturing and analytical equipment including bioreactors, chromatography equipment, analytical instruments and genetic sequencers.

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

Year (12 mo. periods)	New/Expansion Project only Year 1	New/Expansion Project only Year 2	New/Expansion Project only Year 3	New/Expansion Project only Year 4	New/Expansion Project only Year 5
Annual revenue	<u>13,478,702</u>	<u>14,826,572</u>	<u>16,309,220</u>	<u>17,940,152</u>	<u>19,734,167</u>
Annual expense	<u>10,917,749</u>	<u>12,009,523</u>	<u>13,210,475</u>	<u>14,531,523</u>	<u>15,984,675</u>
Net income	<u>2,560,952</u>	<u>2,817,049</u>	<u>3,098,754</u>	<u>3,408,629</u>	<u>3,749,492</u>

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00
315	1	3	22	25	48	6

Year	(Before project)	Year 1	Year 2	Year 3	Year 4	Year 5
No. of Employees	(1) <u>298</u>	<u>348</u>	<u>378</u>	<u>403</u>		
	(2) <u>17</u>					
Estimated payroll	(1) <u>17.8mm</u>	<u>21.2mm</u>	<u>23.4mm</u>	<u>25.4mm</u>		
	(2) <u>480,000</u>					

(1) - full time  
(2) - part time

### Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? ☐ Yes ☒ No
23. Has the project operator conducted this business at this or any other location either in or outside of the state?  
☒ Yes ☐ No
24. Has the project operator or any officers of the project received any prior property tax incentives? ☒ Yes ☐ No  
If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).  
Presently operating at 3233 15th St S, 3239 15th St S, 3301 S University, 4837 Amber Valley Parkway and 4055 41st Ave S in Fargo as Aldevron. Tax exemption for 4055 41st Ave S received in 2016.

### Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☐ Yes ☒ No  
If YES, give name and location of competing business or businesses  
\_\_\_\_\_  
\_\_\_\_\_  
Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition %

### Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? ☐ Yes ☒ No
27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☒ No  
If the answer to 26 or 27 is Yes, list and explain  
\_\_\_\_\_  
\_\_\_\_\_

### Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):  
☐ To present additional facts or circumstances which were not presented at the time of the original application  
☐ To request continuation of the present property tax incentives because the project has:  
☐ moved to a new location  
☐ had a change in project operation or additional capital investment of more than twenty percent  
☐ had a change in project operators  
☐ To request an additional annual exemption for the year of \_\_\_\_\_ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

### Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Brian Walters, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

Signature

CBO

Title

6/10/09

Date

35K

August 5, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by Tzadik Sioux Falls Portfolio III, LLC for a transfer of a payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. The PILOT transfer requested is for the building at 1222 4 Ave. N. The project is the Woodrow Wilson apartments and the PILOT was originally granted to DFI Woodrow Wilson, LLC for the new building.

N.D.C.C. 40-57.1-06 requires a new application to be made for the remainder of a PILOT agreement term if a new project operator takes possession of the property.

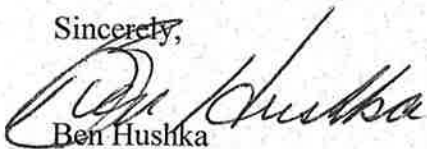
Notices to competitors have been published and the Tax Exempt Review Committee has met to consider this application. The applicant is requesting to fulfill the same terms and payment schedule as originally granted by the City Commission on 8/17/2015.

The committee recommends approval of the transfer of the PILOT agreement.

**SUGGESTED MOTION:**

**Approval of transfer of the payment in lieu of tax agreement on 1222 4 Ave. N. from DFI Woodrow Wilson, LLC to Tzadik Sioux Falls Portfolio III, LLC according to the same terms and payment schedule for the new building as originally granted.**

Sincerely,



Ben Hushka

Tax Exempt Review Committee

**Application For Property Tax Incentives For  
New or Expanding Businesses**

N.D.C.C. Chapter 40-57.1

Project Operator's Application To Fargo  
City or County

**RECEIVED**

JUL 8 2019

**FARGO ASSESSOR**  
*BY EMAIL FROM JIM GILMORE*

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

**This application is a public record**

**Identification Of Project Operator**

1.	Name of project operator of new or expanding business	<u>Tzadik Sioux Falls Portfolio III, LLC</u>
2.	Address of project	<u>1222 4th Ave N</u>
	City	<u>Fargo</u> County <u>Cass</u>
3.	Mailing address of project operator	<u>11098 Biscayne Boulevard, Suite 203</u>
	City	<u>Miami</u> State <u>FL</u> Zip <u>33161</u>
4.	Type of ownership of project	
	<input type="checkbox"/> Partnership	<input type="checkbox"/> Subchapter S corporation
	<input type="checkbox"/> Corporation	<input type="checkbox"/> Cooperative
		<input type="checkbox"/> Individual proprietorship
		<input checked="" type="checkbox"/> Limited liability company
5.	Federal Identification No. or Social Security No.	<u>[REDACTED]</u>
6.	North Dakota Sales and Use Tax Permit No.	<u>N/A</u>
7.	If a corporation, specify the state and date of incorporation	<u>DE, 3/12/2019</u>
8.	Name and title of individual to contact	<u>YueLing Lee, General Counsel</u>
	Mailing address	<u>11098 Biscayne Boulevard, Suite 203</u>
	City, State, Zip	<u>Miami, FL 33161</u> Phone No. <u>(813)957-2394</u>

**Project Operator's Application For Tax Incentives**

9.	Indicate the tax incentives applied for and terms. Be specific.			
	<input type="checkbox"/> <b>Property Tax Exemption</b>	<input checked="" type="checkbox"/> <b>Payments In Lieu of Taxes</b>		
	<u>          </u> Number of years	<u>2018</u> Beginning year	<u>2038</u> Ending year	
	<u>          </u> Percent of exemption	<u>          </u> Amount of annual payments (attach schedule if payments will vary)		
10.	Which of the following would better describe the project for which this application is being made:			
	<input checked="" type="checkbox"/> New business project	<input type="checkbox"/> Expansion of a existing business project		

## Description of Project Property

11. Legal description of project real property

PIN 01-2382-04450-000

Block 45, Roberts 2nd Addition

12. Will the project property be owned or leased by the project operator? ☒ Owned ☐ Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

☐ Yes ☐ No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? ☐ New construction ☒ Existing facility

If existing facility, when was it constructed? 2017

If new construction, complete the following:

- a. Estimated date of commencement of construction of the project covered by this application July 2017

- b. Description of project to be constructed including size, type and quality of construction  
Recently constructed (2017) apartment building adjacent to the original Woodrow Wilson school.

- c. Projected number of construction employees during the project construction n/a - already constructed

14. Approximate date of commencement of this project's operations July 2017

15. Estimated market value of the property used for this project:

a. Land..... \$ 737,360


b. Existing buildings and structures for which an exemption is claimed..... \$ 0

c. Newly constructed buildings and structures when completed..... \$ 9,125,298

d. Total..... \$ 9,862,658

e. Machinery and equipment ..... \$ 378,000

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) ..... 

b. Eligible existing buildings and structures..... \$ 0

c. Newly constructed buildings and structures when completed..... \$ 456,265

d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 456,265

e. Enter the consolidated mill rate for the appropriate taxing district..... 280.60

f. Annual amount of the tax exemption (Line d multiplied by line e)..... \$ 130,661.58

## Description of Project Business

**Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.**

17. Type of business to be engaged in: ☐ Ag processing ☐ Manufacturing ☐ Retailing  
☐ Wholesaling ☐ Warehousing ☒ Services
18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

Leasing of residential partments and commercial space; completion of parking lot

19. Indicate the type of machinery and equipment that will be installed

n/a

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

Year (12 mo. periods)	New/Expansion Project only Year 1	New/Expansion Project only Year 2	New/Expansion Project only Year 3	New/Expansion Project only Year 4	New/Expansion Project only Year 5
Annual revenue	<u>714,600</u>	<u>769,200</u>	<u>784,600</u>	<u>800,200</u>	<u>816,200</u>
Annual expense	<u>188,200</u>	<u>191,900</u>	<u>195,800</u>	<u>199,800</u>	<u>203,700</u>
Net income	<u>526,400</u>	<u>577,300</u>	<u>588,800</u>	<u>600,500</u>	<u>612,500</u>

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00

Year	(Before project)	Year 1	Year 2	Year 3	Year 4	Year 5
No. of Employees	(1) <u>n/a</u>					
	(2) _____					
Estimated payroll	(1) <u>n/a</u>					
	(2) _____					

(1) - full time  
(2) - part time

### Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? ☒ Yes ☐ No
23. Has the project operator conducted this business at this or any other location either in or outside of the state?  
☐ Yes ☒ No
24. Has the project operator or any officers of the project received any prior property tax incentives? ☐ Yes ☒ No  
If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).
- ~~#22 This is a transfer of an existing PILOT from DFI Woodrow Wilson LLC~~

### Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☒ Yes ☐ No  
If YES, give name and location of competing business or businesses  
~~Residential apartments and leased commercial space in the metro area~~
- Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition 100 %

### Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? ☐ Yes ☒ No
27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☒ No  
If the answer to 26 or 27 is Yes, list and explain

### Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):
- ☐ To present additional facts or circumstances which were not presented at the time of the original application
  - ☒ To request continuation of the present property tax incentives because the project has:
    - ☐ moved to a new location
    - ☐ had a change in project operation or additional capital investment of more than twenty percent
    - ☒ had a change in project operators
  - ☐ To request an additional annual exemption for the year of \_\_\_\_\_ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

### Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Adam Hendry, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

Adam Hendry  
Signature

Manager  
Title

7/8/2019  
Date

<u>Value</u>	\$	3,115,000.00	\$	6,499,000.00	\$	9,614,000.00
<u>Taxes</u>	\$	43,610.000	\$	90,986.000	\$	134,596.00

	<u>Year</u>	<u>Existing Building</u>	<u>New Buiding</u>	<u>TOTAL</u>
RENAISSANCE ZONE	2018 1	\$ -	\$ -	\$ -
	2	\$ -	\$ -	\$ -
	3	\$ -	\$ -	\$ -
	4	\$ -	\$ -	\$ -
	5	\$ -	\$ -	\$ -
PILOT	2023 6	\$ -	\$ -	\$ -
	7	\$ -	\$ -	\$ -
	8	\$ -	\$ -	\$ -
	9	\$ -	\$ -	\$ -
	10	\$ -	\$ -	\$ -
	11	\$ 4,361.00	\$ 9,098.60	\$ 13,459.60
	12	\$ 4,361.00	\$ 9,098.60	\$ 13,459.60
	13	\$ 4,361.00	\$ 9,098.60	\$ 13,459.60
	14	\$ 4,361.00	\$ 9,098.60	\$ 13,459.60
	15	\$ 4,361.00	\$ 9,098.60	\$ 13,459.60
	16	\$ 4,361.00	\$ 9,098.60	\$ 13,459.60
	17	\$ 6,541.50	\$ 16,377.48	\$ 22,918.98
	18	\$ 9,594.20	\$ 24,566.22	\$ 34,160.42
	19	\$ 13,083.00	\$ 31,845.10	\$ 44,928.10
	2037 20	\$ 16,135.70	\$ 38,214.12	\$ 54,349.82
	21	\$ 43,610.00	\$ 90,986.00	\$ 134,596.00
	22	\$ 43,610.00	\$ 90,986.00	\$ 134,596.00
	23	\$ 43,610.00	\$ 90,986.00	\$ 134,596.00
	24	\$ 43,610.00	\$ 90,986.00	\$ 134,596.00
	25	\$ 43,610.00	\$ 90,986.00	\$ 134,596.00



358

August 5, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by Tzadik Sioux Falls Portfolio III, LLC for a transfer of a payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. The PILOT transfer requested is for the building at 315 University Dr. N. The project is the Woodrow Wilson apartments and the PILOT was originally granted to DFI Woodrow Wilson, LLC for the existing building.

N.D.C.C. 40-57.1-06 requires a new application to be made for the remainder of a PILOT agreement term if a new project operator takes possession of the property.

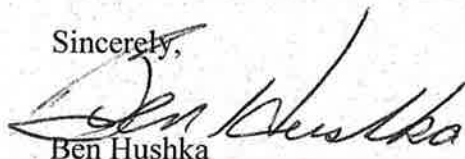
Notices to competitors have been published and the Tax Exempt Review Committee has met to consider this application. The applicant is requesting to fulfill the same terms and payment schedule as originally granted by the City Commission on 8/17/2015.

The committee recommends approval of the transfer of the PILOT agreement.

**SUGGESTED MOTION:**

**Approval of transfer of the payment in lieu of tax agreement on 315 University Dr. N. from DFI Woodrow Wilson, LLC to Tzadik Sioux Falls Portfolio III, LLC according to the same terms and payment schedule for the existing building as originally granted.**

Sincerely,



Ben Hushka

Tax Exempt Review Committee

**Application For Property Tax Incentives For  
New or Expanding Businesses**

N.D.C.C. Chapter 40-57.1

Project Operator's Application To Fargo  
City or County

RECEIVED

JUL 8 2019

FARGO ASSESSOR  
BY EMAIL FROM  
JIM GILMOUR

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

**This application is a public record**

**Identification Of Project Operator**

1.	Name of project operator of new or expanding business	<u>Tzadik Sioux Falls Portfolio III, LLC</u>
2.	Address of project	<u>315 University Dr N</u>
	City	<u>Fargo</u> County <u>Cass</u>
3.	Mailing address of project operator	<u>11098 Biscayne Boulevard, Suite 203</u>
	City	<u>Miami</u> State <u>FL</u> Zip <u>33161</u>
4.	Type of ownership of project	
	<input type="checkbox"/> Partnership	<input type="checkbox"/> Subchapter S corporation
	<input type="checkbox"/> Corporation	<input type="checkbox"/> Cooperative
		<input type="checkbox"/> Individual proprietorship
		<input checked="" type="checkbox"/> Limited liability company
5.	Federal Identification No. or Social Security No.	<u>[REDACTED]</u>
6.	North Dakota Sales and Use Tax Permit No.	<u>N/A</u>
7.	If a corporation, specify the state and date of incorporation	<u>DE, 3/12/2019</u>
8.	Name and title of individual to contact	<u>YueLing Lee, General Counsel</u>
	Mailing address	<u>11098 Biscayne Boulevard, Suite 203</u>
	City, State, Zip	<u>Miami, FL 33161</u> Phone No. <u>(813)957-2394</u>

**Project Operator's Application For Tax Incentives**

9.	Indicate the tax incentives applied for and terms. Be specific.			
	<input type="checkbox"/> <b>Property Tax Exemption</b>	<input checked="" type="checkbox"/> <b>Payments In Lieu of Taxes</b>		
	<u>          </u> Number of years	<u>2018</u> Beginning year	<u>2038</u> Ending year	
	<u>          </u> Percent of exemption	<u>          </u> Amount of annual payments (attach schedule if payments will vary)		
10.	Which of the following would better describe the project for which this application is being made:			
	<input checked="" type="checkbox"/> New business project	<input type="checkbox"/> Expansion of a existing business project		

## Description of Project Property

### 11. Legal description of project real property

PIN 01-2382-04450-000

Block 45, Roberts 2nd Addition

### 12. Will the project property be owned or leased by the project operator? ☒ Owned ☐ Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

☐ Yes ☐ No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

### 13. Will the project be located in a new structure or an existing facility? ☐ New construction ☒ Existing facility

If existing facility, when was it constructed? 1917

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application July 2017

b. Description of project to be constructed including size, type and quality of construction  
Renovation of existing Woodrow Wilson building into residential apartments

c. Projected number of construction employees during the project construction n/a - already constructed

### 14. Approximate date of commencement of this project's operations July 2017

### 15. Estimated market value of the property used for this project:

a. Land..... \$ 480,760

b. Existing buildings and structures for which an exemption is claimed..... \$ 4,899,963

c. Newly constructed buildings and structures when completed..... \$ \_\_\_\_\_

d. Total..... \$ 5,380,723

e. Machinery and equipment..... \$ 150,000

### 16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) ..... 

b. Eligible existing buildings and structures..... \$ 244,998

c. Newly constructed buildings and structures when completed..... \$ \_\_\_\_\_

d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 244,998

e. Enter the consolidated mill rate for the appropriate taxing district..... 280.60

f. Annual amount of the tax exemption (Line d multiplied by line e)..... \$ 70,160.13

## Description of Project Business

**Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.**

17. Type of business to be engaged in: ☐ Ag processing ☐ Manufacturing ☐ Retailing  
☐ Wholesaling ☐ Warehousing ☒ Services
18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

Leasing of residential apartments and commercial space; completion of parking lot

19. Indicate the type of machinery and equipment that will be installed

n/a

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

Year (12 mo. periods)	New/Expansion Project only Year 1	New/Expansion Project only Year 2	New/Expansion Project only Year 3	New/Expansion Project only Year 4	New/Expansion Project only Year 5
Annual revenue	<u>388,600</u>	<u>396,400</u>	<u>404,400</u>	<u>412,500</u>	<u>420,800</u>
Annual expense	<u>94,000</u>	<u>95,900</u>	<u>97,800</u>	<u>99,800</u>	<u>101,800</u>
Net income	<u>274,600</u>	<u>300,500</u>	<u>306,600</u>	<u>312,700</u>	<u>319,000</u>

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00

Year	(Before project)	Year 1	Year 2	Year 3	Year 4	Year 5
No. of Employees	(1) <u>n/a</u>					
	(2) _____					
Estimated payroll	(1) <u>n/a</u>					
	(2) _____					

(1) - full time  
(2) - part time

### Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? ☒ Yes ☐ No
23. Has the project operator conducted this business at this or any other location either in or outside of the state?  
☐ Yes ☒ No
24. Has the project operator or any officers of the project received any prior property tax incentives? ☐ Yes ☒ No
- If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).

~~#22 This is a transfer of an existing PILOT from DFI Woodrow Wilson LLC~~

### Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☒ Yes ☐ No

If YES, give name and location of competing business or businesses

~~Residential apartments and leased commercial space in the metro area~~

Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition 100 %

### Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? ☐ Yes ☒ No
27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☒ No

If the answer to 26 or 27 is Yes, list and explain

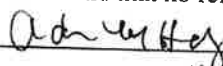
### Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):
- ☐ To present additional facts or circumstances which were not presented at the time of the original application
  - ☒ To request continuation of the present property tax incentives because the project has:
    - ☐ moved to a new location
    - ☐ had a change in project operation or additional capital investment of more than twenty percent
    - ☒ had a change in project operators
  - ☐ To request an additional annual exemption for the year of \_\_\_\_\_ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

### Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Adam Hendry, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

  
Signature

Manager

Title

7/8/2019

Date

<u>Value</u>	\$	3,115,000.00	\$	6,499,000.00	\$	9,614,000.00
<u>Taxes</u>	\$	43,610.000	\$	90,986.000	\$	134,596.00

	<u>Year</u>	<u>Existing Building</u>		<u>New Buiding</u>		<u>TOTAL</u>
2018	1	\$ -	\$	-	\$	-
	2	\$ -	\$	-	\$	-
RENAISSANCE	3	\$ -	\$	-	\$	-
ZONE	4	\$ -	\$	-	\$	-
	5	\$ -	\$	-	\$	-
2023	6	\$ -	\$	-	\$	-
	7	\$ -	\$	-	\$	-
PILOT	8	\$ -	\$	-	\$	-
	9	\$ -	\$	-	\$	-
	10	\$ -	\$	-	\$	-
	11	\$ 4,361.00	\$	9,098.60	\$	13,459.60
	12	\$ 4,361.00	\$	9,098.60	\$	13,459.60
	13	\$ 4,361.00	\$	9,098.60	\$	13,459.60
	14	\$ 4,361.00	\$	9,098.60	\$	13,459.60
	15	\$ 4,361.00	\$	9,098.60	\$	13,459.60
	16	\$ 4,361.00	\$	9,098.60	\$	13,459.60
	17	\$ 6,541.50	\$	16,377.48	\$	22,918.98
	18	\$ 9,594.20	\$	24,566.22	\$	34,160.42
	19	\$ 13,083.00	\$	31,845.10	\$	44,928.10
2037	20	\$ 16,135.70	\$	38,214.12	\$	54,349.82
	21	\$ 43,610.00	\$	90,986.00	\$	134,596.00
	22	\$ 43,610.00	\$	90,986.00	\$	134,596.00
	23	\$ 43,610.00	\$	90,986.00	\$	134,596.00
	24	\$ 43,610.00	\$	90,986.00	\$	134,596.00
	25	\$ 43,610.00	\$	90,986.00	\$	134,596.00

35m

August 5, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by DFI Block 9 Hotel, LLC for a transfer of a payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. The PILOT transfer requested is for a portion of the Block Nine building at 215 Broadway N. The project is the hotel portion of the property and the PILOT was originally granted to Block Nine, LLC.

N.D.C.C. 40-57.1-06 requires a new application to be made for the remainder of a PILOT agreement term if a new project operator takes possession of the property.

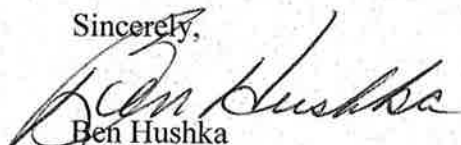
Notices to competitors have been published and the Tax Exempt Review Committee has met to consider this application. The applicant is requesting to fulfill their proportion of the same terms and payment schedule as originally granted by the City Commission on 5/23/2016.

The committee recommends approval of the transfer of the PILOT agreement.

**SUGGESTED MOTION:**

**Approval of transfer of the payment in lieu of tax agreement on the hotel portion of 215 Broadway from Block Nine, LLC to DFI Block 9 Hotel, LLC according to the same terms and payment schedule for the existing building as originally granted.**

Sincerely,



Ben Hushka

Tax Exempt Review Committee

BY EMAIL FROM  
Jim Gilmour  
RECEIVED

JUL 15 2019

FARGO ASSESSOR

**Application For Property Tax Incentives For  
New or Expanding Businesses**

N.D.C.C. Chapter 40-57.1

Project Operator's Application To City of Fargo  
City or County

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

**This application is a public record**

**Identification Of Project Operator**

1. Name of project operator of new or expanding business Block 9 Hotel LLC
2. Address of project 215 Broadway N  
City Fargo County Cass
3. Mailing address of project operator 210 Broadway, Suite 300  
City Fargo State ND Zip 58102
4. Type of ownership of project  
☐ Partnership ☐ Subchapter S corporation ☐ Individual proprietorship  
☐ Corporation ☐ Cooperative ☒ Limited liability company
5. Federal Identification No. or Social Security No. 83-0754142
6. North Dakota Sales and Use Tax Permit No. n/a
7. If a corporation, specify the state and date of incorporation Delaware / May 10, 2018
8. Name and title of individual to contact Michael Allmendinger  
Mailing address 210 Broadway, Suite 300  
City, State, Zip Fargo, ND 58103 Phone No. 701.237.2279

**Project Operator's Application For Tax Incentives**

9. Indicate the tax incentives applied for and terms. Be specific.  

<input type="checkbox"/> <b>Property Tax Exemption</b>	<input checked="" type="checkbox"/> <b>Payments In Lieu of Taxes</b>
<u>          </u> Number of years <u>2022</u>	Beginning year <u>2042</u> Ending year <u>          </u>
<u>          </u> Percent of exemption	Amount of annual payments (attach schedule if payments will vary)
10. Which of the following would better describe the project for which this application is being made:  
☒ New business project ☐ Expansion of a existing business project



## Description of Project Property

### 11. Legal description of project real property

Lots 14-21, Block 9, Keeney & Devitts 1st Addition

### 12. Will the project property be owned or leased by the project operator? ☒ Owned ☐ Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

☐ Yes ☐ No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

### 13. Will the project be located in a new structure or an existing facility? ☒ New construction ☐ Existing facility

If existing facility, when was it constructed? \_\_\_\_\_

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application Fall 2018

b. Description of project to be constructed including size, type and quality of construction

125 Room Hotel Part of Block 9 Project

Overall Project: Hotel 47,320 SF (125 keys); Amenity - 19,820SF; Office - 103,025SF; Retail; 27,610SF

c. Projected number of construction employees during the project construction 300

### 14. Approximate date of commencement of this project's operations Fall 2020

### 15. Estimated market value of the property used for this project:

a. Land ..... \$ 675,000


b. Existing buildings and structures for which an exemption is claimed..... \$ 0

c. Newly constructed buildings and structures when completed ..... \$ 39,500,000

d. Total ..... \$ 40,175,000

e. Machinery and equipment ..... \$ \_\_\_\_\_

### 16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) ..... 

b. Eligible existing buildings and structures ..... \$ 0

c. Newly constructed buildings and structures when completed ..... \$ 39,500,000

d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 39,500,000

e. Enter the consolidated mill rate for the appropriate taxing district ..... 317.32

f. Annual amount of the tax exemption (Line d multiplied by line e) ..... \$ 626,707.00

## Description of Project Business

**Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.**

17. Type of business to be engaged in: ☐ Ag processing ☐ Manufacturing ☐ Retailing  
☐ Wholesaling ☐ Warehousing ☒ Services
18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

125 Room Hotel part of the Block 9 Project

Overall project - Corporate headquarters for RDO Equipment, hotel with 125 rooms, 27,000 SF ground floor retail. In addition to this application, the project will also construction seven condos, a parking garage, and redesign the existing plaza into a year round public gathering space.

19. Indicate the type of machinery and equipment that will be installed

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only
Year (12 mo. periods)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Annual revenue	<u>see PFM</u>	<u>"but for"</u>	<u>report</u>		
Annual expense					
Net income					

21. Projected number and salary of persons to be employed by the project for the first five years:

**Current positions & positions added the initial year of project**

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00

Year	(Before project)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
No. of Employees	(1) _____	_____	_____	_____	_____	_____
	(2) _____	_____	_____	_____	_____	_____
Estimated payroll	(1) _____	_____	_____	_____	_____	_____
	(2) _____	_____	_____	_____	_____	_____

(1) - full time  
(2) - part time

### Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? ☐ Yes ☒ No
23. Has the project operator conducted this business at this or any other location either in or outside of the state?  
☐ Yes ☒ No
24. Has the project operator or any officers of the project received any prior property tax incentives? ☒ Yes ☐ No  
If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).  
RZ: DFI Loudon 2015; DFI St Marks 2015; DFI 1213 2016; DFI BE (123 Broadway) 2016; DFI Roberts 2017; ; \_\_\_\_\_  
DFI BA (113 BW) 2020; DFI BC (119 BW) 2020  
DFI RZ/PILOT: DFI Woodrow 2016; DFI Black 2020; Block 9 Partners 2021 \_\_\_\_\_

### Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☒ Yes ☐ No  
If YES, give name and location of competing business or businesses  
Hotels in the City of Fargo  
\_\_\_\_\_  
Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition 100 %

### Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? ☐ Yes ☒ No
27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☒ No  
If the answer to 26 or 27 is Yes, list and explain  
\_\_\_\_\_  
\_\_\_\_\_

### Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):  
☐ To present additional facts or circumstances which were not presented at the time of the original application  
☐ To request continuation of the present property tax incentives because the project has:  
☐ moved to a new location  
☐ had a change in project operation or additional capital investment of more than twenty percent  
☒ had a change in project operators  
☐ To request an additional annual exemption for the year of \_\_\_\_\_ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

### Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Michael Allmendinger, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.



Signature

President

Title

Date

Block Nine, LLC PILOT Tax  
Schedule

Value \$41,175,000

Taxes \$626,707

<u>Year</u>	Payment Schedule
1	\$ -
2	\$ -
3	\$ -
4	\$ -
5	\$ -
6	\$ -
7	\$ -
8	\$ -
9	\$ -
10	\$ -
11	\$ -
12	\$ -
13	\$ -
14	\$ -
15	\$ -
16	\$ -
17	\$ -
18	\$ -
19	\$ -
20	\$ -

75m

August 5, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by DFI Block 9 RDO, LLC for a transfer of a payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. The PILOT transfer requested is for a portion of the Block Nine building at 215 Broadway N. The project is the RDO corporate headquarters portion of the property and the PILOT was originally granted to Block Nine, LLC.

N.D.C.C. 40-57.1-06 requires a new application to be made for the remainder of a PILOT agreement term if a new project operator takes possession of the property.

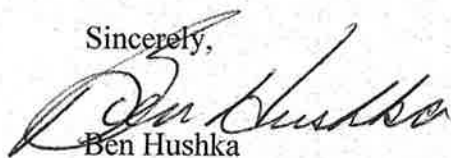
Notices to competitors have been published and the Tax Exempt Review Committee has met to consider this application. The applicant is requesting to fulfill their proportion of the same terms and payment schedule as originally granted by the City Commission on 5/23/2016.

The committee recommends approval of the transfer of the PILOT agreement.

**SUGGESTED MOTION:**

**Approval of transfer of the payment in lieu of tax agreement on the RDO corporate headquarters portion of 215 Broadway from Block Nine, LLC to Block 9 RDO, LLC according to the same terms and payment schedule for the existing building as originally granted.**

Sincerely,



Ben Hushka

Tax Exempt Review Committee

**Application For Property Tax Incentives For  
New or Expanding Businesses**

N.D.C.C. Chapter 40-57.1

Project Operator's Application To City of Fargo

City or County

BY EMAIL FROM  
Jim GILMOUR

RECEIVED

JUL 15 2019

FARGO ASSESSOR

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

**This application is a public record**

**Identification Of Project Operator**

1. Name of project operator of new or expanding business Block 9 RDO, LLC
2. Address of project 215 Broadway N  
City Fargo County Cass
3. Mailing address of project operator 210 Broadway, Suite 300  
City Fargo State ND Zip 58102
4. Type of ownership of project  
☐ Partnership ☐ Subchapter S corporation ☐ Individual proprietorship  
☐ Corporation ☐ Cooperative ☒ Limited liability company
5. Federal Identification No. or Social Security No. 83-1693855
6. North Dakota Sales and Use Tax Permit No. n/a
7. If a corporation, specify the state and date of incorporation \_\_\_\_\_
8. Name and title of individual to contact Bill Nielsen - Director of Tax  
Mailing address P.O. Box 7160  
City, State, Zip Fargo, ND 58106-7160 Phone No. 701-551-5422

**Project Operator's Application For Tax Incentives**

9. Indicate the tax incentives applied for and terms. Be specific.  

<input type="checkbox"/> <b>Property Tax Exemption</b>	<input checked="" type="checkbox"/> <b>Payments In Lieu of Taxes</b>
_____ Number of years	2022 Beginning year 2042 Ending year
_____ Percent of exemption	_____ Amount of annual payments (attach schedule if payments will vary)
10. Which of the following would better describe the project for which this application is being made:  
☒ New business project ☐ Expansion of a existing business project

## Description of Project Property

11. Legal description of project real property

Lots 14-21, Block 9, Keeney & Devitts 1st Addition

12. Will the project property be owned or leased by the project operator? ☒ Owned ☐ Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

☐ Yes ☐ No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? ☒ New construction ☐ Existing facility

If existing facility, when was it constructed? \_\_\_\_\_

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application Fall 2018

b. Description of project to be constructed including size, type and quality of construction

Corporate headquarters for R.D. Offutt Company and RDO Equipment Co.

Overall Project: Hotel 47,320 SF (125 keys); Amenity - 19,820SF; Office - 103,025SF; Retail; 27,610SF

c. Projected number of construction employees during the project construction 300

14. Approximate date of commencement of this project's operations Fall 2020

15. Estimated market value of the property used for this project:

a. Land ..... \$ 675,000

b. Existing buildings and structures for which an exemption is claimed..... \$ 0

c. Newly constructed buildings and structures when completed ..... \$ 39,500,000

d. Total..... \$ 40,175,000

e. Machinery and equipment..... \$ \_\_\_\_\_

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) .....                     

b. Eligible existing buildings and structures..... \$ 0

c. Newly constructed buildings and structures when completed..... \$ 39,500,000

d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 39,500,000

e. Enter the consolidated mill rate for the appropriate taxing district ..... 317.32

f. Annual amount of the tax exemption (Line d multiplied by line e) ..... \$ 626,707.00

## Description of Project Business

**Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.**

17. Type of business to be engaged in: ☐ Ag processing ☐ Manufacturing ☐ Retailing  
☐ Wholesaling ☐ Warehousing ☒ Services
18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

Corporate headquarters for R.D. Offutt Company and RDO Equipment Co.

Overall project - Corporate headquarters for R.D. Offutt Company and RDO Equipment Co., hotel with 125 rooms, 27,000 SF ground floor retail. In addition to this application, the project will also construction seven condos, a parking garage, and redesign the existing plaza into a year round public gathering space.

19. Indicate the type of machinery and equipment that will be installed

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only
Year (12 mo. periods)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Annual revenue	<u>see PFM</u>	<u>"but for"</u>	<u>report</u>		
Annual expense					
Net income					

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00

Year	(Before project)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
No. of Employees	(1) _____	_____	_____	_____	_____	_____
	(2) _____	_____	_____	_____	_____	_____
Estimated payroll	(1) _____	_____	_____	_____	_____	_____
	(2) _____	_____	_____	_____	_____	_____

(1) - full time  
(2) - part time



### Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? ☐ Yes ☒ No
23. Has the project operator conducted this business at this or any other location either in or outside of the state?  
☒ Yes ☐ No
24. Has the project operator or any officers of the project received any prior property tax incentives? ☒ Yes ☐ No

If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).

~~Renaissance Zone - R.D. Offutt Company 2003 - 2008; Fort Noks, Inc. 2005 - 2010; Christi Offutt 2005 - 2010; McGovern 2013 - 2014;~~

### Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☐ Yes ☐ No

If YES, give name and location of competing business or businesses

Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition

### Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? ☐ Yes ☒ No
27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☒ No

If the answer to 26 or 27 is Yes, list and explain

### Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):
- ☐ To present additional facts or circumstances which were not presented at the time of the original application
  - ☐ To request continuation of the present property tax incentives because the project has:
    - ☐ moved to a new location
    - ☐ had a change in project operation or additional capital investment of more than twenty percent
    - ☒ had a change in project operators
  - ☐ To request an additional annual exemption for the year of \_\_\_\_\_ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

### Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, \_\_\_\_\_, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

Signature

Title

Date

Block Nine, LLC PILOT Tax  
Schedule

Value      \$41,175,000

Taxes      \$626,707

<u>Year</u>	<u>Payment Schedule</u>	
1	\$	-
2	\$	-
3	\$	-
4	\$	-
5	\$	-
6	\$	-
7	\$	-
8	\$	-
9	\$	-
10	\$	-
11	\$	-
12	\$	-
13	\$	-
14	\$	-
15	\$	-
16	\$	-
17	\$	-
18	\$	-
19	\$	-
20	\$	-

**PRIVACY ACT NOTIFICATION**

In compliance with the Privacy Act of 1974, disclosure of a social security number or Federal Employer Identification Number (FEIN) on this form is required under N.D.C.C. §§ 40-57.1-03, 40-57.1-07, and 57-01-15, and will be used for tax reporting, identification, and administration of North Dakota tax laws. Disclosure is mandatory. Failure to provide the social security number or FEIN may delay or prevent the processing of this form.

**Certification of Governing Body (To be completed by the Auditor of the City or County)**

The municipality shall, after granting any property tax incentives, certify the findings to the State Tax Commissioner and Director of Tax Equalization by submitting a copy of the project operator's application with the attachments. The governing body, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, granted the following:

☐ **Property Tax Exemption**

\_\_\_\_\_ Number of years

\_\_\_\_\_ Percent of exemption

☐ **Payments in lieu of taxes**

\_\_\_\_\_ Beginning year \_\_\_\_\_ Ending year

\_\_\_\_\_ Amount of annual payments (Attach schedule if payments will vary)

\_\_\_\_\_  
Auditor

## Notice To Competitors Of Hearing On Application For Property Tax Incentives

Notice is hereby given that the Fargo City Commission  
(City or county governing body)

of Fargo, North Dakota, will meet at \_\_\_\_\_  
(City or county) (Time)

on \_\_\_\_\_ at \_\_\_\_\_ to consider the application of  
(Date) (Location)

Block 9 RDO, LLC -215 Broadway N

\_\_\_\_\_  
(Project operator name and address)

for property tax relief on the project which the applicant will use in the operation of

\_\_\_\_\_  
(Type of business)

at 215 Broadway, Fargo, Cass County

\_\_\_\_\_  
(Address)

Lots 14-21, Block 9, Keeney & Devitts 1st Addition

\_\_\_\_\_  
(Legal description)

Any competitor of that applicant may appear and be heard by the Fargo City Commission  
(City or county governing body)

at the time and place designated herein. A competitor may provide written comments to the governing  
body before the scheduled hearing.

This notice is given by the above-named applicant pursuant to the provisions of North Dakota Century  
Code § 40-57.1-03

June 28, 2019

Jim Gilmour  
Director of Strategic Planning & Research  
City of Fargo  
225 4th Street North  
Fargo, North Dakota 58102

Dear Mr. Gilmour:

Block 9 Partners, LLC has established new entities which will ultimately own the different units (retail, hotel, office, etc.) located in the overall project. In preparation for the eventual transfer of ownership from Block 9 Partners, LLC to these new entities we are requesting the transfer of the PILOT incentive originally approved by the City Commission on March 23, 2016.

Block 9 RDO, LLC will be the new entity owning the office portion of the project. We are requesting to transfer and assume the remainder of the already approved PILOT tax payment schedule as is allowed under section 40-57.1.06 of the ND Century Code: "option to make payments in lieu of taxes for the remainder of the exemption or payments in lieu of taxes period."

Please find the attached application, original tax schedule, and business incentive agreement requesting the remainder of the PILOT tax schedule transfer to Block 9 RDO, LLC the new operator of the office portion of this project.

Please let me know if there is any additional information needed.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Nielsen", with a long horizontal flourish extending to the right.

Bill Nielsen  
Director of Tax  
R.D. Offutt Company

350

August 5, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by DFI Block 9 Retail, LLC for a transfer of a payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. The PILOT transfer requested is for a portion of the Block Nine building at 215 Broadway N. The project is the retail portion of the property and the PILOT was originally granted to Block Nine, LLC.

N.D.C.C. 40-57.1-06 requires a new application to be made for the remainder of a PILOT agreement term if a new project operator takes possession of the property.

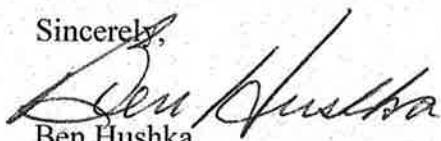
Notices to competitors have been published and the Tax Exempt Review Committee has met to consider this application. The applicant is requesting to fulfill their proportion of the same terms and payment schedule as originally granted by the City Commission on 5/23/2016.

The committee recommends approval of the transfer of the PILOT agreement.

**SUGGESTED MOTION:**

**Approval of transfer of the payment in lieu of tax agreement on the retail portion of 215 Broadway from Block Nine, LLC to DFI Block 9 Retail, LLC according to the same terms and payment schedule for the existing building as originally granted.**

Sincerely,



Ben Hushka

Tax Exempt Review Committee

RECEIVED  
JUL 15 2019  
FARGO ASSESSOR

**Application For Property Tax Incentives For  
New or Expanding Businesses**

N.D.C.C. Chapter 40-57.1

Project Operator's Application To City of Fargo  
City or County

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

**This application is a public record**

**Identification Of Project Operator**

1. Name of project operator of new or expanding business DFI Block 9 Retail LLC
2. Address of project 215 Broadway N  
City Fargo County Cass
3. Mailing address of project operator 210 Broadway, Suite 300  
City Fargo State ND Zip 58102
4. Type of ownership of project  
☐ Partnership ☐ Subchapter S corporation ☐ Individual proprietorship  
☐ Corporation ☐ Cooperative ☒ Limited liability company
5. Federal Identification No. or Social Security No. 83-0984554
6. North Dakota Sales and Use Tax Permit No. n/a
7. If a corporation, specify the state and date of incorporation North Dakota - March 29, 2018
8. Name and title of individual to contact Michael Allmendinger  
Mailing address 210 Broadway, Suite 300  
City, State, Zip Fargo, ND 58103 Phone No. 701.237.2279

**Project Operator's Application For Tax Incentives**

9. Indicate the tax incentives applied for and terms. Be specific.  

<input type="checkbox"/> <b>Property Tax Exemption</b>	<input checked="" type="checkbox"/> <b>Payments In Lieu of Taxes</b>
<u>          </u> Number of years	<u>2022</u> Beginning year <u>2042</u> Ending year
<u>          </u> Percent of exemption	<u>          </u> Amount of annual payments (attach schedule if payments will vary)
10. Which of the following would better describe the project for which this application is being made:  
☒ New business project ☐ Expansion of a existing business project

## Description of Project Property

11. Legal description of project real property

Lots 14-21, Block 9, Keeney & Devitts 1st Addition

12. Will the project property be owned or leased by the project operator? ☒ Owned ☐ Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

☐ Yes ☐ No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? ☒ New construction ☐ Existing facility

If existing facility, when was it constructed? \_\_\_\_\_

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application Fall 2018

b. Description of project to be constructed including size, type and quality of construction

27,610SF of ground floor retail located within the Block 9 Project

Overall Project: Hotel 47,320 SF (125 keys); Amenity - 19,820SF; Office - 103,025SF; Retail; 27,610SF

c. Projected number of construction employees during the project construction 300

14. Approximate date of commencement of this project's operations Fall 2020

15. Estimated market value of the property used for this project:

a. Land..... \$ 675,000

b. Existing buildings and structures for which an exemption is claimed..... \$ 0

c. Newly constructed buildings and structures when completed ..... \$ 39,500,000

d. Total..... \$ 40,175,000

e. Machinery and equipment ..... \$ \_\_\_\_\_

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) ..... 

b. Eligible existing buildings and structures..... \$ 0

c. Newly constructed buildings and structures when completed..... \$ 39,500,000

d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 39,500,000

e. Enter the consolidated mill rate for the appropriate taxing district ..... 317.32

f. Annual amount of the tax exemption (Line d multiplied by line e)..... \$ 626,707.00



## Description of Project Business

**Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.**

17. Type of business to be engaged in: ☐ Ag processing ☐ Manufacturing ☐ Retailing  
☐ Wholesaling ☐ Warehousing ☒ Services
18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

Ground floor will house 27,000 SF of new retail

Overall project - Corporate headquarters for RDO Equipment, hotel with 125 rooms. In addition to this application, the project will also construction seven condos, a parking garage, and redesign the existing plaza into a year round public gathering space.

19. Indicate the type of machinery and equipment that will be installed

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only
Year (12 mo. periods)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Annual revenue	<u>see PFM</u>	<u>"but for"</u>	<u>report</u>		
Annual expense					
Net income					

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00

Year	(Before project)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
No. of Employees	(1) _____	_____	_____	_____	_____	_____
	(2) _____	_____	_____	_____	_____	_____
Estimated payroll	(1) _____	_____	_____	_____	_____	_____
	(2) _____	_____	_____	_____	_____	_____

(1) - full time  
(2) - part time

### Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? ☐ Yes ☒ No
23. Has the project operator conducted this business at this or any other location either in or outside of the state?  
☐ Yes ☒ No
24. Has the project operator or any officers of the project received any prior property tax incentives? ☒ Yes ☐ No
- If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).  
RZ: DFI Loudon 2015; DFI St Marks 2015; DFI 1213 2016; DFI BE (123 Broadway) 2016; DFI Roberts 2017; ; \_\_\_\_\_  
DFI BA (113 BW) 2020; DFI BC (119 BW) 2020  
DFI RZ/PILOT: DFI Woodrow 2016; DFI Black 2020; Block 9 Partners 2021 \_\_\_\_\_

### Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☒ Yes ☐ No
- If YES, give name and location of competing business or businesses  
Leased retail space in the City of Fargo and Renaissance Zone
- Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition 100 %

### Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? ☐ Yes ☒ No
27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☒ No
- If the answer to 26 or 27 is Yes, list and explain  
\_\_\_\_\_

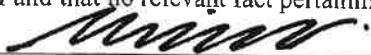
### Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):
- ☐ To present additional facts or circumstances which were not presented at the time of the original application
  - ☐ To request continuation of the present property tax incentives because the project has:
    - ☐ moved to a new location
    - ☐ had a change in project operation or additional capital investment of more than twenty percent
    - ☒ had a change in project operators
  - ☐ To request an additional annual exemption for the year of \_\_\_\_\_ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

### Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Michael Allmendinger, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.



Signature

President

Title

Date

Block Nine, LLC PILOT Tax  
Schedule

Value      \$41,175,000

Taxes      \$626,707

<u>Year</u>	<u>Payment Schedule</u>	
1	\$	-
2	\$	-
3	\$	-
4	\$	-
5	\$	-
6	\$	-
7	\$	-
8	\$	-
9	\$	-
10	\$	-
11	\$	-
12	\$	-
13	\$	-
14	\$	-
15	\$	-
16	\$	-
17	\$	-
18	\$	-
19	\$	-
20	\$	-

35P

August 5, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by DFI Block 9 SRO, LLC for a transfer of a payment in lieu of tax (PILOT) according to N.D.C.C. Chapter 40-57.1. The PILOT transfer requested is for a portion of the Block Nine building at 215 Broadway N. The project is the office portion of the property and the PILOT was originally granted to Block Nine, LLC.

N.D.C.C. 40-57.1-06 requires a new application to be made for the remainder of a PILOT agreement term if a new project operator takes possession of the property.

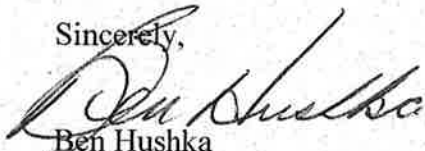
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The committee recommends approval of the transfer of the PILOT agreement.

**SUGGESTED MOTION:**

**Approval of transfer of the payment in lieu of tax agreement on the office portion of 215 Broadway from Block Nine, LLC to Block 9 SRO, LLC according to the same terms and payment schedule for the existing building as originally granted.**

Sincerely,



Ben Hushka

Tax Exempt Review Committee

**Application For Property Tax Incentives For  
New or Expanding Businesses**

N.D.C.C. Chapter 40-57.1

Project Operator's Application To City of Fargo

City or County

BY EMAIL FROM  
JIM GILMORE

RECEIVED

JUL 15 2019

FARGO ASSESSOR

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

**This application is a public record**

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2. Address of project 215 Broadway N  
City Fargo County Cass
3. Mailing address of project operator 210 Broadway, Suite 300  
City Fargo State ND Zip 58102
4. Type of ownership of project  
☐ Partnership ☐ Subchapter S corporation ☐ Individual proprietorship  
☐ Corporation ☐ Cooperative ☒ Limited liability company
5. Federal Identification No. or Social Security No. 83-1708716
6. North Dakota Sales and Use Tax Permit No. n/a
7. If a corporation, specify the state and date of incorporation \_\_\_\_\_
8. Name and title of individual to contact Bill Nielsen - Director of Tax  
Mailing address P.O. Box 7160  
City, State, Zip Fargo, ND 58106-7160 Phone No. 701-551-5422

**Project Operator's Application For Tax Incentives**

9. Indicate the tax incentives applied for and terms. Be specific.  
☐ **Property Tax Exemption**  
\_\_\_\_\_ Number of years 2022  
\_\_\_\_\_ Percent of exemption  
☒ **Payments In Lieu of Taxes**  
Beginning year 2042 Ending year \_\_\_\_\_  
Amount of annual payments (attach schedule if payments will vary) \_\_\_\_\_
10. Which of the following would better describe the project for which this application is being made:  
☒ New business project ☐ Expansion of a existing business project

## Description of Project Property

11. Legal description of project real property

Lots 14-21, Block 9, Keeney & Devitts 1st Addition

12. Will the project property be owned or leased by the project operator? ☒ Owned ☐ Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

☐ Yes ☐ No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? ☒ New construction ☐ Existing facility

If existing facility, when was it constructed? \_\_\_\_\_

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application Fall 2018

b. Description of project to be constructed including size, type and quality of construction  
Speculative Office Space within Block 9 Project

Overall Project: Hotel 47,320 SF (125 keys); Amenity - 19,820SF; Office - 103,025SF; Retail; 27,610SF

c. Projected number of construction employees during the project construction 300

14. Approximate date of commencement of this project's operations Fall 2020

15. Estimated market value of the property used for this project:

a. Land..... \$ 675,000

b. Existing buildings and structures for which an exemption is claimed..... \$ 0

c. Newly constructed buildings and structures when completed..... \$ 39,500,000

d. Total..... \$ 40,175,000

e. Machinery and equipment ..... \$ \_\_\_\_\_

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) .....                     

b. Eligible existing buildings and structures..... \$ 0

c. Newly constructed buildings and structures when completed..... \$ 39,500,000

d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ 39,500,000

e. Enter the consolidated mill rate for the appropriate taxing district..... 317.32

f. Annual amount of the tax exemption (Line d multiplied by line e)..... \$ 626,707.00

## Description of Project Business

**Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.**

17. Type of business to be engaged in: ☐ Ag processing ☐ Manufacturing ☐ Retailing  
☐ Wholesaling ☐ Warehousing ☒ Services
18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

### Speculative Office Space within Block 9 Project

Overall project - Corporate headquarters for R.D. Offutt Company and RDO Equipment Co., hotel with 125 rooms, 27,000 SF ground floor retail. In addition to this application, the project will also construction seven condos, a parking garage, and redesign the existing plaza into a year round public gathering space.

19. Indicate the type of machinery and equipment that will be installed

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

	New/Expansion Project only Year 1	New/Expansion Project only Year 2	New/Expansion Project only Year 3	New/Expansion Project only Year 4	New/Expansion Project only Year 5
Year (12 mo. periods)					
Annual revenue	see PFM	"but for"	report		
Annual expense					
Net income					

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00

Year	(Before project)	Year 1	Year 2	Year 3	Year 4	Year 5
No. of Employees	(1) _____	_____	_____	_____	_____	_____
	(2) _____	_____	_____	_____	_____	_____
Estimated payroll	(1) _____	_____	_____	_____	_____	_____
	(2) _____	_____	_____	_____	_____	_____

(1) - full time  
(2) - part time

### Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? ☐ Yes ☒ No
23. Has the project operator conducted this business at this or any other location either in or outside of the state?  
☒ Yes ☐ No
24. Has the project operator or any officers of the project received any prior property tax incentives? ☒ Yes ☐ No

If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).

~~Renaissance Zone - R.D. Offutt Company 2003 - 2008; Fort Noks, Inc. 2005 - 2010; Christi Offutt 2005 - 2010; McGovern 2013 - 2014;~~

### Business Competition

25. Is any similar business being conducted by other operators in the municipality? ☐ Yes ☐ No

If YES, give name and location of competing business or businesses

Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition

### Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? ☐ Yes ☒ No
27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? ☐ Yes ☒ No

If the answer to 26 or 27 is Yes, list and explain

### Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):
- ☐ To present additional facts or circumstances which were not presented at the time of the original application
  - ☐ To request continuation of the present property tax incentives because the project has:
    - ☐ moved to a new location
    - ☐ had a change in project operation or additional capital investment of more than twenty percent
    - ☒ had a change in project operators
  - ☐ To request an additional annual exemption for the year of \_\_\_\_\_ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

### Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, \_\_\_\_\_, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

Signature

Title

Date



Block Nine, LLC PILOT Tax  
Schedule

Value \$41,175,000

Taxes \$626,707

<u>Year</u>	Payment Schedule	
1	\$	-
2	\$	-
3	\$	-
4	\$	-
5	\$	-
6	\$	-
7	\$	-
8	\$	-
9	\$	-
10	\$	-
11	\$	-
12	\$	-
13	\$	-
14	\$	-
15	\$	-
16	\$	-
17	\$	-
18	\$	-
19	\$	-
20	\$	-

June 28, 2019

Jim Gilmour  
Director of Strategic Planning & Research  
City of Fargo  
225 4th Street North  
Fargo, North Dakota 58102

Dear Mr. Gilmour:

Block 9 Partners, LLC has established new entities which will ultimately own the different units (retail, hotel, office, etc.) located in the overall project. In preparation for the eventual transfer of ownership from Block 9 Partners, LLC to these new entities we are requesting the transfer of the PILOT incentive originally approved by the City Commission on March 23, 2016.

Block 9 SOR, LLC will be the new entity owning the spec office portion of the project. We are requesting to transfer and assume the remainder of the already approved PILOT tax payment schedule as is allowed under section 40-57.1.06 of the ND Century Code: "option to make payments in lieu of taxes for the remainder of the exemption or payments in lieu of taxes period."

Please find the attached application, original tax schedule, and business incentive agreement requesting the remainder of the PILOT tax schedule transfer to Block 9 SOR, LLC the new operator of the spec office portion of this project.

Please let me know if there is any additional information needed.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Nielsen", with a long horizontal flourish extending to the right.

Bill Nielsen  
Director of Tax  
R.D. Offutt Company

**MEMORANDUM**

**TO:** CITY COMMISSION

**FROM:** NICOLE CRUTCHFIELD, PLANNING DIRECTOR *nc*

**DATE:** AUGUST 8, 2019

**SUBJECT:** REQUEST FOR APPROVAL OF GUARANTEED MAXIMUM PRICE FOR CIVIC PLAZA AREA 1 "SODBUSTER LANDSCAPE" AND AMENDMENT TO CONTRACT WITH MCGOUGH FOR CONSTRUCTION MANAGEMENT SERVICES TO BEGIN CONSTRUCTION

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The City Planning and Development Department in coordination with the Administration office and Engineering Department, is seeking final approval of the Guaranteed Maximum Price (GMP), and to hire McGough to construct Area 1 Civic Plaza "Sodbuster Landscape". Completion is expected by October 1, 2019.

Attached is the draft final contract for the construction services along with the details of the Guaranteed Maximum Price (GMP) totaling \$1,499,848. If approval is received at the August 12<sup>th</sup> City Commission meeting, construction will begin August 19<sup>th</sup>.

As a summary of the past related City Commission decisions are below:

- July 15, the City Commission approved a contract with McGough for preconstruction services that included determining the guaranteed maximum price (GMP). McGough was procured through a Request for Qualification process.
- July 29, the Finance Committee reviewed an estimated GMP of \$1.5M with the understanding the plans and GMP would be refined, and approved proceeding to the City Commission.
- July 29, Scott Bishop, Bishop Land Design (BLD), presented an update of the schedule and design for the Civic Plaza, Area 1 "Sodbuster Landscape" to the City Commission. Since the meeting, BLD has completed design documents for the Area 1 "Sodbuster Landscape". From these design documents, McGough was able to determine an accurate construction cost, the GMP.

Mr. Bishop and a member of the McGough construction company will be available for any questions.

**Recommended Motion:** Approve the guaranteed maximum price and amendment to contract with McGough for construction management services for Area 1 "Sodbuster Landscape", subject to final technical review by the City Attorney.



# McGOUGH

**Owner:** City of Fargo  
**Project:** Fargo City Plaza - Area 1

**Estimator:** Clark Hagen & Taylor Werne  
**Estimate Type:** DD GMP  
**Date:** 8/8/2019

Code	Description	Qty	Unit	Rate	Total	% of Total
1	Existing Conditions	25,423	SF	0.26	6,650	0.44
2	Sitework	25,423	SF	35.95	913,983	60.94
3	Substructure	25,423	Footprint SF	0.00	0	0.00
4	Structure	25,423	SF	0.00	0	0.00
5	Exterior Enclosure	0	Ext SF	0.00	0	0.00
6	Roofing	0	Roof SF	0.00	0	0.00
7	Interiors	25,423	SF	0.00	0	0.00
8	Stairs	0	Flights	0.00	0	0.00
9	Building Equipment	25,423	SF	0.00	0	0.00
10	Conveying Systems	0	EA	0.00	0	0.00
11	Mechanical	25,423	SF	0.00	0	0.00
12	Fire Protection	25,423	SF	0.00	0	0.00
13	Electrical	25,423	SF	4.84	123,125	8.21
14	Low Voltage Electrical Systems	25,423	SF	1.18	30,000	2.00
15	General Conditions	2	MO	83,205.76	166,412	11.10
16	Weather Conditions	25,423	SF	0.00	0	0.00
17	Hoisting	2	MO	0.00	0	0.00
	<b>Subtotal of Construction Costs</b>	<b>25,423</b>	<b>SF</b>	<b>48.78</b>	<b>1,240,169</b>	<b>82.69</b>
	<b>Miscellaneous Costs</b>					
18	Permit Fees				0	0.00
19	Unemployment Bond				0	0.00
20	Surveying/Layout				31,600	2.11
21	Testing & Inspections				0	0.00
22	Builder's Risk & Deductibles				1,200	0.08
23	Performance Bond				11,250	0.75
24	Subcontractor Default Insurance				12,821	0.85
25	Pre-Construction Services				0	0.00
26	General Liability Insurance	1,297,041			12,322	0.82
	<b>Subtotal Construction &amp; Misc. Items</b>				<b>1,309,363</b>	<b>87.30</b>
	<b>Fees &amp; Contingency</b>					
27	Design Contingency	0.01	%	1,309,362.59	17,022	1.13
28	Construction Contingency	0.08	%	1,309,362.59	102,785	6.85
29	Escalation: Mid Pt of Construction	0.000	%	1,429,169.27	0	0.00
30	D-B Design Fees	0.00	%		0	0.00
31	Construction Fee	0.0495	%	1,429,169.27	70,679	4.71
	<b>Grand Total Construction Costs</b>	<b>25,423</b>	<b>SF</b>	<b>59.00</b>	<b>1,499,848</b>	<b>100.00</b>



**Owner:** City of Fargo  
**Project:** Fargo City Plaza - Area 1

**Estimator:** Clark Hagen/Taylor Werner  
**Estimate Type:** DD GMP  
**Date:** 8/8/2019

ID#	Description	Qty	Unit	Rate	Total
1	Existing Conditions	25,423	SF	0.26	6,650
	<b>Jobsite Requirements</b>	<b>25,423</b>	<b>GSF</b>	<b>0.26</b>	<b>6,650</b>
1.14	Library Wall Protection	5,449	SF	1.22	6,650



**Owner:** City of Fargo  
**Project:** Fargo City Plaza - Area 1

**Estimator:** Clark Hagen/Taylor Werner  
**Estimate Type:** DD GMP  
**Date:** 8/8/2019

ID#	Description	Qty	Unit	Rate	Total
<b>2</b>	<b>Sitework</b>	<b>25,423</b>	<b>SF</b>	<b>35.95</b>	<b>913,983</b>
	<b>Misc. Site Preparation</b>	<b>1</b>	<b>LS</b>	<b>10,923.71</b>	<b>10,924</b>
2.1	6' Chain Link Temp Fence w/ Man Gate(s)	787	LF	12.00	9,448
2.2	Jersey Barriers	60	LF	5.39	323
2.3	4' Chain Link Temp Fence on Jersey Barriers	60	LF	10.78	647
2.7	Tree protection fence	276	LF	1.83	506
	<b>Site Clearing</b>	<b>1</b>	<b>LS</b>	<b>37,491.96</b>	<b>37,492</b>
2.9	Clearing and Grubbing	1,001	SY	4.00	4,002
2.10	Tree Removal	3	EA	4,000.00	12,000
2.11	Strip and Stockpile Topsoil	334	CY	15.00	5,003
2.16	Cut Existing Concrete Wall	1	EA	3,000.00	3,000
2.12	Demo Concrete	1,492	SF	2.25	3,356
2.13	Demo Asphalt	3,488	SF	2.10	7,324
2.14	Demo Fence	170	LF	4.75	807
2.16	Demo Pole & Foundation	8	EA	150.00	1,200
2.16	Remove Bike Rack	1	EA	400.00	400
2.16	Remove Time Capsule	1	EA	400.00	400
	<b>Erosion Control</b>	<b>1</b>	<b>LS</b>	<b>4,042.97</b>	<b>4,043</b>
2.18	Silt Fence	787	LF	2.91	2,293
2.19	Inlet Protection	1	EA	250.00	250
2.20	Construction Entrance	1	EA	1,500.00	1,500
	<b>Earthwork</b>	<b>1</b>	<b>LS</b>	<b>98,069.23</b>	<b>98,069</b>
2.21	Rough Grading	3,376	CY	4.50	15,190
2.22	Finish Grading	3,027	SY	1.50	4,540
2.26	Import fill	2,154	CY	21.00	45,225
15.64	Temp. Access Roadways	1	LS	20,000.00	20,000
2.22	Tensar Geogrid	14,571	SF	0.90	13,114
	<b>Site Utilities</b>	<b>358</b>	<b>LF</b>	<b>124.55</b>	<b>44,590</b>
2.52	Domestic Water - C900	27	LF	65.00	1,756
2.58	Connect Water and Repair Pavement, Sidewalk, Curb & Gutter	1	EA	7,500.00	7,500
2.59	PVC Pipe	331	LF	75.00	24,835
2.64	Catch Basins	4	EA	1,750.00	7,000
2.65	Storm Water Manholes	1	EA	3,500.00	3,500
	<b>Bituminous Paving/Striping</b>	<b>18</b>	<b>SY</b>	<b>359.12</b>	<b>6,464</b>
2.78	Porous Paving	18	SY	350.00	6,464
	<b>Site Concrete</b>	<b>12,634</b>	<b>SF</b>	<b>11.87</b>	<b>150,018</b>
2.81	Concrete Paving Below Pavers	2,998	SF	9.00	26,978
2.82	Joint sealants	2,000	LF	4.00	8,000
2.83	(A2) Stamped Concrete Paving	6,716	SF	11.00	73,881
2.83	Custom Stamp Set	2	EA	3,500.00	7,000
2.84	Sodbuster Pedestal	1	EA	20,000.00	20,000



# McGOUGH

**Owner:** City of Fargo  
**Project:** Fargo City Plaza - Area 1

**Estimator:** Clark Hagen/Taylor Werner  
**Estimate Type:** DD GMP  
**Date:** 8/8/2019

ID#	Description	Qty	Unit	Rate	Total
2.89	Concrete Below Decking	916	SF	10.00	9,158
15.67	Protection of New Concrete Surfaces	1	LS	5,000.00	5,000
	<b>Unit Pavers - Includes Sand Cushion</b>	<b>2,998</b>	<b>SF</b>	<b>25.00</b>	<b>74,940</b>
2.92	(A1) Brick Pavers	2,998	SF	25.00	74,940
	<b>Site Furnishings</b>	<b>1</b>	<b>LS</b>	<b>65,674.12</b>	<b>65,674</b>
2.100	(D1) A Frame Embedded Bike Rack	15	EA	447.86	6,718
2.106	(D4) Custom Site Seating	66	LF	640.63	42,192
2.109	(D2) Trash Receptacles - Vestre	10	EA	1,676.45	16,765
	<b>Site Improvements</b>	<b>1</b>	<b>EA</b>	<b>34,529.93</b>	<b>34,530</b>
2.118	Thermory Ash Wood Decking	916	SF	37.71	34,530
	<b>Site Signage</b>	<b>3</b>	<b>EA</b>	<b>5,000.00</b>	<b>15,000</b>
2.129	(D3) Monument Sign Allowance	3	EA	5,000.00	15,000
	<b>Landscaping</b>	<b>1</b>	<b>LS</b>	<b>372,239.15</b>	<b>372,239</b>
2.136	Trees (AR) Red Maple	7	EA	450.00	3,150
2.136	Trees (UA) American Elm	4	EA	450.00	1,800
2.136	Trees (OV) Ironwood	3	EA	450.00	1,350
2.136	Trees (PT) Quaking Aspen	11	EA	450.00	4,950
2.136	Trees (TA) Basswood	3	EA	450.00	1,350
2.134	Nursery Trees (AR) Red Maple	53	EA	100.00	5,300
2.134	Nursery Trees (UA) American Elm	71	EA	100.00	7,100
2.134	Nursery Trees (PT) Quaking Aspen	47	EA	100.00	4,700
2.137	Shrubs (AS) Serviceberry	2	EA	60.00	120
2.137	Shrubs (FA) Red Osier Dogwood	4	EA	60.00	240
2.138	Perennials & Grasses	573	EA	45.00	25,785
2.138	Prairie Mix 1	237	EA	45.00	10,665
2.138	Prairie Mix 2	215	EA	45.00	9,675
2.138	Prairie Mix 3	335	EA	45.00	15,075
2.138	Ornamental Mix 1	484	EA	45.00	21,780
2.138	Grove Mix 1	248	EA	45.00	11,160
2.138	Grove Mix 2	285	EA	45.00	12,825
2.138	Grove Mix 3	470	EA	45.00	21,150
2.138	Grove Mix 4	246	EA	45.00	11,070
2.138	Grove Mix 5	336	EA	45.00	15,120
2.138	Grove Mix 6	414	EA	45.00	18,630
2.138	Grove Mix 7	900	EA	45.00	40,500
2.138	Winter Kill 10%	474	EA	45.00	21,330
2.138	Addendum #1 Plant Update	857	EA	45.00	38,565
2.139	Wood Mulch	12,646	SF	0.50	6,323
2.140	Planting Soil	524	CY	40.00	20,948
2.141	Horticultural Subsoil	262	CY	40.00	10,474
2.141	Lawn Soil, Passive	42	CY	35.00	1,457



# McGOUGH

**Owner:** City of Fargo  
**Project:** Fargo City Plaza - Area 1

**Estimator:** Clark Hagen/Taylor Werner  
**Estimate Type:** DD GMP  
**Date:** 8/8/2019

ID#	Description	Qty	Unit	Rate	Total
2.142	Sod	167	SY	9.50	1,585
2.144	Seed - Restoration of disturbed Areas	1	LS	2,000.00	2,000
2.145	Site Irrigation	1,738	SY	15.00	26,063





**Owner:** City of Fargo  
**Project:** Fargo City Plaza - Area 1

**Estimator:** Clark Hagen/Taylor Werner  
**Estimate Type:** DD GMP  
**Date:** 8/8/2019

ID#	Description	Qty	Unit	Rate	Total
13	Electrical	25,423	SF	4.84	123,125
	<b>Electrical - Site</b>	<b>1</b>	<b>SF</b>	<b>123,125.00</b>	<b>123,125</b>
2.68	Electrical Service from Library	87	LF	250.00	21,625
2.111	(FL1) Sodbuster Ground Mounted Uplight	4	EA	2,500.00	10,000
2.111	(L) Sodbuster Strip Uplighting	2	EA	4,000.00	8,000
2.111	(L1) Ground Mounted Uplight	3	EA	4,000.00	12,000
2.111	(L2) Pedestrian Light Fixture	7	EA	4,500.00	31,500
2.111	(P1) Sodbuster Downlighting	4	EA	7,500.00	30,000
2.111	Move Electrical Boxes	1	EA	10,000.00	10,000



# McGough

**Owner:** City of Fargo  
**Project:** Fargo City Plaza - Area 1

**Estimator:** Clark Hagen/Taylor Werner  
**Estimate Type:** DD GMP  
**Date:** 8/8/2019

ID#	Description	Qty	Unit	Rate	Total
14	Low Voltage Electrical Systems	25,423	SF	1.18	30,000
	Special Systems	1	SF	30,000.00	30,000
14.1	Control System Wiring and Connection to City Hall	1	LS	30,000.00	30,000



# McGOUGH

**Owner:** City of Fargo  
**Project:** Fargo City Plaza - Area 1

**Estimator:** Clark Hagen/Taylor Werner  
**Estimate Type:** DD GMP  
**Date:** 8/8/2019

ID#	Description	Qty	Unit	Rate	Total
<b>15</b>	<b>General Conditions</b>	<b>2</b>	<b>MO</b>	<b>83,205.76</b>	<b>166,412</b>
	<b>Jobsite Office Overhead:</b>	<b>2</b>	<b>MO</b>	<b>6,987.50</b>	<b>13,975</b>
15.1	Single Wide Trailer	3	MO	500.00	1,500
15.4	Single Wide Trailer	1	EA	4,500.00	4,500
15.11	Internet Service Setup	1	EA	250.00	250
15.12	Internet Service Monthly Fee	3	MO	600.00	1,800
15.13	Mobile Phone Airtime Charges per Month, per User	3	MO	225.00	675
15.14	Temporary Toilets Office (1 per 10 persons)	3	MO	125.00	375
15.36	O&M Documents - Enhanced SMART Docs	1	LS	4,875.00	4,875
	<b>Temporary Facilities &amp; Controls</b>	<b>2</b>	<b>MO</b>	<b>3,375.00</b>	<b>6,750</b>
15.39	Electric Set-up	1	LS	3,500.00	3,500
15.47	Temp. Toilets Field (1 per 10 People), Delivery & Heaters	3	MO	250.00	750
15.49	Project Photos	1	LS	2,500.00	2,500
	<b>Project Safety</b>	<b>2</b>	<b>MO</b>	<b>1,835.00</b>	<b>3,670</b>
15.70	Project Signs (Identification & Directional)	1	LS	2,500.00	2,500
15.76	First Aid Boxes & Supplies	3	MO	100.00	300
15.77	Hard Hats (box of 20)	1	EA	380.00	380
15.78	Protective Eyewear (box of 10)	2	EA	35.00	70
15.79	Fire Extinguisher w/ Stand	4	EA	105.00	420
	<b>Cleanup - Temporary/Ongoing</b>	<b>2</b>	<b>MO</b>	<b>27,853.24</b>	<b>55,706</b>
15.86	Temp./On-Going Clean-up (1 full-time laborer)	14	WK	3,286.18	46,007
15.88	20 cubic yard box	20	EA	485.00	9,700
	<b>Project Staff</b>	<b>2</b>	<b>MO</b>	<b>43,155.03</b>	<b>86,310</b>
15.116	Principal/Sr. PM/Sr. Supt.	12	WK	545.60	6,547
15.119	Project Manager	12	WK	2,320.08	27,841
15.123	Superintendent	10	WK	4,400.16	44,002
15.125	Quality Control	8	WK	360.01	2,880
15.126	Field Safety	8	WK	360.01	2,880
15.131	Project Coordinator	10	WK	216.02	2,160

**McGOUGH***Building for the Next Generation*

**Exhibit A-4 Assumptions  
City of Fargo Sodbuster  
Site Hardscape / Landscape**

**Location:** Fargo North Dakota**Architect:** Bishop Land Design**Drawings Dated:** 7/29/19

Item	Description	Amount
1	Building Permit	Not Required
2	Testing and Inspection Costs (Coordination & Scheduling is by McGough)	By Owner
3	Builders Risk Insurance & Deductibles	Included
4	Performance Bond	Included
5	General Liability Insurance	Included
6	Subcontractor Default Insurance	Included
7	Shipping/handling/setting/fastening and temporary protection of Sodbuster Sculpture	Not Included
8	Removing of utilities beyond the limits of construction	Not Included
9	Surveyance/security	Not Included
10	Contaminated ground water or soils or buried debris from previous structures or utilities	Not Included
11	Unforeseen or differing soil or site conditions (unknown buried utilities, structures, or soils differing from geotech report.)	Not Included
12	Removal of Asbestos or other Hazardous Materials	Not Included
13	Requirements of geotechnical report beyond what is shown in the DD Documents (Geotech report has not provided)	Not Included
14	Unforeseen or differing soil or site conditions (unknown buried utilities, structures, or soils differing from geotech report.)	Not Included
15	Removal of Asbestos or other Hazardous Materials	Not Included
16	Design Contingency	\$ 17,022.00
17	Construction Contingency	8% Included
18	Removal of existing site items to be salvaged by City	Not Included
19	Guaranteed Completion Date (Evidence exists of current lead times and availability of certain items. McGough will endeavor to work as expeditiously as possible and keep the team informed of schedule)	Not Included
20	If certain materials or plantings are not available it is assumed that McGough and BLD will coordinate substitutions as necessary to meet the budget.	Included
21	Where budget assumptions are made in the estimate for items that are not shown or specified in the contract documents it is assumed these will be designed to budget.	Included
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DRAFT

# AIA Document A133™ – 2009

**Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

AGREEMENT made as of the «    » day of «    » in the year Two Thousand Nineteen  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status (Name and address))

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

and the Construction Manager:  
(Name, legal status (Name and address))

McGough Construction Co., LLC  
2737 Fairview Avenue North  
St. Paul, MN 55113

for the following Project:  
(Name and address or location)

The Fargo Civic Plaza, Area 1 "Sodbuster Landscape"  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

The Architect:  
(Name, legal status (Name and address))

Bishop Land Design, LLC  
1245 Hancock Street, Suite 2  
Quincy, MA 02169

The Owner's Designated Representative:  
(Name, address and other information)

Scott Bishop  
Bishop Land Design, LLC  
1245 Hancock Street, Suite 2  
Quincy, MA 02169  
Phone: x  
Email: x

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

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

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

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

The Construction Manager's Designated Representative:  
(Name, address and other information)

PM Name Derek Hoeschen  
McGough Construction Co., LLC  
2737 Fairview Avenue North 630 1st Avenue North, #4  
St. Paul, MN 55113 Fargo, ND 58102  
Phone: 701.639.6288 651.63x.xxxx  
Email: ~~xx~~derek.hoeschen@mcgough.com

The Architect's Designated Representative:  
(Name, address and other information)

Scott Bishop  
Bishop Land Design, LLC  
1245 Hancock Street, Suite 2  
Quincy, MA 02169

Phone: x

Email: x

The Owner and Construction Manager agree as follows.

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## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.



## **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### **§ 2.1 Preconstruction Phase**

**§ 2.1.1** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### **§ 2.1.2 Consultation**

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### **§ 2.1.4 Phased Construction**

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### **§ 2.1.5 Preliminary Cost Estimates**

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project.

**§ 2.1.7** The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall



procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### **§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

#### **§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 2.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following

acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### § 2.3 Construction Phase

#### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance date of the Construction Manager's Guaranteed Maximum Price proposal Amendment or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

#### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect-Architect and the Owner. The Owner shall then determine, with the advice of the Construction Manager and the Architect, Manager, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

#### § 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner ~~shall have retained Bishop Land Design, LLC as its Architect~~ to provide services, duties and responsibilities as described in "FARGO CIVIC PLAZA | Analysis, Contextual Planning and Site Programming, the Prime Agreement Between Owner and Architect, as well as "FARGO CIVIC PLAZA | Amendment 1 | Conceptual Landscape Design", and "FARGO CIVIC PLAZA | Amendment 2 | Site and Landscape Design | Area 1, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. AIA Document B133™ 2014, B103™ 2007, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement." The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Cost for the Construction Manager's Preconstruction Phase services shall be the lump sum of Five Thousand, Two Hundred and Fifty Dollars (\$5,250.00) which shall be included in the Guaranteed Maximum Price.



§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~«6 months»~~ (~~«6»~~) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

#### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (~~—~~) ~~«sixty»~~ (~~«60»~~) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

~~% The lesser of the highest amount permitted by law or Three Percent (3%) over the reference rate from time to time in effect at the Wells Fargo Bank. Construction Manager will not assess interest on minor delays due to normal processing procedures.~~

### ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

~~The Construction Manager's Fee shall be Four and Ninety-Five One Hundredths — Percent (4.95 — %) of the Cost of the Work.~~

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

~~For Changes to the Work, the Construction Manager's Fee shall be adjusted at the rate of Four and Ninety-Five One Hundredths — Percent (4.95 — %) of the Cost of the Work associated with the Change.~~

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:  
~~N/A~~

§ 5.1.4 Rental rates for Construction Manager-owned ~~equipment shall not exceed~~ percent (~~—~~%) of the standard rate paid at the place of the Project ~~equipment~~. (See Section 6.5.2.)

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
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#### § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of

the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.  
(Insert specific provisions if the Construction Manager is to participate in any savings.)

Should the sum of the Cost of the Work and the Construction Manager's Fee be less than the Guaranteed Maximum Price, then the difference shall constitute savings and One Hundred Percent (100%) of the savings shall be retained by the Owner.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

### § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. The agreed billing rates, in lieu of actual cost, are set forth in the attached Exhibit "B" – Trade Labor Billing Rates. These rates will be adjusted annually on May 1st. Such adjusted rates shall not affect the GMP.



§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval. The agreed billing rates, in lieu of actual cost, are set forth in the attached Exhibit "C" – Supervisory and Administrative Personnel Billing Rates. These rates may be adjusted annually on May 1st. Such adjusted rates shall not affect the GMP.

~~(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)~~ Work with Owner's Approval.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. The agreed billing rates, in lieu of actual cost, are set forth in the attached Exhibit "C" – Supervisory and Administrative Personnel Billing Rates. These rates may be adjusted annually on May 1st. Such adjusted rates shall not affect the GMP.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. All such costs are included in the billing rates in Exhibits "B" and "C".

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. ~~Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value. See attached Exhibit "F" – Consumables List. These rates will be adjusted annually on May 1st. Such adjusted rates shall not affect the GMP.~~

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. ~~The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item.~~ Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. See attached Exhibit "D" – Small Tools List and Exhibit "E" – Equipment Rental Rates. Small Tools (Exhibit "D") will be billed at Four Percent (4%) of the cost of labor. These rates will be adjusted annually on May 1st. Such adjusted rates shall not affect the GMP.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

#### § 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. The agreed rate to be charged, in lieu of actual cost, for General Liability Insurance, Automobile Insurance, Umbrella/Excess Insurance, Contractor's Pollution Insurance, and Contractor's Professional Liability Insurance, shall be Ninety-Five One Hundredths Percent (0.95%) of the Cost of the Work. The rate to be charged for Subcontractor Default Insurance ("SDI") shall be One and Two-Tenths Percent (1.2%) of the cost of the Subcontract Work.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

#### § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.



§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### § 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

#### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The To the extent required to confirm that Construction Manager complies with this Agreement, the Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 7.1 Progress Payments

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

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the first (1st) day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the thirtieth (30th) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than (—) thirty (30) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending

final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;

- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of ~~percent (—%)~~. See 7.1.11 below. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ~~percent (—%)~~. See 7.1.11 below from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

**§ 7.1.8** Except with the Owner's prior approval, payments to the Subcontractors shall be subject to retainage of not less than that defined in Section 7.1.11 below. The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

**§ 7.1.10** In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 7.1.11** There will be no retainage on the work performed by the Construction Manager's own forces. There will be a Five Percent (5%) retainage on all subcontractors.

## **§ 7.2 Final Payment**

**§ 7.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

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

and in no event more than 67 days from the date that the Construction Manager has submitted a final Certificate for Payment.

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of

the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 and 7.2.2 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§ 7.2.4** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds insurance as set forth in Article 11 of AIA Document A201-2007. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

### Type of Insurance or Bond

See Exhibit "G" - Insurance Requirements

### Limit of Liability or Bond Amount (\$0.00)

## ARTICLE 9 DISPUTE RESOLUTION

**§ 9.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

**§ 9.2** For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☒ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

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### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

### § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.



§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

### § 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### § 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

### § 11.5 Other provisions:

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## ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- 1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- 2 AIA Document A201–2007, General Conditions of the Contract for Construction
- 3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

following:

- 4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

- 5 Other documents:  
(List other documents, if any, forming part of the Agreement.)

Exhibit A Guaranteed Maximum Price Amendment  
Exhibit B Trade Labor Billing Rates  
Exhibit C Supervisory and Administrative Personnel Billing Rates  
Exhibit D Small Tool List  
Exhibit E Equipment Rental Rates  
Exhibit F Consumables List  
Exhibit G Insurance Requirements

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

CITY OF FARGO(OWNER)

McGOUGH CONSTRUCTION CO., LLC

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

Timothy J. Mahoney  
Mayor

\_\_\_\_\_  
(Printed name and title)

Amy Thompson-Connie Armstrong  
Vice President & General Senior Counsel

\_\_\_\_\_  
(Printed name and title)



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## Finance Office

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

**TO:** BOARD OF CITY COMMISSIONERS  
**FROM:** KENT COSTIN, DIRECTOR OF FINANCE *KAC*  
**RE:** APPROVAL OF THE 2020 PRELIMINARY BUDGET AND BUDGET HEARING SCHEDULE  
**DATE:** AUGUST 5, 2019

The Mayor presented the preliminary budget on July 23, 2019 and distributed the draft preliminary budget books for your review on July 26, 2019.

The next step of the budget approval process is to approve the preliminary budget and establish the date for the required public budget and taxation hearings on September 9, 2019 in the Fargo City Commission Chambers.

The Cass County Auditor will prepare a consolidated notice of budget hearings and tax levies for all taxing entities as required by NDCC. All property owners will receive this notice.

Approval of the final budget is required by October 7, 2019.

**Suggested Motion:**

Approve the 2020 preliminary budget, increasing the property tax mill rate from 51 to 53 mills and scheduling the budget and taxation hearings on September 9, 2019 at 6:00 p.m.