

FARGO CITY COMMISSION AGENDA
Monday, August 19, 2024 - 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, August 5, 2024).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 1st reading of an Ordinance Amending Section 23-0211 of Article 23-02 of Chapter 23 of the Fargo Municipal Code Relating to the Electrical Code.
- 2. 2nd reading, waive reading and final adoption of an Ordinance Rezoning a Certain Parcel of Land Lying in YWCA Addition to the City of Fargo, Cass County, North Dakota; 1st reading, 8/5/24.
- 3. 2nd reading, waive reading and final adoption of an Ordinance Rezoning a Certain Parcel of Land Lying Presentation Addition to the City of Fargo, Cass County, North Dakota; 1st reading, 8/5/24.
- 4. Applications for Games of Chance:
 - a. Fargo Davies High School for a raffle on 8/23/24-2/28/25.
 - b. Fargo Davies High School for a raffle on 11/26/24-2/14/25.
 - c. Veterans Honor Flight of ND/MN for a raffle on 8/25/24.
 - d. YWCA Cass Clay for a raffle board on 09/05/24.
 - e. El Zagal Outdoors Unlimited for a raffle on 09/10/24.
- 5. Concur with the findings of staff and the Liquor Control Board and apply the administrative penalty of a \$500.00 fine for a first failure to the liquor license violations identified at Front Street Tap Room.
- 6. Concur with the findings of staff and the Liquor Control Board and apply the administrative penalty of a \$500.00 fine for a first failure to the liquor license violations identified at VFW.
- 7. Concur with the findings of staff and the Liquor Control Board and apply the administrative penalty of a \$500.00 fine for a first failure to the liquor license violations identified at Hi Ho South, Applebee's on 45th, Fargo Billiards,. Delta Hotels, Chili's and Candlewood Suites.
- 8. Final Balancing Change Order No. 1 in the amount of \$11,443.18 for Project No. FM-15-F3.
- 9. Change Order No. 1 in the amount of \$82,514.40 for Project No. SR-24-B1.
- 10. Crossing Surface Installation Agreement with BNSF Railway Company for the resurfacing of the 27th Street North Railroad At-Grade Crossing (Project No. RR-25-A1).

11. Contract and bond for Project No. DR-21-A1.
12. Contract and bond for Project No. UR-24-A1.
13. Memorandum of Offer to Landowner for Permanent Easements (Street and Utility) and (Utility) with PB&J Properties, LLC (Improvement District No. PR-24-A1).
14. Resolution Authorizing the Issuance of Taxable Annual Appropriation Bonds, Series 2024F and Resolution Authorizing the Issuance of Annual Appropriation Bonds, Series 2024G.
15. Items from the FAHR Staff meeting:
 - a. Receive and file General Fund - Budget to Actual through 7/31/24.
 - b. Reallocation of \$200,000.00 from Municipal Court to the Police Department to pay the 2024 allocation to the late Axon invoice.
 - c. ND Forest Service grant awards in the amount up to \$43,300.00 and related expense for new trees in 2025.
 - d. Accept the Grant award from the Assistance to Firefighters Grant (FEMA) in the amount of \$51,814.54 and related expenses.
 - e. Change orders in the amount of \$69,830.00 related to the Transit AVA/AVL software replacement project.
 - f. Bid awards for Fire Station No. 5 Renovation Project in the amount of \$2,463,004.00, as presented (ITB24276).
16. Notice of Grant Award from the ND Department of Health and Human Services for MCH services (CFDA #93.994).
17. Master Services Agreement and Statement of Work with Doosan Digital Innovation America, LLC (RFP24272).
18. Resolution approving Plat of Prairie Farms Third Addition.
19. Receive and file the Bias Motivation and Hate Crime 2nd Quarter Report.
20. Bid award in the amount of \$1,031,160.00 to Northdale Oil for the purchase of contracted fuel for the 1st and 2nd Quarters of 2025 (RFP24274).
21. Resolution of Governing Body of Applicant for filing of an application with the ND Department of Environmental Quality for a loan under the Clean Water Act/or Safe Drinking Water Act (Project No. WA2402).
22. Resolution of Governing Body of Applicant for filing of an application with the ND Department of Environmental Quality for assistance performing a lead service line inventory in compliance with the Lead and Copper Rule Revisions.
23. Bills.

REGULAR AGENDA:

24. 1st reading of an Ordinance Enacting Article 10-14 of Chapter 10 of the Fargo Municipal Code Relating to Camping on Public Property.

PUBLIC HEARINGS - 5:15 pm:

25. **PUBLIC HEARING** – Application filed by Beyond Shelter, Inc. for a Payment in Lieu of Tax Exemption (PILOT) for a project to be located at 2131 and 2185 65th Avenue South which the applicant will use to construct affordable rental housing for seniors.
26. **PUBLIC HEARING** – Schatz Fifth Addition (5601 and 5671 34th Avenue South); approval recommended by the Planning Commission on 6/4/24:
 - a. Zoning Change from MR-3, Multi-Dwelling Residential to MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development Overlay.
 - b. 1st Reading of rezoning ordinance.
 - c. Planned Unit Development Master Land Use Plan.
 - d. Plat of Schatz Fifth Addition.
27. **PUBLIC HEARING** – Renaissance Zone Rehabilitation Project for Campsite 4, LLC (Project 365-F) for the rehabilitation of a commercial property located at 5 14 Street North.
28. **PUBLIC HEARING** – Fargo Growth Plan 2024.
29. Recommendation to adopt the Resolution Amending the Home Rule Charter – Sales, Use and Gross Receipts Taxes for the exclusive use by Police and Fire and placing the question on the November 5th ballot.
30. Applications for Property Tax Exemptions for Improvements Made to Buildings
 - a. Border Properties #1, LLC, 4321 14th Avenue North (5 years).
 - b. Samantha Smestad and Ryan Thompson, 1909 8th Street North (5 years).
 - c. Joe Boulger, 1542 8th Street North (5 years).
 - d. Preston Nesemeier, 1621 8th Avenue South (5 years).
 - e. Michael Shirk/Heath, 901 11th Avenue North (5 years).
 - f. KLH&J Land, LLC, 4001 15th Avenue North (5 years).
 - g. Kristin Bode, 78 18th Avenue North (5 years).
 - h. Mitchell and Kathleen Rumble, 520 21st Avenue South (5 years).
31. Recommendation to amend the Findings of Fact, Conclusions and Order to allow for a 30-day extension for property located at 909 4th Street North.
32. Liaison Commissioner Assignment Updates.
33. **RESIDENT COMMENTS (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at [FargoND.gov/VirtualCommission](https://www.fargoND.gov/VirtualCommission)).**

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

Minutes are available on the City of Fargo website at www.fargoND.gov/CityCommission.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA



ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 23-0211
OF ARTICLE 23-02 OF CHAPTER 23 OF THE FARGO MUNICIPAL CODE
RELATING TO THE ELECTRICAL CODE

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; and,

WHEREAS, N.D.C.C. §43-09-21 authorizes cities to make wiring standards more stringent than those established by the state; and

NOW, THEREFORE,

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

Section 1. Amendment.

Section 23-0211 of Article 23-02 of Chapter 23 of the Fargo Municipal Code is hereby amended to read as follows:

23-0211. Installations must conform to certain regulations before certificate issued.-- No certificate of approval shall be issued for electric light, power, and heating installations unless such installations are in strict conformity with the provisions of this chapter, the statutes of the state of North Dakota, the North Dakota State Wiring Standards, Article 24.1-06 of the North Dakota Administrative Code, as amended herein, the ordinances, rules and regulations issued by the board of city commissioners of the city of Fargo, under authority of the state statutes, and unless they are in conformity with approved methods of construction for safety to life and property. The regulations as laid down in the ~~2020~~ 2023 edition of the National Electrical Code as currently adopted by the State of North Dakota, as approved by the American Standards Association and in the National Electrical

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 Safety Code, as approved by the American Standards Association, and other installation and safety
2 regulations approved by the American Standards Association, together with the current standards as
published by the National Fire Protection Association, shall be prima facie evidence of such approved
methods.

3 Section 2. Amendment.

4 With respect to the North Dakota State Wiring Standards, Article 24.1-06 of the North
5 Dakota Administrative Code, as the same are adopted by reference, Subsections 10 and 11 of
Section 24.1-06-02-10, are hereby amended to read:

- 6 10. Exception: 2023 edition, National Electrical Code (first version, printed in
7 2022), article 210.12(B): AFCI protection is ~~not~~ required for the following:
- 8 a. Refrigeration appliances if a single receptable on a dedicated circuit is
9 installed;
- 10 b. Furnaces used for main heating source.
- 11 11. Exception: 2023 edition, National Electrical Code (first version, printed in
12 2022), article 210.8(A): GFCI protection shall ~~not~~ be required for
13 refrigeration appliances in dwelling units if a single receptable on an
14 individual branch circuit is installed.
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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. Effective Date.

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

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5 Timothy J. Mahoney, M.D., Mayor
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9 Attest:

10 _____
11 Steven Sprague, City Auditor
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First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

2

ORDINANCE NO. _____

AN ORDINANCE REZONING A CERTAIN PARCEL
OF LAND LYING IN YWCA 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 YWCA 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, 2024; and,

WHEREAS, the rezoning changes were approved by the City Commission on August 5, 2024,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot One (1), Block One (1) of YWCA Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "MR-1", Multi-Dwelling Residential, District to "P/T", Public and Institutional, District;

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

(SEAL)

Attest:

Timothy J. Mahoney, M.D., Mayor

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

3

ORDINANCE NO. _____

AN ORDINANCE REZONING A CERTAIN PARCEL
OF LAND LYING IN PRESENTATION 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 Presentation 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, 2024; and,

WHEREAS, the rezoning changes were approved by the City Commission on August 5, 2024,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot Ones (1) through Three (3), Block One (1) of Presentation Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "MR-2", Multi-Dwelling Residential, District and "SR-2", Single-Dwelling Residential, District, to "P/I", Public and Institutional, District.

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

(SEAL)

Attest:

Timothy J. Mahoney, M.D., Mayor

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

GAMING DIVISION

SFN 9338 (4-2023)

FAR 24-96

(400)

Applying for (check one)

☒ Local Permit
 ☐ Restricted Event Permit*
Games to be conducted ☐ Raffle by a Political or Legislative District Party
☐ Bingo
 ☒ Raffle
 ☐ Raffle Board
 ☐ Calendar Raffle
 ☐ Sports Pool
 ☐ Poker*
 ☐ Twenty-One*
 ☐ Paddlewheels*

*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.

LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS

ORGANIZATION INFO

Name of Organization or Group <i>Fargo David's High School</i>		Dates of Activity (Does not include dates for the sales of tickets) <i>8/23/24 to 2/28/25</i>	
Organization or Group Contact Person <i>Lenny Ohlhauser</i>	E-mail <i>ohlhaul@fargo.k12.nd.us</i>	Telephone Number <i>701.446.5608</i>	
Business Address <i>7150 25th St S</i>	City <i>Fargo</i>	State <i>ND</i>	ZIP Code <i>58104</i>
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name <i>David's HS</i>	County <i>Cass</i>
Site Physical Address <i>7150 25th St S</i>	City <i>Fargo</i>
State <i>ND</i>	ZIP Code <i>58104</i>

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)
50/50 See Attached calendar

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

Game Type	Description of Prize	Exact Retail Value of Prize
<i>50/50 Raffle</i>	<i>- 5 money collected</i>	
	<i>Soccer, football, basketball, wrestling</i>	
Total (limit \$40,000 per year)		\$ <i>10,000</i>

Intended Uses of Gaming Proceeds

Funds to support meals / town functions

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

☐ Yes ☒ No

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

☐ Yes ☒ No

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

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

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

☐ Yes ☒ No

Name <i>Lenny Ohlhauser</i>	Title <i>AD</i>	Telephone Number <i>701.446.5608</i>	E-mail Address <i>ohlhaul@fargo.k12.nd.us</i>
Signature of Organization or Group's Top Official <i>Lenny Ohlhauser</i>		Title <i>AD</i>	Date <i>8.6.24</i>



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

GAMING DIVISION

SFN 9338 (4-2023)

46

✓ FAR 24-9

Applying for (check one)



Local Permit



Restricted Event Permit*

Games to be conducted



Raffle by a Political or Legislative District Party



Bingo



Raffle



Raffle Board



Calendar Raffle



Sports Pool



Poker*



Twenty-One*



Paddlewheels*

*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.

LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS

ORGANIZATION INFO

Name of Organization or Group <i>Fargo Davies High School</i>		Dates of Activity (Does not include dates for the sales of tickets) <i>11.26.24 to 2.14.25</i>	
Organization or Group Contact Person <i>Lenny Olthausen</i>	E-mail <i>olthausl@fargo.k12.nd.us</i>	Telephone Number <i>701.446.5608</i>	
Business Address <i>7150 25th St S</i>	City <i>Fargo</i>	State <i>ND</i>	ZIP Code <i>58101</i>
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name <i>Schools Area</i>		County <i>Cass</i>	
Site Physical Address <i>5205 31st Ave</i>	City <i>Fargo</i>	State <i>ND</i>	ZIP Code <i>58103</i>
Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.) <i>50/50 See hockey schedule Boys/Girls Hockey</i>			

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

Game Type	Description of Prize	Exact Retail Value of Prize
<i>50/50 Raffle</i>	<i>5 new, collected! Hockey games</i>	
Total (limit \$40,000 per year)		\$ <i>4000.00</i>

Intended Uses of Gaming Proceeds

<i>Funds to support team meals/functions</i>	
Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1 - June 30 (If yes, the organization or group does not qualify for a local permit or restricted event permit)	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Has the organization or group received a local permit from an city or county for the fiscal year July 1 - June 30 (If yes, indicate the total retail value of all prizes previously awarded)	
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - Total Retail Value: <input type="text"/> (This amount is part of the total prize limit for \$40,000 per fiscal year)	
Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be for political purposes.)	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Name <i>Lenny Olthausen</i>	Title <i>AD</i>	Telephone Number <i>701.446.5608</i>	E-mail Address <i>olthausl@fargo.k12.nd.us</i>
Signature of Organization or Group's Top Official <i>Lenny Olthausen</i>		Title <i>AD</i>	Date <i>8.6.24</i>



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

GAMING DIVISION

SFN 9338 (9-2023)

(40)

FAR 24-a

Applying for (check one)



Local Permit



Restricted Event Permit*

Games to be conducted



Raffle by a Political or Legislative District Party



Bingo



Raffle



Raffle Board



Calendar Raffle



Sports Pool



Poker*



Twenty-One*



Paddlewheels*

*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.

LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS

ORGANIZATION INFO

Name of Organization or Group Veterans Honor Flight of ND/MN		Dates of Activity (Does not include dates for the sales of tickets) August 25, 2024	
Organization or Group Contact Person Jane Matejcek	E-mail ladyjanemm@yahoo.com	Telephone Number 701-238-7749	
Business Address PO Box 294	City Hunter	State ND	ZIP Code 58047
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Redhawks Stadium		County Cass	
Site Physical Address 1515 15th Ave N	City Fargo	State ND	ZIP Code 58102
Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.) August 25th, 2024 50/50 Raffle			

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

Game Type	Description of Prize	Exact Retail Value of Prize
50/50 Raffles	Cash	estimate \$1,000
Total (limit \$40,000 per year)		\$

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds Veterans Honor Flight of ND/MN	
Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1 - June 30 (If yes, the organization or group does not qualify for a local permit or restricted event permit) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Has the organization or group received a local permit from an city or county for the fiscal year July 1 - June 30 (If yes, indicate the total retail value of all prizes previously awarded) <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes - Total Retail Value: \$11,305 (This amount is part of the total prize limit for \$40,000 per fiscal year)	
Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be for political purposes.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Printed Name of Organization Group's Permit Organizer Karen Haugen	Telephone Number 701-367-1518	E-mail Address Karenhaugen58@gmail.com
Signature of Organization Group's Permit Organizer <i>Karen Haugen</i>	Title <i>Volunteer</i>	Date <i>8/7/24</i>



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

GAMING DIVISION

SFN 9338 (9-2023)

Ad

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Applying for (check one)

☒ Local Permit
 ☐ Restricted Event Permit*
Games to be conducted ☐ Raffle by a Political or Legislative District Party
☐ Bingo
 ☐ Raffle
 ☒ Raffle Board
 ☐ Calendar Raffle
 ☐ Sports Pool
 ☐ Poker*
 ☐ Twenty-One*
 ☐ Paddlewheels*

*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.

LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS

ORGANIZATION INFO

Name of Organization or Group YWCA Cass Clay		Dates of Activity (Does not include dates for the sales of tickets) 09/05/2024	
Organization or Group Contact Person Erin Prochnow	E-mail eprochnow@ywcacassclay.org	Telephone Number 701-232-2547	
Business Address 4650 38th Ave S, Suite 110	City Fargo	State ND	ZIP Code 58104
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Delta by Marriott		County Cass	
Site Physical Address 1635 42nd St SW	City Fargo	State ND	ZIP Code 58103
Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.) Raffle Board 09/05/2024			

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle Board	Travel Travel Getaway	3,600.00
Raffle Board	Schmidt's Gold, Mother of Pearl, and Diamond Necklace	1,650.00
Raffle Board	RDO Kids Ride On Gator	533.59
Total (limit \$40,000 per year)		\$ 5,783.59

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds All proceeds benefit YWCA Emergency Shelter programs and operations	
Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1 - June 30 (If yes, the organization or group does not qualify for a local permit or restricted event permit) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Has the organization or group received a local permit from an city or county for the fiscal year July 1 - June 30 (If yes, indicate the total retail value of all prizes previously awarded) <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - Total Retail Value: <input type="text"/> (This amount is part of the total prize limit for \$40,000 per fiscal year)	
Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be for political purposes.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Printed Name of Organization Group's Permit Organizer Erin Prochnow	Telephone Number 701-232-2547	E-mail Address eprochnow@ywcacassclay.org
Signature of Organization Group's Permit Organizer 	Title CEO	Date 8/14/2024



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 GAMING DIVISION
 SFN 9338 (9-2023)

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Applying for (check one)

☐

Local Permit

☐

Restricted Event Permit*

Games to be conducted

☐

Raffle by a Political or Legislative District Party

☐

Bingo

☒

Raffle

☐

Raffle Board

☐

Calendar Raffle

☐

Sports Pool

☐

Poker*

☐

Twenty-One*

☐

Paddlewheels*

*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.

LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS

ORGANIZATION INFO

Name of Organization or Group El Zagal Outdoors Unlimited		Dates of Activity (Does not include dates for the sales of tickets) 9-10-24	
Organization or Group Contact Person Roger Ellsworth		E-mail rogerellsworth11@gmail.com	Telephone Number 612-849-2888
Business Address 1429 3rd St N.		City Fargo	State ND
Mailing Address (if different)		City	State ND
			ZIP Code 58102

SITE INFO

Site Name El Zagal Shrine		County Cass	
Site Physical Address 1429 3 ST N		City Fargo	State ND
			ZIP Code 58102
Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.) September 10, 2024			

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

Game Type	Description of Prize	Exact Retail Value of Prize
Meat Raffle	10 prizes each valued @ 50.00	500.00
Total (limit \$40,000 per year)		\$ 500.00

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds Fargo North Football	
Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240) <input type="checkbox"/> Yes <input type="checkbox"/> No	
Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1 - June 30 (If yes, the organization or group does not qualify for a local permit or restricted event permit) <input type="checkbox"/> Yes <input type="checkbox"/> No	
Has the organization or group received a local permit from an city or county for the fiscal year July 1 - June 30 (If yes, indicate the total retail value of all prizes previously awarded) <input type="checkbox"/> No <input type="checkbox"/> Yes - Total Retail Value: <input type="text"/> (This amount is part of the total prize limit for \$40,000 per fiscal year)	
Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be for political purposes.) <input type="checkbox"/> Yes <input type="checkbox"/> No	

Printed Name of Organization Group's Permit Organizer Roger A. Ellsworth	Telephone Number 612-849-2888	E-mail Address rogerellsworth11@gmail.com
Signature of Organization Group's Permit Organizer Roger Ellsworth	Title Pres.	Date 8/4/24

August 19, 2024

(5)

To: Board of City Commissioners

From: Steven Sprague, City Auditor

Re: Front Street Tap Room

The above named licensee has been provided a notice by the City Auditor's office of a liquor license compliance violation under section 25-1509 of the Fargo Municipal Code. The Liquor Control Board met on July 17, 2024 at 1:30 p.m. in the City Commission Chambers of City Hall, 225 4th Street North, Fargo ND to consider the violation.

The Liquor Control Board concurred with the Police Department and Auditor's office and recommended following the established administrative penalty, compliance check failure service to a minor. This is a first compliance check failure, the penalty is \$500. The licensee agreed with the findings and has chosen not to appeal the finding.

Recommended Motion

Agree with the findings of staff and the Liquor Control Board and apply the administrative penalty (\$500 fine, first failure) to the liquor license violations identified at Front Street Tap Room.

August 19, 2024



To: Board of City Commissioners

From: Steven Sprague, City Auditor

Re: VFW

The above named licensee has been provided a notice by the City Auditor's office of a liquor license compliance violation under section 25-1509 of the Fargo Municipal Code. The Liquor Control Board met on July 17, 2024 at 1:30 p.m. in the City Commission Chambers of City Hall, 225 4th Street North, Fargo ND to consider the violation.

The Liquor Control Board concurred with the Police Department and Auditor's office and recommended following the established administrative penalty, compliance check failure service to a minor. This is a first compliance check failure, the penalty is \$500. The licensee agreed with the findings and has chosen not to appeal the finding.

Recommended Motion

Agree with the findings of staff and the Liquor Control Board and apply the administrative penalty (\$500 fine, first failure) to the liquor license violations identified at VFW

August 9, 2024

①

To: Board of City Commissioners
From: Steven Sprague, City Auditor *SS*
Re: Server training compliance failures

In December 2022 the City of Fargo changed the ordinance relating to server training, we now require the licensees to make sure all employees involved in the stream of service get the proper server training. The City no longer conducts the server training, server training is available on line 24/7 through the ND Safety Counsel. Because of this change licensees are responsible to monitor their employees. The City hired an outside firm to conduct a Server Training Audit. The audit results were presented to the Liquor Control Board at a regular meeting.

All licensees who failed the compliance test were provided a notice by the City Auditor's office of a liquor license compliance violation under section 25-1511 of the Fargo Municipal Code. The Liquor Control Board meet on July 17, 2024 at 1:30 p.m. in the City Commission Chambers of City Hall, 225 4th Street North, Fargo ND to consider the violations.

The Liquor Control Board determined all licensees not in compliance as of July 17, 2024 would be considered to be in violation of the ordinance. Licensees were provided the opportunity to demonstrate compliance by providing documentation to the City Auditor's office. For those not providing documentation the Liquor Board concurred with the Auditor's office and recommended applying the administrative penalty. This is a first failure for not having staff server trained, the administrative penalty is \$500.

Recommended Motion

Agree with the findings of staff and the Liquor Control Board and apply the \$500 administrative penalty for first failure to the liquor license violations identified at the following establishments. Hi Ho South, Applebee's on 45th, Fargo Billiards, Delta Hotels, Chili's, Candlewood Suites.

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE



Project No. FM-15-F3

Type: Final Balancing Change Order #1

Location: 714 Hackberry Drive South

Date of Hearing: 8/12/2024

RoutingDate

City Commission

8/19/2024

PWPEC File

X

Project File

Christine Goldader

The Committee reviewed the accompanying correspondence from Project Manager, Christine Goldader, regarding Final Balancing Change Order #1 in the amount of \$11,443.18, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Final Balancing Change Order #1 in the amount of \$11,443.18, bringing the total contract amount to \$161,933.18.

On a motion by Steve Sprague, seconded by Susan Thompson, the Committee voted to recommend approval of Final Balancing Change Order #1 to Excavating, Inc.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Final Balancing Change Order #1 in the amount of \$11,443.18, bringing the total contract amount to \$161,933.18 to Excavating, Inc.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax

Yes No

Developer meets City policy for payment of delinquent specials

N/A

Agreement for payment of specials required of developer

N/A

Letter of Credit required (per policy approved 5-28-13)

N/A

COMMITTEE

Present Yes No Unanimous

Tim Mahoney, Mayor

☐☐☐☒

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Brenda Derrig, Assistant City Administrator

☒☒☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

Tom Knakmuhs, City Engineer


☒☒☐

Susan Thompson, Finance Director

☒☒☐

ATTEST:

C: Kristi Olson


 Tom Knakmuhs, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Christine Goldader, Project Manager
Date: August 12, 2024
Re: Project No. FM-15-F3 – Final Balancing Change Order #1

Background:

The attached Final Balancing Change Order #1 in the amount of \$11,443.18 reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

The original contract bid price for this project was \$150,490.00 and the project final amount is \$161,933.18.

Recommended Motion:

Approve the Final Balancing Change Order #1 in the amount of \$11,443.18 to Excavating, Inc.

CAG/klb
Attachment



CHANGE ORDER REPORT
DEMOLITION, LEVEE CONSTRUCTION, SITE RESTORATION & INCIDENTALS
PROJECT NO. FM-15-F3
#714 HACKBERRY DRIVE SOUTH

Final Balancing
Change Order

Change Order No 1 Change Order Date 7/29/2024
Contractor Excavating, Inc - Fargo

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE Change Order # 1

Final Balancing Change Order.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Flood Mitigation	7	Rem & Repl Curb & Gutter	LF	30		30	1	31	\$77.50	\$77.50
	10	Sediment Control Log 6" to 8" Dia	LF	70		70	20	90	\$4.25	\$85.00
	13	Remove Tree	EA	4		4	2	6	\$240.00	\$480.00
	18	Excavate & Haul - Excess Material	CY	200		200	57	257	\$7.65	\$436.05
	19	Fill - Import	CY	2000		2000	443	2443	\$14.85	\$6,578.55
	21	Topsoil - Import	CY	250		250	120	370	\$17.85	\$2,142.00
	23	Seeding Type C	SY	2500		2500	1274	3774	\$0.67	\$853.58
	24	Mulching Type 1 Hydro	SY	2500		2500	1275	3775	\$0.62	\$790.50
Flood Mitigation Sub Total									\$11,443.18	

Summary

Source Of Funding	Infrastructure Sales Tax Fund 460
Net Amount Change Order # 1 (\$)	\$11,443.18
Previous Change Orders (\$)	\$0.00
Original Contract Amount (\$)	\$150,490.00
Total Contract Amount (\$)	\$161,933.18

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

APPROVED

For Contractor

Title



Estimator/Project Manager

APPROVED DATE

Department Head

Mayor

Attest



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

9

Project No. SR-24-B1

Type: Change Order #1

Location: Citywide

Date of Hearing: 8/12/2024

RoutingDate

City Commission

8/19/2024

PWPEC File

X

Project File

Brandon Beaudry

The Committee reviewed the accompanying correspondence from Project Engineer, Brandon Beaudry, related to Change Order #1 in the amount of \$82,514.40 for additional sidewalk spot repairs.

Staff is recommending approval of Change Order #1 in the amount of \$82,514.40, bringing the total contract amount to \$721,326.20.

On a motion by Steve Sprague, seconded by Susan Thompson, the Committee voted to recommend approval of Change Order #1 to Border States Paving.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #1 in the amount of \$82,514.40, bringing the total contract amount to \$721,326.20 to Border States Paving.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax & Special Assessments

Developer meets City policy for payment of delinquent specials
 Agreement for payment of specials required of developer
 Letter of Credit required (per policy approved 5-28-13)

Yes	No
	N/A
	N/A
	N/A

COMMITTEE

Present	Yes	No	Unanimous
			<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Michael Redlinger
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Tim Mahoney, Mayor

Nicole Crutchfield, Director of Planning

Steve Dirksen, Fire Chief

Brenda Derrig, Assistant City Administrator

Ben Dow, Director of Operations

Steve Sprague, City Auditor

Tom Knakmuhs, City Engineer

Susan Thompson, Finance Director

ATTEST:

C: Kristi Olson

Tom Knakmuhs, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Brandon Beaudry, Project Inspector
Date: August 5, 2024
Re: Project No. SR-24-B1 - Change Order #1

Background:

Project No. SR-24-B1 is for Sidewalk & Shared Use Path Rehab/Reconstruction. This project consists of sidewalk & shared use path removal and replacement, new sidewalk installation, and incidentals Citywide.

Border States Paving Inc. is the Prime Contractor for this project.

This change order is for additional sidewalk spot repairs added to the contract through public complaints & requests at various areas Citywide.

The attached change order in the amount of **\$82,514.40** which increases the total contract amount to \$721,326.20 (12.92% of the original contract) for additional work as shown on Change Order #1.

This project is funded by Sales Tax and Special Assessments.

Recommended Motion:

Approve Change Order #1 to Border States Paving Inc in the amount of \$82,514.40

BGB/klb
Attachment

C: Tom Knakmuhs
Kevin Gorder



CHANGE ORDER REPORT
SIDEWALK & SHARED USE PATH REHAB/RECONSTRUCTION
PROJECT NO. SR-24-B1
VARIOUS AREAS CITY WIDE

Change Order No 1 **Change Order Date** 8/1/2024
Contractor Border States Paving Inc

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE Change Order # 1

Additional quantity for sidewalk complaints received throughout construction season.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Assessed	2	F&I Sidewalk 6" Thick Reinf Conc	SY	40		40	14	54	\$95.00	\$1,330.00
	3	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	76		76	100	176	\$100.00	\$10,000.00
	4	Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	40		40	14	54	\$115.00	\$1,610.00
	6	Remove Tree	EA	16		16	3	19	\$790.00	\$2,370.00
							Assessed Sub Total			\$15,310.00
City Paid	9	Rem & Repl Curb & Gutter	LF	200		200	200	400	\$80.00	\$16,000.00
	10	F&I Sidewalk 4" Thick Reinf Conc	SY	700		700	70	770	\$72.50	\$5,075.00
	11	F&I Sidewalk 6" Thick Reinf Conc	SY	70		70	65	135	\$95.00	\$6,175.00
	12	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	30		30	100	130	\$100.00	\$10,000.00
	14	F&I Det Wam Panels Cast Iron	SF	144		144	32	176	\$65.20	\$2,086.40
	15	Casting to Grade - w/Conc	EA	4		4	23	27	\$736.00	\$16,928.00

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
	21	Mulching Type 1 Hydro	SY	5840		5840	700	6540	\$5.00	\$3,500.00
	22	Seeding Type B	SY	5840		5840	700	6540	\$5.00	\$3,500.00
	23	Irigation Repair	EA	10		10	5	15	\$788.00	\$3,940.00
City Paid Sub Total										\$67,204.40

Summary

Source Of Funding

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

Special Assessed / Sales Tax
\$82,514.40
\$0.00
\$638,811.80
\$721,326.20

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

APPROVED
For Contractor
Title

8/15/2024

Project Manager

APPROVED DATE
Department Head
Mayor
Attest



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

10

Project No.: RR-25-A1

Type: BNSF Crossing Surface Installation

Location: 27th Street North Railroad Crossing

Date of Hearing: 8/12/2024

RoutingDate

City Commission

8/19/2024

PWPEC File

X

Project File

Eric Hodgson

The Committee reviewed the accompanying correspondence from Project Manager, Eric Hodgson, regarding a Crossing Surface Installation Agreement from BNSF for the at-grade crossing located at 27th Street North, south of 1st Avenue North.

On July 29, 2024, PWPEC discussed the requested closure of this at-grade crossing and decided that keeping the current crossing was beneficial to the City. Subsequently, BNSF wants to replace the crossing material at this location. Per our original agreement with BNSF, the City would reimburse BNSF for all expenses incurred. Total estimated project cost is \$301,180 to be paid using City Sales Tax Infrastructure Funds.

Staff is seeking approval of the Crossing Surface Installation Agreement from BNSF to resurface the crossing at 27th Street North.

On a motion by Ben Dow, seconded by Michael Redlinger, the committee voted to recommend approval of the Crossing Surface Installation Agreement with BNSF.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve the Crossing Surface Installation Agreement with BNSF for the resurfacing of the 27th Street North Railroad At-Grade Crossing.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax

Yes	No
	N/A
	N/A
	N/A

Developer meets City policy for payment of delinquent specials
 Agreement for payment of specials required of developer
 Letter of Credit required (per policy approved 5-28-13)

COMMITTEE

Tim Mahoney, Mayor
 Nicole Crutchfield, Director of Planning
 Steve Dirksen, Fire Chief
 Brenda Derrig, Assistant City Administrator
 Ben Dow, Director of Operations
 Steve Sprague, City Auditor
 Tom Knakmuhs, City Engineer
 Susan Thompson, Finance Director

Present	Yes	No	Unanimous
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Michael Redlinger
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


 Tom Knakmuhs, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Eric Hodgson, Civil Engineer II
Date: August 12, 2024
Re: 27th Street North Railroad At-Grade Crossing
(RR-25-A1)

Background:

BNSF contacted the City of Fargo to discuss the City's willingness to close an at-grade crossing located on 27th Street North, south of 1st Avenue North (DOT Crossing # 070828T). BNSF, along with other railroads, received guidance from the Federal Railroad Administration to close any redundant or unnecessary crossings to help reduce the number of accidents at railroad crossings. Currently, alternate access exists via the 25th Street underpass located approximately 400 feet east of this location. BNSF and the State offered monetary incentives to the City for the closure.

On July 29th, 2024 PWPEC discussed this matter and decided that keeping the current crossing was beneficial to the City. Subsequently, BNSF wants to replace the crossing material at this location, and per our original agreement with BNSF, the City would reimburse BNSF for all expenses incurred.

Attached is the Crossing Surface Installation Agreement that BNSF needs the City to sign in order to move forward with the project. Legal reviewed the Agreement, and the only issue noted is that the contractor requirements will probably be difficult for contractors to meet therefore likely limiting the number of qualified bidders.

Total Estimated Project Cost = \$301,180.00

This project will utilize City Sales Tax Infrastructure Funds.

Recommended Motion:

Sign the Crossing Surface Installation Agreement from BNSF.

EBH/jmg

Attachments:

- Crossing Surface Installation Agreement
- Estimate

C: Jeremy Gorden

CROSSING SURFACE INSTALLATION AGREEMENT

BNSF File No.: BF-20519116
Mile Post 9.15
Line Segment 26
U.S. DOT Number 070828T
KO Subdivision

This Crossing Surface Installation Agreement (hereinafter called, this "Agreement") is entered into effective as of _____, by and between **CITY OF FARGO** (hereinafter called, "**AGENCY**") and BNSF Railway Company (hereinafter called, "**BNSF**").

WHEREAS, BNSF operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, AGENCY desires to replace the existing concrete crossing surface 27th Street N with a new concrete crossing surface;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1) **BNSF Work.** The Company will install two new concrete crossing surfaces for a width of 56 feet from the edge of the pavement on the East side of the tracks to the edge of the pavement on the West side of the tracks. The new crossing surface will adequately cover all vehicular driving lanes at 27th Street N. The Company will perform all necessary track upgrades to accommodate the new crossing surface.
- 2) **AGENCY Work.** AGENCY must construct the Project as shown on the attached Exhibit A and do all work ("AGENCY's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. AGENCY must furnish all labor, materials, tools and equipment for the performance of AGENCY's Work. The principal elements of AGENCY's Work are as follows:
 - A. Design and Construction of 27th Street N;
 - B. Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
 - C. Installation of advance warning signs in accordance with the MUTCD;

- D. Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- E. Provide suitable drainage, both temporary and permanent;
- F. Provide all barricades, lights, flagmen or traffic control devices as necessary, during the installation of the concrete pedestrian crossing surfaces;
- G. Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF.

- 3) **Payment; Invoicing.** Upon execution of this Agreement by both parties hereto, Company will send Agency an invoice detailing the total amount owed by Agency for the new crossing surface. Company shall send to Agency a final invoice upon completion and Agency shall pay the final invoice within 30 days of receipt.

Agency agrees to pay Company One Thousand Six Hundred Seventy and No/100 Dollars (\$1,670.00) per foot for the new crossing surface. Agency's **ESTIMATED** total cost for the new crossing surface is One Hundred Eighty Six Thousand Eight Hundred Fifty Nine and No/100 Dollars (\$186,859.00).

- 4) **Maintenance of the Crossing Surface.** After installation of the new crossing surface is completed, BNSF will maintain, at its own cost and expense, the crossing surface, against normal wear and tear, in a satisfactory manner for the expected life of the crossing surface. Notwithstanding the preceding sentence, BNSF shall be entitled to receive any contribution toward the cost of such maintenance made available by reason of any existing or future laws, ordinances, regulations, orders, grants, or other means or sources.
- 5) **Vehicular Traffic during Installation.** The AGENCY shall provide, at its own cost and expense, all necessary barricades, lights or traffic control devices for detouring vehicular/pedestrian traffic at the 27th Street N crossing during installation of the new crossing surface.
- 6) **Drainage.** The AGENCY agrees to allow BNSF to drain water from the 27th Street N crossing area into existing AGENCY storm sewers, if such storm sewers are available. Drain pipes and filter fabric necessary for such drainage will be furnished and installed by BNSF.
- 7) **Roadway Surfacing Work.** The AGENCY agrees to provide, at its sole cost and expense, enough asphalt to cover the distance between the existing roadway surface at 27th Street N and the new crossing surface on both sides of the track as well as the area between the tracks.

- 8) **Contractor Requirements:** AGENCY must require its contractor to comply with the obligations set forth in this Agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor, the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

No work shall be commenced within BNSF's right of way until the AGENCY's contractor shall have (i) executed and delivered to BNSF an agreement in the form of said Exhibit C-1 and (ii) delivered to and secured BNSF's approval of the required insurance.

- 9) **Term.** This Agreement begins on the effective date set forth above and remains in effect until completion of all work contemplated in this Agreement and AGENCY's payment of the amounts set forth in Section 3 above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first written above.

BNSF Railway Company:

By: _____

Printed Name: _____

Title: _____

AGENCY:

CITY OF FARGO

By: _____

Printed Name: _____

Title: _____

Exhibit A



EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the reconstruction of the railroad crossing surface approaches and associated traffic control at 27th Street N (DOT 070828T) in Fargo, ND.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to **Rosa Martinez** at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify **The City of Fargo** and Railway's Manager Public Projects, telephone number 763-782-3476 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file BF-20519116.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor

must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer Steve Lyne at 402-304-6670 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to Anoka County and must not be undertaken until approved in writing by the Railway, and until Anoka County has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for

protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.

- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by The City of Fargo for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.
- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's

property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.eRailsafe.com, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's **Roadmaster Kasey Moreland (telephone 218-791-1992)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
- **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - **1.05.03c** The cost of flagger services provided by the Railway will be borne by The City of Fargo. The estimated cost for one (1) flagger is approximately between \$1,200.00-\$2,000.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
 - **1.05.03d** The average train traffic on this route is 20 freight trains per 24-hour period at a timetable speed 35 MPH and N/A passenger trains at a timetable speed of N/A MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker

Protection Regulations.

- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFContractor.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09** THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative Kasey Moreland (218-791-1992)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately:
(a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery;
(b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- ☐ Passenger on train (C) ☐ Non-employee (N)
(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)
- ☐ Contractor/safety sensitive (F) ☐ Contractor/non-safety sensitive (G)
- ☐ Volunteer/safety sensitive (H) ☐ Volunteer/other non-safety sensitive (I)
- ☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- ☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- ☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name) (Employee No.) (Phone #)

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM
DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490**



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St: _____	2. Date: _____	Time: _____
County: _____ (if non BNSF location)	3. Temperature: _____	4. Weather: _____
Mile Post / Line Segment: _____		
5. Driver's License No (and state) or other ID: _____		SSN (required): _____
6. Name (last, first, mi): _____		
7. Address: _____	City: _____	St: _____ Zip: _____
8. Date of Birth: _____	and/or Age: _____ (if available)	Gender: _____
Phone Number: _____	Employer: _____	
9. Injury: _____ (i.e., Laceration, etc.)	10. Body Part: _____ (i.e., Hand, etc.)	
11. Description of Accident (To include location, action, result, etc.): _____ _____ _____		
12. Treatment:		
<input type="checkbox"/> First Aid Only	_____	
<input type="checkbox"/> Required Medical Treatment	_____	
<input type="checkbox"/> Other Medical Treatment	_____	
13. Dr. Name: _____		Date: _____
14. Dr. Address:		
Street: _____	City: _____	St: _____ Zip: _____
15. Hospital Name: _____		
16. Hospital Address:		
Street: _____	City: _____	St: _____ Zip: _____



EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: _____

Agency Project: _____

_____(hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, with **The City of Fargo** for the performance of certain work in connection with the following project: reconstruction of the railroad crossing surface approaches and associated traffic control at 27th Street N (DOT 070828T) in Fargo, ND. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **The City of Fargo** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS,**



EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE



Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.



No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.



A. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.



Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.



If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes



(together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

1) EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.



2) TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative Kasey Moreland (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.



IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

Contractor Legal Name

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____
Manager Public Projects

Title: _____

Accepted and effective this _____ day of 20____.

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

Construction Year: 2025
Prices: Annual Construction Inflation = 8%
Year of Estimate = 2024

Line	Name	Quantity	Unit	Unit Value \$	Value \$
Paving					
	Mobilization	1	LS	\$ 15,450.00	\$ 15,450.00
	Traffic Control	1	LS	\$ 10,000.00	\$ 10,000.00
	Remove Pavement All Thicknesses All Types	39	SY	\$ 30.00	\$ 1,183.33
	Remove Curb & Gutter	8	LF	\$ 15.00	\$ 120.00
	F&I Pavement 7" Thick Asphalt	42	SY	\$ 65.00	\$ 2,708.33
	Railroad Crossing Material	112	LF	\$ 1,670.00	\$ 186,859.00
	Railroad Protection Insurance	1	LS	\$ 5,000.00	\$ 5,000.00
				Paving Total	\$221,320.67
				Total w/26% Fees and Contingency	

(13)

Engineering Department

225 4th Street North

Fargo, ND 58102

Phone: 701.241.1545 | Fax: 701.241.8101

Email feng@FargoND.gov

www.FargoND.gov

August 2, 2024

Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

**Re: Memorandum of Offer to Landowner
Permanent Easements – Improvement District #PR-24-A1**

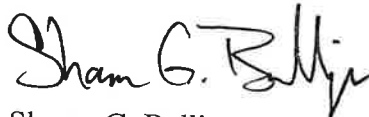
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of (2) permanent easements in association with Improvement District #PR-24-A1. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize the purchase of (2) permanent easements from **PB&J Properties, LLC** in association with Improvement District #PR-24-A1 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner & Easement documents on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Kasey McNary
Jeremy Engquist

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project PR-24-A1	County Cass	Parcel(s) 01882400100000
Landowner PB&J Properties, LLC		
Mailing Address 5522 36th St S Fargo, ND 58104		

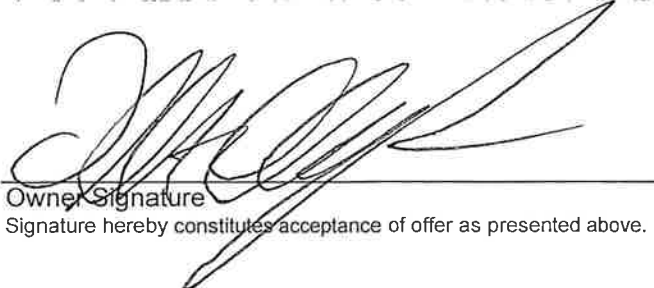
The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See enclosed easement(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 64,204.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	
Easement and Access Control	\$	<u>64,204.00</u>
Improvements on Right of Way*	\$	
Damages to Remainder	\$	
Total Offer	\$	<u>64,204.00</u>

*Description of Damages to Remainder are as follows:


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


 Shawn G. Bullinger
 Land Acquisition Specialist, City of Fargo

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

CITY OF
Fargo

Timothy J. Mahoney

MAYOR

SIGNATURE

DATE

PERMANENT EASEMENT
(Street and Utility)

This Permanent Easement is made and entered by and between **PB&J Properties, LLC**, a North Dakota limited liability company, hereinafter referred to as “Grantor”, and **City of Fargo, Cass County, North Dakota**, a municipal corporation, its successors and assigns, hereinafter referred to as “Grantee”.

WHEREAS, Grantor owns property located at 4266 32nd Avenue South in Fargo, which is bordered to the north by 32nd Avenue South, and is more particularly described as:

Lot 1, Block 1, Asleson Commercial 3rd Addition, located within the City of Fargo, situate in the County of Cass and State of North Dakota;

WHEREAS, Grantee desires to widen 32nd Avenue South between 42nd Street South and 45th Street South;

WHEREAS, Grantor agrees to grant unto Grantee a street and utility easement and public utility easement allowing 32nd Avenue South to be widened and allow for a separated sidewalk along the south side of 32nd Avenue South;

WHEREAS, there is an existing sign located within the easement areas being granted by Grantor to Grantee, and the parties wish to leave the sign within the easement areas;

WHEREAS, the parties hereto now wish to define their rights and obligations with respect to the easement granted hereby and the existing sign to remain within the easement area.

1. Grantor, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO** Grantee a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of laying, constructing, operating, maintaining and repairing a street and all other public utilities, together with the customary appurtenances including location of any and all utilities, said parcel being more particularly described as follows:

A tract of land in Lot 1, Block 1 of Asleson Commercial Third Addition on file as document 1671793 at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota described as follows:

The northerly 12.00 feet of said Lot 1.

Said tract contains 4,152 square feet, more or less.

(hereafter the "Easement Area"). The Easement Area is pictorially represented on Exhibit A attached hereto and incorporated herein by reference.

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

3. Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said street and customary appurtenances including location of any and all utilities, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the construction, operation, maintenance or repair of said street including location of any and all utilities or customary appurtenances, provided that Grantee, at its own expense, shall

refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said street and public utilities and customary appurtenances was begun.

4. The parties hereby agree that Grantor may leave the existing sign within the Easement Area. The location of the sign is more particularly described as:

A tract being a part of Lot 1, Block 1 of Asleson Commercial 3rd Addition on file as document 1671793 at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota described as follows:

The easterly 26.00 feet of the westerly 174.50 feet of the southerly 10.00 feet of the northerly 12.00 feet of said Lot 1.

Said tract contains 260 square feet, more or less.

(hereafter the "Sign Location").

5. It is the intent of the parties hereto to allow Grantor to leave the existing sign within the Sign Location, which is within the above-described Easement Area.

6. Grantor shall be responsible for all maintenance, upkeep, and repairs to the sign and all components of the sign. Grantor shall be solely responsible for all the associated costs and expenses of the maintenance, upkeep, repairs, or replacement of the sign and all components thereof.

7. Grantor shall be responsible for the repair and replacement of any portion of public property, including the street, sidewalk, and public utilities, which may be damaged or destroyed as a direct result of Grantor's use, operation, and maintenance of the sign whether occurring within or outside the Easement Area.

8. Grantor shall be responsible for any and all insurance coverage for the sign, at Grantor's discretion, and Grantee shall not be responsible nor liable for providing any insurance,

paying any premiums, or paying any increased insurance premiums due to the existence of the sign within the Easement Area.

9. To the extent it becomes necessary in the future to have the sign relocated to a location outside of the Easement Area, then Grantee will be responsible for all costs to remove and/or relocate the sign to Grantor's private property, but only so long as the request to relocate the sign is made by Grantee. Grantee shall also then be responsible for restoring the Easement Area to a vegetated surface upon completion of the relocation of the sign.

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this _____ day of _____, 2024.

GRANTOR:

PB&J Properties, LLC

By: _____

Its: _____

STATE OF _____)

_____)

COUNTY OF _____)

On this _____ day of _____, 2024, before me, a notary public in and for said county and state, personally appeared _____ to me known to be the _____ of **PB&J Properties, LLC**, and executed the within and foregoing instrument, and acknowledged the same.

(SEAL)

Notary Public

My Commission Expires:

GRANTEE:

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

Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

On this _____ day of _____, 2024, before me a notary public in and for said county and state, personally appeared Timothy J. Mahoney and Steve Sprague, known to me to be the Mayor and City Auditor, respectively, of the city of Fargo, the Grantee described in and that executed the within and foregoing instrument, and acknowledged to me that said Grantee executed the same.

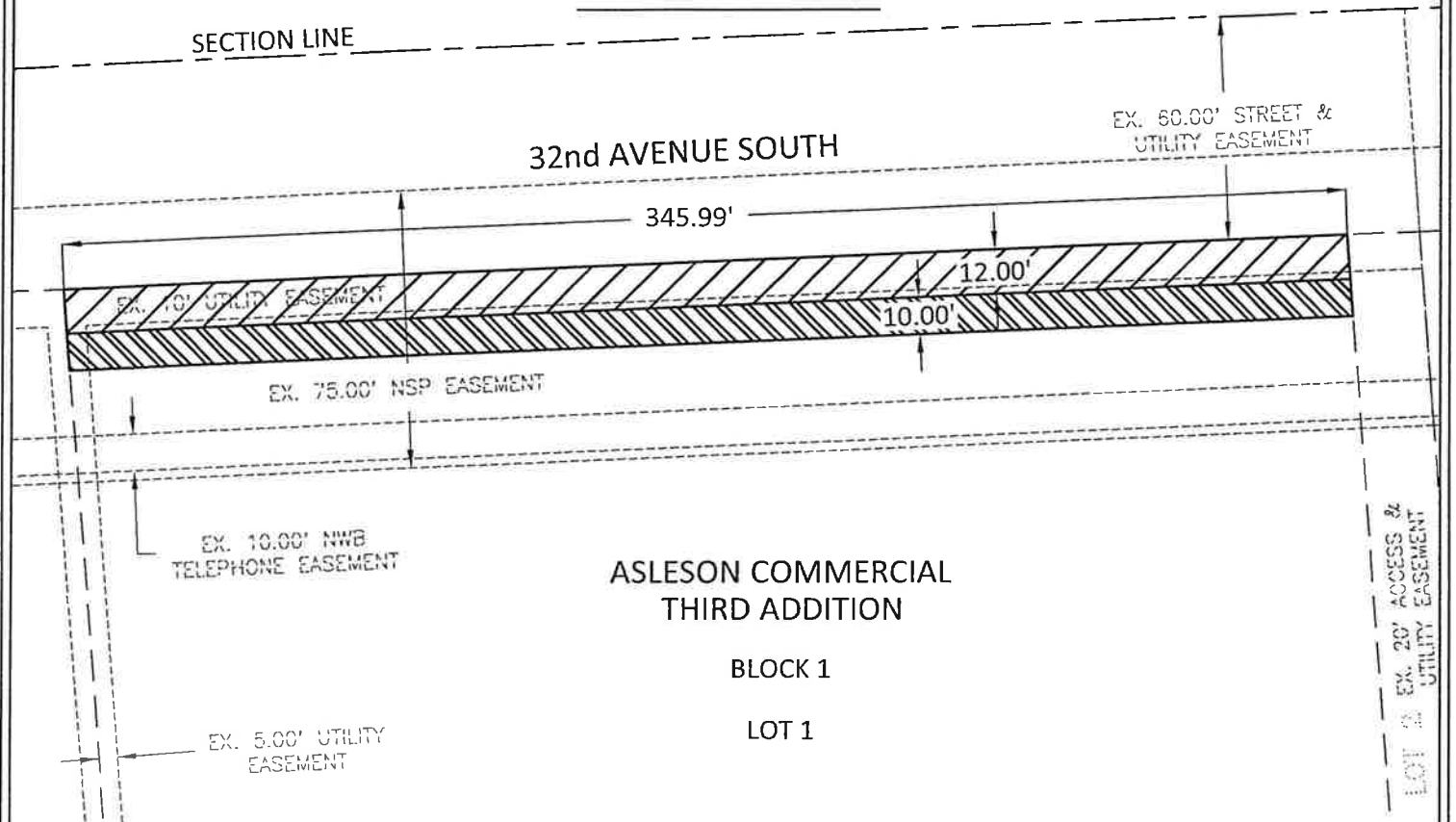
(SEAL)

Notary Public
My Commission Expires:

The legal description was prepared by:
Brent W. Wacha (LS-5068)
Professional Land Surveyor
City of Fargo – Engineering
225 4th Street North
Fargo ND 58102
(701) 476-6638

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

EXHIBIT A



LEGEND

- STREET & UTILITY EASEMENT
- UTILITY EASEMENT
- EXISTING LOT LINE
- RIGHT OF WAY
- EXISTING EASEMENT
- SECTION LINE



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



ENGINEERING DEPT.

PERMANENT EASEMENT

LOT 1, BLOCK 1, ASLESON COMMERCIAL THIRD ADDITION,
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: JWZ

APPROVED BY: BWW

DATE: MARCH 25, 2024

SHEET 1 OF 2

EXHIBIT A

Street & Utility Easement Description:

A tract of land in Lot 1, Block 1 of Asleson Commercial Third Addition on file as document 1671793 at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota described as follows:

The northerly 12.00 feet of said Lot 1.

Said tract contains 4,152 square feet, more or less.

Utility Easement Description:

A tract of land in Lot 1, Block 1 of Asleson Commercial Third Addition on file as document 1671793 at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota described as follows:

The southerly 10.00 feet of the northerly 22.00 feet of said Lot 1.

Said tract contains 3,460 square feet, more or less.



ENGINEERING DEPT.

PERMANENT EASEMENT

LOT 1, BLOCK 1, ASLESON COMMERCIAL THIRD ADDITION,
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: JWZ

APPROVED BY: BWV

DATE: MARCH 25, 2024

SHEET 2 OF 2

PERMANENT EASEMENT
(Utility)

This Permanent Easement is made and entered by and between **PB&J Properties, LLC**, a North Dakota limited liability company, hereinafter referred to as “Grantor”, and **City of Fargo, Cass County, North Dakota**, a municipal corporation, its successors and assigns, hereinafter referred to as “Grantee”.

WHEREAS, Grantor owns property located at 4266 32nd Avenue South in Fargo, which is bordered to the north by 32nd Avenue South, and is more particularly described as:

Lot 1, Block 1, Asleson Commercial 3rd Addition, located within the City of Fargo, situate in the County of Cass and State of North Dakota;

WHEREAS, Grantee desires to widen 32nd Avenue South between 42nd Street South and 45th Street South;

WHEREAS, Grantor agrees to grant unto Grantee a street and utility easement and public utility easement allowing 32nd Avenue South to be widened and allow for a separated sidewalk along the south side of 32nd Avenue South;

WHEREAS, there is an existing sign located within the easement areas being granted by Grantor to Grantee, and the parties wish to leave the sign within the easement areas;

WHEREAS, the parties hereto now wish to define their rights and obligations with respect to the easement granted hereby and the existing sign to remain within the easement area.

1. Grantor, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO** Grantee a permanent and perpetual easement over, upon and in the land hereinafter described for the purpose of laying, constructing, operating, maintaining and repairing public utilities, together with the customary appurtenances including location of any and all utilities, said parcel being more particularly described as follows::

A tract of land in Lot 1, Block 1 of Asleson Commercial Third Addition on file as document 1671793 at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota described as follows:

The southerly 10.00 feet of the northerly 22.00 feet of said Lot 1.

Said tract contains 3,460 square feet, more or less.

(hereafter the "Easement Area"). The Easement Area is pictorially represented on Exhibit A attached hereto and incorporated herein by reference.

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

3. Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said public utilities and customary appurtenances including location of any and all utilities, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the construction, operation, maintenance or repair of said street including location of any and all utilities or customary appurtenances, provided that Grantee, at its

own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said public utilities and customary appurtenances was begun.

4. The parties hereby agree that Grantor may leave the existing sign within the Easement Area. The location of the sign is more particularly described as:

A tract being a part of Lot 1, Block 1 of Asleson Commercial 3rd Addition on file as document 1671793 at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota described as follows:

The easterly 26.00 feet of the westerly 174.50 feet of the southerly 10.00 feet of the northerly 12.00 feet of said Lot 1.

Said tract contains 260 square feet, more or less.

(hereafter the "Sign Location").

5. It is the intent of the parties hereto to allow Grantor to leave the existing sign within the Sign Location, which is within the above-described Easement Area.

6. Grantor shall be responsible for all maintenance, upkeep, and repairs to the sign and all components of the sign. Grantor shall be solely responsible for all the associated costs and expenses of the maintenance, upkeep, repairs, or replacement of the sign and all components thereof.

7. Grantor shall be responsible for the repair and replacement of any portion of public property, including the street, sidewalk, and public utilities, which may be damaged or destroyed as a direct result of Grantor's use, operation, and maintenance of the sign whether occurring within or outside the Easement Area.

8. Grantor shall be responsible for any and all insurance coverage for the sign, at Grantor's discretion, and Grantee shall not be responsible nor liable for providing any insurance,

paying any premiums, or paying any increased insurance premiums due to the existence of the sign within the Easement Area.

9. To the extent it becomes necessary in the future to have the sign relocated to a location outside of the Easement Area, then Grantee will be responsible for all costs to remove and/or relocate the sign to Grantor's private property, but only so long as the request to relocate the sign is made by Grantee. Grantee shall also then be responsible for restoring the Easement Area to a vegetated surface upon completion of the relocation of the sign.

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this ____ day of _____, 2024.

GRANTOR:

PB&J Properties, LLC

By: _____
Its: _____

STATE OF _____)
_____)
COUNTY OF _____)

On this ____ day of _____, 2024, before me, a notary public in and for said county and state, personally appeared _____ to me known to be the _____ of **PB&J Properties, LLC**, and executed the within and foregoing instrument, and acknowledged the same.

(SEAL)

Notary Public
My Commission Expires:

GRANTEE:

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

Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

On this _____ day of _____, 2024, before me a notary public in and for said county and state, personally appeared Timothy J. Mahoney and Steve Sprague, known to me to be the Mayor and City Auditor, respectively, of the city of Fargo, the Grantee described in and that executed the within and foregoing instrument, and acknowledged to me that said Grantee executed the same.

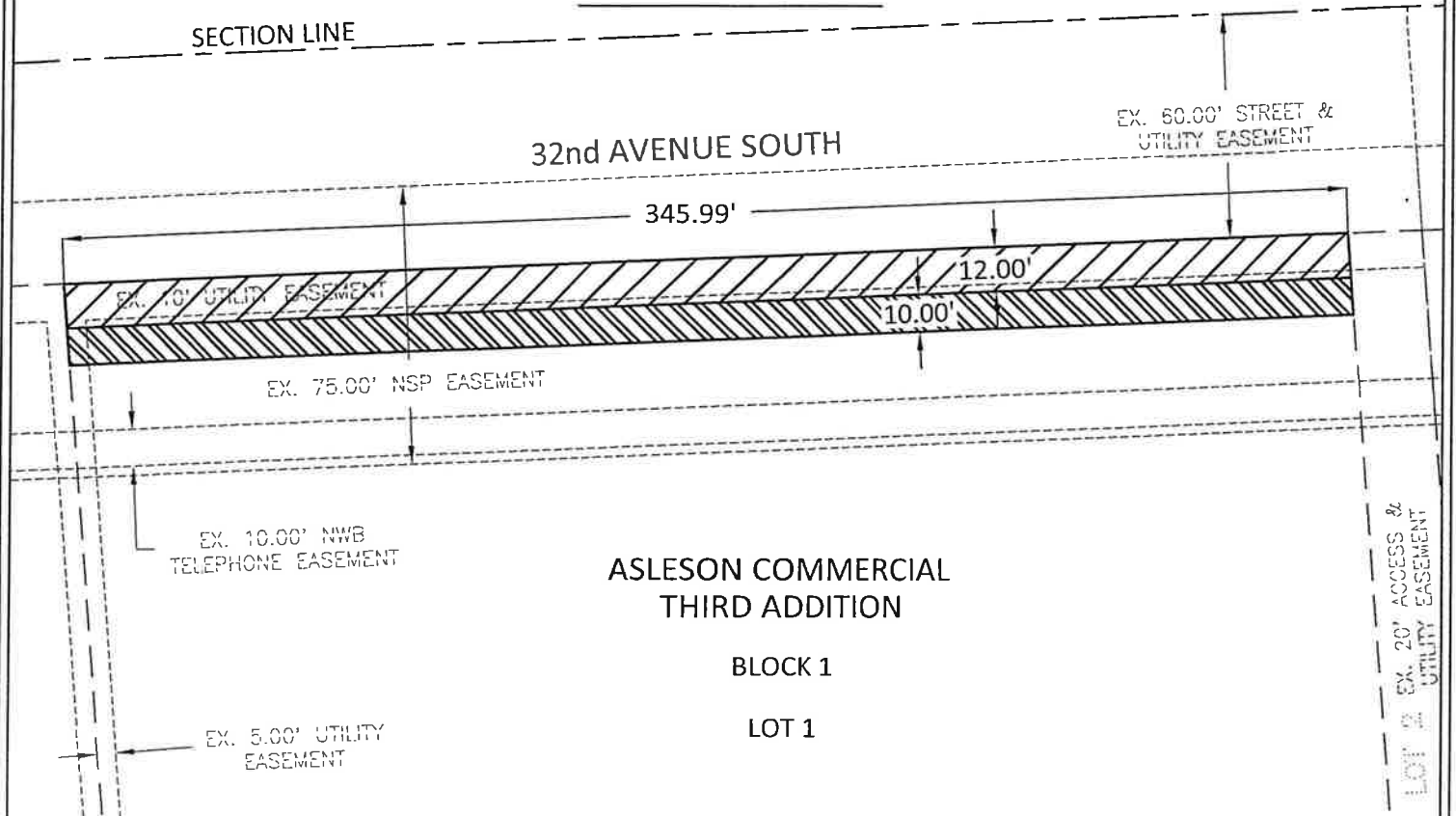
(SEAL)

Notary Public
My Commission Expires:

The legal description was prepared by:
Brent W. Wacha (LS-5068)
Professional Land Surveyor
City of Fargo – Engineering
225 4th Street North
Fargo ND 58102
(701) 476-6638

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

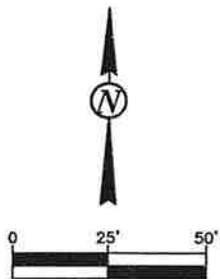
EXHIBIT A



ASLESON COMMERCIAL
THIRD ADDITION

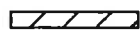





BLOCK 1

LOT 1



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

LEGEND

-  STREET & UTILITY EASEMENT
-  UTILITY EASEMENT
-  EXISTING LOT LINE
-  RIGHT OF WAY
-  EXISTING EASEMENT
-  SECTION LINE



ENGINEERING DEPT.

PERMANENT EASEMENT

LOT 1, BLOCK 1, ASLESON COMMERCIAL THIRD ADDITION,
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: JWZ

APPROVED BY: BWW

DATE: MARCH 25, 2024

SHEET 1 OF 2

EXHIBIT A

Street & Utility Easement Description:

A tract of land in Lot 1, Block 1 of Asleson Commercial Third Addition on file as document 1671793 at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota described as follows:

The northerly 12.00 feet of said Lot 1.

Said tract contains 4,152 square feet, more or less.

Utility Easement Description:

A tract of land in Lot 1, Block 1 of Asleson Commercial Third Addition on file as document 1671793 at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota described as follows:

The southerly 10.00 feet of the northerly 22.00 feet of said Lot 1.

Said tract contains 3,460 square feet, more or less.



PERMANENT EASEMENT

LOT 1, BLOCK 1, ASLESON COMMERCIAL THIRD ADDITION,
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA



DRAWN BY: JWZ

APPROVED BY: BWV

DATE: MARCH 25, 2024

SHEET 2 OF 2



FINANCE OFFICE
225 4th Street North
Fargo, ND 58102
Phone: (701) 241-1333
www.FargoND.gov

TO: Board of Commissioners

FROM: Susan Thompson, Director of Finance

RE: Resolution Authorizing the Issuance of Taxable Annual Appropriation Bonds, Series 2024F, of approximately \$9.5 Million; and Resolution Authorizing the Issuance of Annual Appropriation Bonds, Series 2024G, of approximately \$25 Million.

August 19, 2024

DATE:

As has been discussed on several occasions, the City of Fargo will issue appropriation bonds in the fall of 2024 for various City facility needs. Taxable appropriation bonds will be issued to finance the construction of NP Parking Garage, in conjunction with the previously approved BND Infrastructure Loan. Parking lot debt is expected to be repaid with parking revenues and related TIF revenues; any shortfalls will be paid through General Fund allocations. Tax-exempt appropriation bonds will be issued to fund projects including purchase of the currently leased Police Headquarters, HVAC repairs to the Police Headquarters, Fire Station 5 repair, and Fargo's portion of the new Red River Regional Dispatch Center. Facility debt will be paid through annually appropriated General Fund budget allocations.

Steve Scharff of Baker Tilly will present on the proposed bond sales at the Finance Committee meeting on Monday, August 19, 2024 at noon.

Suggested Motion:

Approve Resolution Authorizing the Issuance of Taxable Annual Appropriation Bonds, Series 2024F, of approximately \$9.5 Million; and Resolution Authorizing the Issuance of Annual Appropriation Bonds, Series 2024G, of approximately \$25 Million prescribing terms and conditions thereof, and creating funds for the payment thereof.

RESOLUTION AUTHORIZING THE ISSUANCE OF
TAXABLE ANNUAL APPROPRIATION BONDS, SERIES 2024F

WHEREAS, pursuant to Section 40-05-01 Subd 2 of the North Dakota Century Code and Article 3-0802 of the Issuer's Home Rule Charter (collectively the "Act") (as the same may from time to time be amended the "Act"), the City of Fargo, North Dakota (the "Issuer") is authorized and empowered, among other things, to issue its bonds to finance various facilities, including the Project (as defined herein); and

WHEREAS, pursuant to North Dakota Century Code Chapter 48-02.1, as amended (the "Infrastructure Development Act"), the Issuer is authorized to enter into development agreements for fee-based facilities, such as the Project; and

WHEREAS, pursuant to the Infrastructure Development Act, the Issuer has previously entered into that certain Development Agreement dated as of October 31, 2022, as amended, between the City and Great Plains NP Holdings, LLC (the "Development Agreement") for the development of an approximately 450-490 space parking garage, the status of which as a public facility or undertaking is hereby ratified (the "Garage"); and

WHEREAS, the Issuer proposes to issue its Taxable Annual Appropriation Bonds, Series 2024F (the "Bonds") in the amount of approximately \$9,500,000 to finance (i) a portion of the Issuer's obligations under the Development Agreement with respect to the acquisition and construction of the Garage, as defined in the Development Agreement, (ii) capitalized interest on such obligations during construction, (iii) a reserve fund deposit for the Bonds and (iv) costs of issuance of the obligations (collectively, the "Project"); and

WHEREAS, repayment of the Bonds will be subject to the appropriation annually by the Issuer of amounts sufficient to pay debt service on the Bonds for the following fiscal year of the Issuer; and

WHEREAS, the Bonds do not constitute public debt under any constitutional or statutory provision of the State of North Dakota, and upon a failure to appropriate moneys sufficient to pay debt service, the Bonds will be cancelled and the Issuer will have no further obligation for payment of any amounts relating to the Bonds; and

WHEREAS, the Bonds shall be payable solely from legally available funds of the Issuer appropriated annually and shall not be payable from, or be secured by any pledge of, any other funds, revenues, assets or taxing power of the Issuer.

BE IT RESOLVED by the governing body of City of Fargo, Cass County, North Dakota, as follows:

1. Approval of Bond Purchase Agreement. The selection of D.A. Davidson & Co. as purchaser and underwriter of the Bonds (the "Underwriter") is hereby satisfied, confirmed and approved. The Bonds shall be sold to the Underwriter in accordance with and upon the terms and

conditions set forth in a Bond Purchase Agreement by and between the Issuer and the Underwriter (the "Bond Purchase Agreement").

2. Authorization of Official Statement. The Director of Finance is hereby authorized and directed to prepare, or cause to be prepared, a preliminary and final official statement containing such information relating to the Issuer, the Bonds and the Project as is appropriate. The Director of Finance is hereby authorized and directed to execute the final official statement on behalf of the Issuer.

3. Further Actions Authorized. The officers of the Issuer are hereby authorized and directed to prepare and furnish to the Underwriter, and to the attorneys approving the legality of the Bonds, certified copies of such proceedings, ordinances, resolutions, and records and all such certificates and affidavits and other instruments as may be required to evidence the legality and marketability of said Bonds, and all certified copies, certificates, affidavits, and other instruments so furnished, including any heretofore furnished, shall constitute representations of the Issuer as to the correctness of all facts stated or recited therein.

4. Repealer. All prior resolutions and other acts or proceedings of this governing body which are in any way inconsistent with the terms of this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

5. Effective Date. This resolution shall be effective immediately upon adoption.

Mayor

Attest:

City Auditor

RESOLUTION AUTHORIZING THE ISSUANCE OF
ANNUAL APPROPRIATION BONDS, SERIES 2024G

WHEREAS, pursuant to Section 40-05-01 Subd 2 of the North Dakota Century Code and Article 3-0802 of the Issuer's Home Rule Charter (collectively the "Act") (as the same may from time to time be amended the "Act"), the City of Fargo, North Dakota (the "Issuer") is authorized and empowered, among other things, to issue its bonds to finance various facilities, including the Project (as defined herein); and

WHEREAS, the Issuer proposes to issue its Annual Appropriation Bonds, Series 2024G (the "Bonds") in the amount of approximately \$25,000,000 to finance (i) the acquisition and improvement of municipal facilities, including public safety, public works and administrative facilities, (ii) capitalized interest on such obligations during construction, (iii) a reserve fund deposit for the Bonds and (iv) costs of issuance of the obligations (collectively, the "Project"); and

WHEREAS, repayment of the Bonds will be subject to the appropriation annually by the Issuer of amounts sufficient to pay debt service on the Bonds for the following fiscal year of the Issuer; and

WHEREAS, the Bonds do not constitute public debt under any constitutional or statutory provision of the State of North Dakota, and upon a failure to appropriate moneys sufficient to pay debt service, the Bonds will be cancelled and the Issuer will have no further obligation for payment of any amounts relating to the Bonds; and

WHEREAS, the Bonds shall be payable solely from legally available funds of the Issuer appropriated annually and shall not be payable from, or be secured by any pledge of, any other funds, revenues, assets or taxing power of the Issuer.

BE IT RESOLVED by the governing body of City of Fargo, Cass County, North Dakota, as follows:

1. Approval of Bond Purchase Agreement. The selection of D.A. Davidson & Co. as purchaser and underwriter of the Bonds (the "Underwriter") is hereby satisfied, confirmed and approved. The Bonds shall be sold to the Underwriter in accordance with and upon the terms and conditions set forth in a Bond Purchase Agreement by and between the Issuer and the Underwriter (the "Bond Purchase Agreement").

2. Authorization of Official Statement. The Director of Finance is hereby authorized and directed to prepare, or cause to be prepared, a preliminary and final official statement containing such information relating to the Issuer, the Bonds and the Project as is appropriate. The Director of Finance is hereby authorized and directed to execute the final official statement on behalf of the Issuer.

3. Further Actions Authorized. The officers of the Issuer are hereby authorized and directed to prepare and furnish to the Underwriter, and to the attorneys approving the legality of the Bonds, certified copies of such proceedings, ordinances, resolutions, and records and all such

certificates and affidavits and other instruments as may be required to evidence the legality and marketability of said Bonds, and all certified copies, certificates, affidavits, and other instruments so furnished, including any heretofore furnished, shall constitute representations of the Issuer as to the correctness of all facts stated or recited therein.

4. Repealer. All prior resolutions and other acts or proceedings of this governing body which are in any way inconsistent with the terms of this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

5. Effective Date. This resolution shall be effective immediately upon adoption.

Mayor

Attest:

City Auditor



FINANCE OFFICE
225 4th Street North
Fargo, ND 58102
Phone: (701) 241-1333
www.FargoND.gov

TO: Board of Commissioners

FROM: Susan Thompson, Director of Finance

RE: FAHR Staff meeting – Items for Commission Review/Approval

DATE: August 19, 2024

Receive & File: General Fund Budget to Actual through 7/31/2024

Action Needed: Various Financial Approvals
FAHR endorsed the respective departments' requests for City Commissions approval. Reports of Action, along with supporting schedules, are included.

Budget Adjustments

Finance – Reallocation Request (Muni Court to Police)
Forestry – Grant Award ND Forest Service
Fire – Grant Award AFG

Other Financial Considerations

Transit – Change Order
Fire – Recommendation of Award for First Station 5
Repair/Remodel

City of Fargo, North Dakota
General Fund - Budget to Actual
 Unaudited Monthly Financial Statements - Through July 31, 2024
 Amounts shown in thousands

	YTD Budget	YTD Actual	YTD Variance
REVENUES:			
1 Taxes	\$ 45,434	\$ 44,640	\$ (794)
2 Licenses & Permits	3,730	4,232	501
3 Intergovernmental Revenue	10,960	10,159	(801)
4 Charges for Services	8,905	7,919	(986)
5 Fines & Traffic Tickets	903	919	16
6 Interest	2,304	5,036	2,732
7 Miscellaneous Revenue	582	477	(105)
8 Transfers In	7,618	7,686	69
Total Revenues	\$ 80,436	\$ 81,068	\$ 632
EXPENDITURES:			
9 General Government	\$ 16,679	\$ 16,332	\$ 347
10 Public Safety	29,786	28,775	1,011
11 Public Works	9,051	8,259	792
12 Health & Welfare	9,269	8,737	532
13 Culture & Recreation	3,149	3,042	108
14 Economic Development	296	90	206
15 General Support	747	985	(237)
16 Capital Outlay	172	183	(11)
17 Operating Transfers	3,473	3,662	(189)
18 Contingency (Salary Savings)	(795)	2	(798)
Total Expenditures	\$ 71,827	\$ 70,067	\$ 1,760
Revenue Over (Under) Expenditures	\$ 8,609	\$ 11,001	\$ 2,392

- 1** Timing w/ tax remittance; YTD mild weather resulted in lower utility Franchise Fees.
- 3** YTD state highway funds are trending below budget. Adj projection.
- 4** Timing w/ Fees related to construction.
- 6** Higher interest rates than expected via budget.
- 10** Timing with Fire Station 8 personnel: budget: 7.5 x12 months (Jan-Dec); actual:15 x6 months July-Dec).
- 11** Mild Jan-Mar: lower snow/street related expenses.
- 18** Est 2024 Salary Savings budgeted here; actual salary savings is reflected within specific departments.

Report of Action:
FAHR Meeting of 8/12/2024



- ☐ Purchase Policy
- ☒ Budget Adjustment/Reallocation
- ☐ Personnel Request
- ☐ Other Financial

Department: Finance Department
Description: Reallocate \$200,000 from Municipal Court to Police, as per memo.
Net Financial Impact: \$0

At their meeting, FAHR endorsed this request.

Suggested Motion:

Approve the reallocation of \$200,000 from Municipal Court (incarceration expense) to the Police Department (equipment expense) to pay 2024's allocation of the late Axon invoice.



FINANCE OFFICE
225 4th Street North
Fargo, ND 58102
Phone: (701) 241-1333
www.FargoND.gov

TO: Board of Commissioners
FROM: Susan Thompson, Director of Finance
RE: Budget Adjustment Request
DATE: August 8, 2024

With the agreement of Municipal Court and the Police Department, Finance requests to reallocate \$200,000 from Municipal Court (incarceration expense) to the Police Department (equipment expense).

The 2024 Budget includes an additional \$200,000 for incarceration expense in anticipation of proposed higher daily fees assessed by the Cass County Jail. As the City and County continue to negotiate an updated jail contract, the daily rate remains unchanged and the additional budget funds aren't expected to be spent in 2024.

Finance requests to reallocate \$200,000 to the Police Department specifically to pay 2024 expenses of an unanticipated Axon invoice related to the 2022 purchase of Axon Body Worn Cameras. Earlier this year, the police department was presented with an outstanding invoice of nearly \$500,000 which Axon claims was not sent, nor acknowledged by Axon at the time of project close-out inquiries by FPD and City Finance, due to complications with a software conversion. Upon our reconciliation of bid award, purchase orders, invoices, and payments, Finance concurs that Axon's outstanding invoice is due to Axon per the original contract terms. Due to the time elapsed since the purchase and Axon's overall poor handling of error, the fact that original equipment funding was ARPA funds which were subsequently relocated and spent, and the City of Fargo resources required to sort this out, we negotiated a reduction of the invoice, along with annual payments over the remainder of the contract (\$293,435 to be paid 2024-2026). 2024's payment is \$195,711.84. Remaining annual payments will be included in respective budgets.

Suggested Motion:

Approve the reallocation of \$200,000 from Municipal Court (incarceration expense) to the Police Department (equipment expense) to pay 2024's allocation of the late Axon invoice.

FINANCE DEPT USE ONLY:	
FAHR REVIEWED ON:	_____
COMMISSION APPROVED ON:	_____
ENTERED BY FINANCE:	_____
<i>Date:</i>	_____
<i>By:</i>	_____
<i>BA#</i>	_____

Report of Action:
FAHR Meeting of 8/12/2024



- ☐ Purchase Policy
- ☒ Budget Adjustment/Reallocation
- ☐ Personnel Request
- ☐ Other Financial

Department: Forestry
Description: Receive \$43,000 grant award from ND Forest Service to replace trees in the Madison neighborhood, as per memo.

Net Financial Impact: \$0

At their meeting, FAHR endorsed this request.

Suggested Motion:

Approve the two ND Forest Service grant funds in the amount totaling up to \$43,000 and approve related 2025 expenses for new trees.



PUBLIC WORKS OPERATIONS

Fleet Management, Forestry,
Streets & Sewers, Watermeters,
Watermains & Hydrants
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1465
FAX: (701) 241-8100

August 9, 2024

Honorable Board of City Commissioners
City Hall
225 4th St N, Fargo, ND 58102

RE: ND Forest Service (NDFS) grant awards

Commissioners:

The recent federally supported Inflation Reduction Act (IRA) allowed state and local agencies access to grant funding for various urban and community forestry projects. Neighborhoods need to meet underserved or disadvantage eligibility requirements. One of these areas is the Madison neighborhood. No local share is required, but are on a reimbursement basis.

The Madison neighborhood is made up of 726 trees, which approximately 37% are ash. The projects include removal and replacement (non-ash varieties) of 32 ash trees, with the planting of an additional 28 new trees.

On June 28th, 2024, we were notified that two grants were received.

1. Up to \$18,300 for tree and stump removal
2. Up to \$25,000 for tree planting

The allocated funds will be spent and reimbursed in the 2025 budget year within the following accounts:

Expenses

541-3081-440.38-81	Diversification (tree removal)	\$12,483
541-3081-440.38-92	Stump Grinding	\$ 5,817
541-3081-440.38-99	Other Services (tree planting & post care)	\$25,000

Revenue

541-3081-331.12-18	Operating Indirect / Misc. State Grants	\$43,300
--------------------	---	----------

The following project codes have been created:

<u>Project</u>	<u>Description</u>	<u>FAIN</u>	<u>CFDA</u>
FO2401	IRA-SPRING TREE EQUITY #1 - \$18,300	23- DG-1101000-032	10.727
FO2402	IRA-SPRING TREE EQUITY #2 - \$25,000	23-DG-1101000-032	10.727

Recommended motion:

Move to accept the two ND Forest Service grant funds in the amount totaling up to \$43,300.00.

Central Fueling
Fleet Purchase
And Vehicle Maintenance

Right of Way Maintenance
Sanitary & Storm
Sewer Maintenance

Snow Removal
Street Maintenance
Street Name Sign Maintenance

Urban Forestry
Watermeters
Watermain Distribution 10



PUBLIC WORKS OPERATIONS

Fleet Management, Forestry,
Streets & Sewers, Watermeters,
Watermains & Hydrants
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1465
FAX: (701) 241-8100

Your approval of this request is appreciated.

Sincerely,



Scott Liudahl, City Forester

Cc: Ben Dow

Commission 2024 NDFS grants.doc

Central Fueling
Fleet Purchase
And Vehicle Maintenance

Right of Way Maintenance
Sanitary & Storm
Sewer Maintenance

Snow Removal
Street Maintenance
Street Name Sign Maintenance

Urban Forestry
Watermeters
Watermain Distribution 11

BUDGET ADJUSTMENT REQUEST

This form must be completed for all budget adjustments. Please include this form with any requests submitted to FAHR and Commission. If the requested adjustment is a reallocation of budgeted funds within the same department, the request form can be sent directly to Finance. Please email to: Finance@fargond.gov.

*Finance should review this adjustment request form for validity before it is presented to ensure accuracy. Any budget adjustments that increase expenditures **MUST** be approved by City Commission to be entered.*

DEPARTMENT: Forestry

REQUESTED BY: Scott Liudahl

PROJECT NUMBER : FD2401/02

DATE PREPARED: 8/12/2024

DESCRIPTION OF REQUEST:

ND Forest Service Grant Award - replace trees in Madison neighborhood. **2025 budget

REVENUE ACCOUNT NUMBER:	CURRENT BUDGET	REQUESTED ADJUSTMENT	NEW BUDGET
514-3081-331-12-18 Operating Rev - Misc State Grants		\$ 43,300	
	+		= \$ -
	+		= \$ -
TOTAL REVENUE ADJUSTMENTS:		\$ 43,300	

EXPENSE ACCOUNT NUMBER:	CURRENT BUDGET	REQUESTED ADJUSTMENT	NEW BUDGET
541-3081-440-38.81 Diversification (tree removal)		\$ 12,483	\$ 12,483
541-3081-440-38.92 Stump Grinding		\$ 5,817	\$ 5,817
541-3081-440-38.99 Other Services (planting and post care)	+	\$ 25,000	= \$ 2,500
	+		= \$ -
	+		= \$ -
	+		= \$ -
	+		= \$ -
TOTAL EXPENSE ADJUSTMENTS:		\$ 43,300	

PLEASE NOTE: Budget Adjustments that increase expenditures **MUST be approved by Finance & Commission.**

MONTHLY ALLOCATION (if not evenly over the remaining months of the year)					
Jan	Feb	Mar	Apr	May	June
x 2025					
Jul	Aug	Sep	Oct	Nov	Dec

FINANCE DEPT USE ONLY:

FAHR REVIEWED ON: _____

COMMISSION APPROVED ON: _____

ENTERED BY FINANCE:

Date: _____

By: _____

BA# _____

Your COPY
Please SAVE



NORTH DAKOTA FOREST SERVICE

"To care for, protect and improve forests and natural resources to enhance the quality of life for present and future generations."

July 16, 2024

Dear Scott:

The North Dakota Forest Service (NDFS) is pleased to enclose the 2024 SPRING Tree Equity (IRA) grant subaward 2024S-IRA-TM001 that has been signed by the State Forester. The receiving of this signed contract allows the City of Fargo Forestry Dept to begin the project.

The NDFS will reimburse City of Fargo Forestry Dept up to \$18,300.00 once the following guidelines are completed:

- The project must be completed as outlined in the grant application. **Changes to the project must be submitted to the NDFS and approved before implementation to be eligible for reimbursement.**
- NDFS Community Forestry Staff – Grace Ivesdal at 231-5138 has been contacted immediately following project completion for an inspection. An inspection must be completed prior to any reimbursement.
- The completed billing and match statement along with invoices and supporting documents shall be submitted prior to **November 28, 2025**.

Using the enclosed envelope, please send the completed reimbursement forms, invoices, and supporting documentation along with proof of payment to:

Community Forestry Grants
North Dakota Forest Service
916 E Interstate Ave, Ste. 4
Bismarck, ND 58503-1227

We appreciate your interest to involve the NDFS in your community forestry program. We look forward to continuing to work with the City of Fargo Forestry Dept.

Once again, congratulations on this grant award. Please contact me if you have any questions or concerns.

Sincerely,

Mary Fisk
Office Manager

Enclosure

**SUBAWARD 2024S-IRA-TM001
AGREEMENT BETWEEN THE NORTH DAKOTA FOREST SERVICE AND**

**City of Fargo Forestry Dept
NORTH DAKOTA**

**FOR THE PROVISION OF TREE EQUITY INFLATION REDUCTION ACT (IRA)
COMMUNITY CHALLENGE GRANT FUNDS**

I. GENERAL

This agreement is entered into between the North Dakota Forest Service, hereinafter referred to as the NDFS, and the above, named entity, hereinafter referred to as the COOPERATOR.

All application materials submitted by the COOPERATOR are listed in the Grant Application and are included within this agreement.

II. PURPOSE

The purpose of this agreement is to stimulate development of innovative and effective urban and community forestry projects and programs in North Dakota. The USDA-Forest Service provides grant funds to accomplish the project specified in this agreement.

The parties in this contract agree to jointly provide staff, financial, and in-kind resources necessary to fulfill the established program objective.

III. TERM

The budget period for the Agreement shall commence on the date the State Forester signs this contract and ending **November 28, 2025**. The budget period may be extended by written request from Cooperator followed by written approval from the NDFS.

IV. ALLOWABLE COSTS AND PAYMENTS

The COOPERATOR may incur costs as specified in the Grant Application – Project Budget and be reimbursed by the NDFS. Unless otherwise noted, only those costs specifically set forth in Grant Application – Project Budget shall be allowable costs under this Agreement. All costs incurred shall be accounted for in accordance with COOPERATOR'S established rates, policy and procedures, including the payment of salaries, wages and fringe benefits for any employees paid from this Agreement. COOPERATOR shall establish and maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to reflect properly all costs of whatever nature that COOPERATOR claims to have incurred in the performance of this Agreement, including cost sharing or program income, if any.

NDFS will reimburse COOPERATOR upon completion and passing inspection of project. Proper documentation shall be submitted to NDFS as specified in the Reimbursement Guidelines document. The billing and match statement along with invoices shall be submitted prior to **November 28, 2025** to the North Dakota Forest Service, 916 East Interstate Ave, Ste 4, Bismarck, ND 58503-1227.

Grant funds awarded to this project up to \$18,300.00

V. SUPERVISION

Refer to Grant Application – Project Narrative.

VI. RESPONSIBILITIES

The NDFS agrees to:

- Submit appropriate payment(s) to the COOPERATOR not to exceed the total amount of the grant award.

The COOPERATOR agrees to:

- Expend the grant award in the manner specified in the Grant Application.
- Contact **Grace Ivesdal at 231-5138** immediately following project completion for an inspection. An inspection must be completed prior to any reimbursements.
- Submit copy of completed project (design plan, inventory, etc.), if applicable.
- Submit before and after pictures of any tree removals.
- Submit tree inspection list, if applicable.
- If planting, assure that plant materials and plant installation meet standards outlined in the NDFS Community Forestry Tree Planting and Three-Year Maintenance Plan.
- Maintain project in accordance with the Three-Year Maintenance Plan.
- Include the statement "This publication is made possible through a grant from the USDA Forest Service and the North Dakota Forest Service." in any publications or outreach materials related to this project.

VII. Unique Entity ID Number

The COOPERATOR is required to identify their organization's Unique Entity ID. The federal government has adopted the use of Unique Entity ID to track how federal grant money is allocated and is assigned free to all businesses/entities required to register with the US Federal Government for contracts or grants.

This is the UEI supplied on your application: K2QJQZVH5PM6.

If this is not correct, cross it off and write the correct UEI.

All entities receiving subawards greater than \$30,000 shall be registered in the Central Contractor Registration (CCR) or System for Award Management (SAM). <https://www.sam.gov/SAM/>

NDSU is required to comply with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 amendment thereto (FFATA) which is Public Law 109-282. FFATA requires NDSU to report certain first-tier subcontract greater than \$30,000 and executive compensation data. The law requires all reported information to be made publicly available, including all information reported to NDSU by Recipient. For subcontract greater than \$30,000 the recipient will fully complete and return the enclosed **Federal funding accountability and Transparency Act (FFATA) Request Form**. This form should be submitted with the signed agreement/contract and no later than 30 days from the date of the fully executed contract. Recipient must notify NDSU immediately if there is any change in Recipient's data as supplied in the FFATA Request Form.

VIII. PROGRAM OBJECTIVES

Refer to Grant Application – Project Narrative.

IX. INCORPORATING PROVISIONS OF THE PRIME AWARD

The effort being performed under this subaward is part of the Prime Award received from:

Agency	FAIN #	Amount	Assistance Listing #	Assistance Listing Name	Award Year	NDSU Proj
USDA-FS	23-DG-11010000-032	\$750,000	10.727	Cooperative Forestry Assistance	2023	FAR0037202

Consequently, the terms and conditions specified by the Prime Award and general provisions are hereby incorporated as part of this subaward and take precedence in the case of any inconsistencies with this subaward. Any changes to the prime award amount or expiration date are automatically incorporated into this award, as appropriate.

This agreement is subject to the following Office of Management and Budget (OMB) Circular:

- OMB Circular 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards; Final Rule.
- The OMB Circular is available on the Internet at <http://www.ecfr.gov> and select Title 2 "Grants & Agreements."

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Funding for these contracted services come from the U.S Forest Service which requires contractors and sub-contractors performing work on federal grants and contracts to abide by the Davis Bacon Act. DAVIS BACON WAGES FOR CONSTRUCTION. Following the requirement in Section 41101 of the Bipartisan Infrastructure Law, P.L. 117-58, Davis-Bacon wage rates must be applied for all laborers and mechanics employed by contractors or subcontractors in the performance of construction, alteration, or repair work on a project assisted in whole or in part by funding made available under this Act. Laborers and mechanics shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the "Davis-Bacon Act").

X. INDEPENDENT CONTRACTOR

COOPERATOR herein is an Independent Contractor, not a partner or joint venturer, and shall not act as an agent or employee of the NDFS. COOPERATOR shall not have any authority, either express or implied, to enter any agreement, incur any obligations on NDFS's behalf, or commit NDFS in any manner without NDFS's expressed prior written consent.

XI. LIABILITY

In accordance with North Dakota state law, COOPERATOR agrees to defend, indemnify and hold NDFS harmless from any and all claims, injuries, damages or other liabilities arising in tort or breach of contract and resulting directly or indirectly from any intentional or negligent (including grossly negligent) acts or failure to act by COOPERATOR's officers, agents or employees, arising in favor of any person or entity.

XII. TERMINATION

In the event of default by COOPERATOR under this subaward, or in the event that the prime sponsor terminates work by NDFS on this subject matter, then performance by COOPERATOR may be terminated by NDFS at any time by giving written notice. Such notice shall be effective upon the receipt of written notice by the COOPERATOR. COOPERATOR shall take all reasonable steps to minimize termination costs.

XIII. AUDIT

This agreement is subject to the provisions of the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133 "Audits of States, Local governments and Non-Profit Organization."

- COOPERATOR shall, upon written request of sponsor, provide a copy of COOPERATOR's most recent audit report. COOPERATOR agrees to provide copies of subsequent audit reports if requested by sponsor.
- Financial reports, supporting documents and other records pertinent to this subaward shall be retained by the COOPERATOR for a period of three (3) years from the date of final expenditures, reports; except records that relate to audits, appeals, litigation of the settlement of claims arising out of performance of this subaward shall be retained until such audits appeals, litigation or claims have been disposed of.
- COOPERATOR shall permit independent auditors (as defined in the OMB circulars) to have access to the records and financial statement as necessary to comply with the appropriate OMB circulars and this article.
- Following the awarding of grants, the NDFS will conduct project inspections to assure compliance with project contracts.

XIV. SERVICES AND EQUIPMENT

Pursuant to 2 CFR 200.216, COOPERATOR will not obligate or expend funds received under this Subaward to: (1) procure or obtain; (2) extend or renew a contract to procure or obtain; or (3) enter into a contract (or extend or a renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services (as described in Public Law 115- 232, section 889) as a substantial or essential component or any system, or as a critical technology as part of any system.

XV. CERTIFICATION

A. Acceptance of this Subaward constitutes certification that the COOPERATOR is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this project by any Federal department or agency.

B. Acceptance of this Subaward constitutes certification that the COOPERATOR is not delinquent on any Federal debt.

C. Acceptance of this Subaward constitutes certification that to the best of the COOPERATOR's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the COOPERATOR, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the COOPERATOR will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," to NDFS in accordance with its instructions.

D. Acceptance of this Subaward constitutes certification that COOPERATOR: has and will continue to advise its employees working on any federal awards that they are subject to the whistleblower rights and remedies of the pilot program; will inform their employees in writing of the employee whistleblower protections under 41 U.S.C. § 4712 in the predominant language of the workforce; and include such requirements in any agreement made with any subcontractor.

XVI. GOVERNING LAW

The laws of the State of North Dakota, United States of America shall govern the interpretation of this subaward. The only appropriate venue for resolution of disputes to this subaward shall be in the State of North Dakota, United States of America.

IN WITNESS WHEREOF, the parties to this Agreement do hereby execute this contract and agree to abide by its terms.

City of Fargo Forestry Dept
Entity

Authorized Signature

Print Signature Name

Date

ND Forest Service
Entity

Tom Claeys, State Forester

Date

NDSU does not discriminate in its programs and activities on the basis of age, color, gender expression/identity, genetic information, marital status, national origin, participation in lawful off-campus activity, physical or mental disability, pregnancy, public assistance status, race, religion, sex, sexual orientation, spousal relationship to current employee, or veteran status, as applicable. Direct inquiries to Vice Provost, Title IX/ADA Coordinator, Old Main 100, (701) 231-7708, ndsu.eoaa@ndsu.edu.

Your COPY
Please SAVE



NORTH DAKOTA FOREST SERVICE

"To care for, protect and improve forests and natural resources to enhance the quality of life for present and future generations."

July 16, 2024

Dear Scott:

The North Dakota Forest Service (NDFS) is pleased to enclose the 2024 SPRING Tree Equity (IRA) grant subaward 2024S-IRA-TP002 that has been signed by the State Forester. The receiving of this signed contract allows the City of Fargo Forestry Dept to begin the project.

The NDFS will reimburse City of Fargo Forestry Dept up to \$25,000.00 once the following guidelines are completed:

- The project must be completed as outlined in the grant application. **Changes to the project must be submitted to the NDFS and approved before implementation to be eligible for reimbursement.**
- NDFS Community Forestry Staff – Grace Ivesdal at 231-5138 has been contacted immediately following project completion for an inspection. An inspection must be completed prior to any reimbursement.
- The completed billing and match statement along with invoices and supporting documents shall be submitted prior to **November 28, 2025**.

Using the enclosed envelope, please send the completed reimbursement forms, invoices, and supporting documentation along with proof of payment to:

Community Forestry Grants
North Dakota Forest Service
916 E Interstate Ave, Ste. 4
Bismarck, ND 58503-1227

We appreciate your interest to involve the NDFS in your community forestry program. We look forward to continuing to work with the City of Fargo Forestry Dept.

Once again, congratulations on this grant award. Please contact me if you have any questions or concerns.

Sincerely,

Mary Fisk
Office Manager

Enclosure

**Your COPY
Please SAVE**

**SUBAWARD 2024S-IRA-TP002
AGREEMENT BETWEEN THE NORTH DAKOTA FOREST SERVICE AND**

**City of Fargo Forestry Dept
NORTH DAKOTA**

**FOR THE PROVISION OF TREE EQUITY INFLATION REDUCTION ACT (IRA)
COMMUNITY CHALLENGE GRANT FUNDS**

I. GENERAL

This agreement is entered into between the North Dakota Forest Service, hereinafter referred to as the NDFS, and the above, named entity, hereinafter referred to as the COOPERATOR.

All application materials submitted by the COOPERATOR are listed in the Grant Application and are included within this agreement.

II. PURPOSE

The purpose of this agreement is to stimulate development of innovative and effective urban and community forestry projects and programs in North Dakota. The USDA-Forest Service provides grant funds to accomplish the project specified in this agreement.

The parties in this contract agree to jointly provide staff, financial, and in-kind resources necessary to fulfill the established program objective.

III. TERM

The budget period for the Agreement shall commence on the date the State Forester signs this contract and ending **November 28, 2025**. The budget period may be extended by written request from Cooperator followed by written approval from the NDFS.

IV. ALLOWABLE COSTS AND PAYMENTS

The COOPERATOR may incur costs as specified in the Grant Application – Project Budget and be reimbursed by the NDFS. Unless otherwise noted, only those costs specifically set forth in Grant Application – Project Budget shall be allowable costs under this Agreement. All costs incurred shall be accounted for in accordance with COOPERATOR'S established rates, policy and procedures, including the payment of salaries, wages and fringe benefits for any employees paid from this Agreement. COOPERATOR shall establish and maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to reflect properly all costs of whatever nature that COOPERATOR claims to have incurred in the performance of this Agreement, including cost sharing or program income, if any.

NDFS will reimburse COOPERATOR upon completion and passing inspection of project. Proper documentation shall be submitted to NDFS as specified in the Reimbursement Guidelines document. The billing and match statement along with invoices shall be submitted prior to **November 28, 2025** to the North Dakota Forest Service, 916 East Interstate Ave, Ste 4, Bismarck, ND 58503-1227.

Grant funds awarded to this project up to \$25,000.00

V. SUPERVISION

Refer to Grant Application – Project Narrative.

VI. RESPONSIBILITIES

The NDFS agrees to:

- Submit appropriate payment(s) to the COOPERATOR not to exceed the total amount of the grant award.

The COOPERATOR agrees to:

- Expend the grant award in the manner specified in the Grant Application.
- Contact **Grace Ivesdal at 231-5138** immediately following project completion for an inspection. An inspection must be completed prior to any reimbursements.
- Submit copy of completed project (design plan, inventory, etc.), if applicable.
- Submit before and after pictures of any tree removals.
- Submit tree inspection list, if applicable.
- If planting, assure that plant materials and plant installation meet standards outlined in the NDFS Community Forestry Tree Planting and Three-Year Maintenance Plan.
- Maintain project in accordance with the Three-Year Maintenance Plan.
- Include the statement "This publication is made possible through a grant from the USDA Forest Service and the North Dakota Forest Service." in any publications or outreach materials related to this project.

VII. Unique Entity ID Number

The COOPERATOR is required to identify their organization's Unique Entity ID. The federal government has adopted the use of Unique Entity ID to track how federal grant money is allocated and is assigned free to all businesses/entities required to register with the US Federal Government for contracts or grants.

This is the UEI supplied on your application: K2QJQZVH5PM6.

If this is not correct, cross it off and write the correct UEI.

All entities receiving subawards greater than \$30,000 shall be registered in the Central Contractor Registration (CCR) or System for Award Management (SAM). <https://www.sam.gov/SAM/>

NDSU is required to comply with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 amendment thereto (FFATA) which is Public Law 109-282. FFATA requires NDSU to report certain first-tier subcontract greater than \$30,000 and executive compensation data. The law requires all reported information to be made publicly available, including all information reported to NDSU by Recipient. For subcontract greater than \$30,000 the recipient will fully complete and return the enclosed Federal funding accountability and Transparency Act (FFATA) Request Form. This form should be submitted with the signed agreement/contract and no later than 30 days from the date of the fully executed contract. Recipient must notify NDSU immediately if there is any change in Recipient's data as supplied in the FFATA Request Form.

VIII. PROGRAM OBJECTIVES

Refer to Grant Application – Project Narrative.

IX. INCORPORATING PROVISIONS OF THE PRIME AWARD

The effort being performed under this subaward is part of the Prime Award received from:

Agency	FAIN #	Amount	Assistance Listing #	Assistance Listing Name	Award Year	NDSU Proj
USDA-FS	23-DG-11010000-032	\$750,000	10.727	Cooperative Forestry Assistance	2023	FAR0037202

Consequently, the terms and conditions specified by the Prime Award and general provisions are hereby incorporated as part of this subaward and take precedence in the case of any inconsistencies with this subaward. Any changes to the prime award amount or expiration date are automatically incorporated into this award, as appropriate.

This agreement is subject to the following Office of Management and Budget (OMB) Circular:

- OMB Circular 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards; Final Rule.
- The OMB Circular is available on the Internet at <http://www.ecfr.gov> and select Title 2 "Grants & Agreements."

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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In accordance with North Dakota state law, COOPERATOR agrees to defend, indemnify and hold NDFS harmless from any and all claims, injuries, damages or other liabilities arising in tort or breach of contract and resulting directly or indirectly from any intentional or negligent (including grossly negligent) acts or failure to act by COOPERATOR's officers, agents or employees, arising in favor of any person or entity.

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XV. CERTIFICATION

A. Acceptance of this Subaward constitutes certification that the COOPERATOR is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this project by any Federal department or agency.

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Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the COOPERATOR will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," to NDFS in accordance with its instructions.

D. Acceptance of this Subaward constitutes certification that COOPERATOR: has and will continue to advise its employees working on any federal awards that they are subject to the whistleblower rights and remedies of the pilot program; will inform their employees in writing of the employee whistleblower protections under 41 U.S.C. §4712 in the predominant language of the workforce; and include such requirements in any agreement made with any subcontractor.

XVI. GOVERNING LAW

The laws of the State of North Dakota, United States of America shall govern the interpretation of this subaward. The only appropriate venue for resolution of disputes to this subaward shall be in the State of North Dakota, United States of America.

IN WITNESS WHEREOF, the parties to this Agreement do hereby execute this contract and agree to abide by its terms.

City of Fargo Forestry Dept Entity	 Authorized Signature	Scott Lindahl Print Signature Name	7/10/24 Date
ND Forest Service Entity	 Tom Claeys, State Forester		7/15/2024 Date

NDSU does not discriminate in its programs and activities on the basis of age, color, gender expression/identity, genetic information, marital status, national origin, participation in lawful off-campus activity, physical or mental disability, pregnancy, public assistance status, race, religion, sex, sexual orientation, spousal relationship to current employee, or veteran status, as applicable. Direct inquiries to Vice Provost, Title IX/ADA Coordinator, Old Main 100, (701) 231-7708, ndsu.eoaa@ndsu.edu.

Report of Action:

FAHR Meeting of 8/12/2024



- ☐ Purchase Policy
- ☒ Budget Adjustment/Reallocation
- ☐ Personnel Request
- ☐ Other Financial

Department: Fire

Description: Receive \$51,814.54 grant award from FEMA to be used to upgrade exhaust equipment at all stations. Related 10% match is from already budgeted equipment expense.

Net Financial Impact: \$0

At their meeting, FAHR endorsed this request.

Suggested Motion:

Accept the award from Assistance to Firefighters Grant (FEMA) in the amount of \$51,814.54, and approve related expenses.



Fire Department
637 NP Avenue
Fargo, ND 58102
Phone: 701.241.1540 | Fax: 701.241.8125
www.FargoND.gov

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: AUGUST 5, 2024

SUBJECT: ASSISTANCE TO FIREFIGHTERS GRANT AWARD ACCEPTANCE

On February 14, 2024, the City Commission approved the fire department to apply for an Assistance to Firefighters Grant (AFG) through FEMA. A portion of the grant was awarded that includes upgrading the Source Capture Exhaust Systems in each station that capture the exhaust from fire apparatus and exhaust it outside. The total cost for this grant is \$56,996, with a local match required from the City of Fargo. This equates to a grant award of \$51,814.54 from FEMA and a match of \$5,181.46 from the City of Fargo. The local portion will be paid using funds from the current fire department building repairs budget.

Grant Award # EMW-2023-FG-00878
CFDA # 97.044
Federal Share \$51,814.54
Local Share \$5,181.46

We request the following budget adjustment:

101-0000-331.12-42 Operating Indirect / NDDDES – Fire	\$51,815
101-4045-412.43-10 Repair and Maintenance / Building Repairs	\$56,996

RECOMMENDED MOTION: Accept the award from the Assistance to Firefighters Grant in the amount of \$51,814.54.

BUDGET ADJUSTMENT REQUEST

This form must be completed for all budget adjustments. Please include this form with any requests submitted to FAHR and Commission. If the requested adjustment is a reallocation of budgeted funds within the same department, the request form can be sent directly to Finance. Please email to: Finance@fargond.gov.

*Finance should review this adjustment request form for validity before it is presented to ensure accuracy. Any budget adjustments that increase expenditures **MUST** be approved by City Commission to be entered.*

DEPARTMENT: Fire

REQUESTED BY: Steve Dirksen PROJECT NUMBER : F1052

DATE PREPARED: 8/8/2024

DESCRIPTION OF REQUEST: Assistance to Firefighters grant award budget adjustment.

REVENUE ACCOUNT NUMBER:	CURRENT BUDGET	REQUESTED ADJUSTMENT	NEW BUDGET
101-0000-331-12.42 Operating Indirect / NDDes		\$ 51,815	\$ 51,815
	+		= \$ -
	+		= \$ -
TOTAL REVENUE ADJUSTMENTS:		\$ 51,815	

EXPENSE ACCOUNT NUMBER:	CURRENT BUDGET	REQUESTED ADJUSTMENT	NEW BUDGET
101-4045-412-43.10 Repair and Maintenance		\$ 51,815	\$ 51,815
	+		= \$ -
	+		= \$ -
	+		= \$ -
	+		= \$ -
	+		= \$ -
TOTAL EXPENSE ADJUSTMENTS:		\$ -	

MONTHLY ALLOCATION (if not evenly over the remaining months of the year)					
Jan	Feb	Mar	Apr	May	June
Jul	Aug	Sep	Oct	Nov	Dec

FINANCE DEPT USE ONLY:	
FAHR REVIEWED ON:	<div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div>
COMMISSION APPROVED ON:	<div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div>
ENTERED BY FINANCE:	<div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div>
Date:	<div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div>
By:	<div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div>
BA#	<div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div>

Report of Action:
FAHR Meeting of 8/12/2024



- ☐ Purchase Policy
- ☐ Budget Adjustment/Reallocation
- ☐ Personnel Request
- ☒ Other Financial

Department: Transit
Description: Approve the change orders of \$69,830 for the AVA/AVL software, as per memo.
Net Financial Impact: \$0 - Expense will be funded with grant funds and previously approved local match.

At their meeting, FAHR endorsed this request.

Suggested Motion:
Approve change orders totaling \$69,830 related to the AVA/AVL software replacement project.



Metropolitan Area Transit

650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

August 7, 2024

City of Fargo Commission
City Hall - 225 4th St N
Fargo, ND 58102

Dear Commissioners:

The Transit Department has been working with GMV Synchronatics Corporation for the Automatic Vehicle Announcement/Automatic Vehicle Locator (AVA/AVL) software replacement project that was approved by the City of Fargo Commission earlier this year. Additional expenses have come up during the course of the project including items that were previously budgeted for but were not included in the vendor's initial proposal and unforeseen integration issues with existing equipment. All expenses listed below will be funded with grant funds (Federal Contract **ND-2023-017-01-00** and NDDOT Contract **38231162**) and previously approved local match.

RFP No. AFB23214, Project F23004 (Fixed RT-AVL/AVA Software):

Removal of Existing CAD/AVL	\$9,900.00
Arrival Prediction Screen	\$3,060.00
Digital Vehicle Inspection (Fixed Route)	\$19,680.00
Covert Alarm Integration - Hardware	\$3,225.00
Covert Alarm Integration – Integration	\$4,945.00
Annual Fees for Arrival Prediction URL's	\$1,580.00
Annual Fees for Digital Vehicle Inspection (Fixed Route)	\$16,800.00

RFP No. AFB23214, Project F23006 (Para Schedule Soft/Equip):

Digital Vehicle Inspection (Paratransit)	\$5,740.00
Annual Fees for Digital Vehicle Inspection (Paratransit)	\$4,900.00

Total: \$69,830.00

The requested motion is to approve the attached change orders for the referenced projects. Thank you.

Sincerely,

Cole Swingen
Assistant Transit Director – Operations
701-476-5989
cswingen@fargond.gov

/enc

For Schedule Information: 701-232-7500



CHANGE ORDER#: 01
CONTRACT/RFP#: 23214
DATE: 7/17/2024

TO: MATBUS
FROM: GMV - Emanuel Molinar, Project Manager
CC: Jeff Hunter, Director of Business Development, Seth Larson, Chief Financial

Change Order Description: Regional Fleet Scope Adjustments

1	Added the removal of the existing CAD/AVL equipment from 33 buses
2	Added 4 Arrival Prediction URLs
3	Added Digital Vehicle Inspection (TransitCheck) for a total of 62 vehicles (43 fixed route and 19 Paratransit and On-demand)
4	Added Covert Alarm Integration for the 43 fixed route vehicles
5	Added Annual Fees for the 4 Arrival Prediction URLs
6	Added Annual Fees for Digital Vehicle Inspection (TransitCheck) for a total of 62 vehicles

#	Description	Qty	Unit Price	Subtotal
1	<u>Removal of the existing CAD/AVL</u> Labor	33	\$300.00	\$9,900.00
2	<u>Arrival Prediction Screen</u> Vehicle and System Licenses, LCD Sign Management Software	4	\$765.00	\$3,060.00
3	<u>Digital Vehicle Inspection</u> Vehicle and System Licenses, Digital Vehicle Inspection	62	\$410.00	\$25,420.00
4	<u>Covert Alarm Integration</u> Hardware, Covert Alarm Button Integration Integration, Covert Alarm Button	43 43	\$75.00 \$115.00	\$3,225.00 \$4,945.00
5	<u>Annual Fees for Arrival Prediction URLs</u> Annual Service Fee, LCD Sign Management Software	4	\$395.00	\$1,580.00
6	<u>Annual Fees for Digital Vehicle Inspection</u> Annual Service Fee, Digital Vehicle	62	\$350.00	\$21,700.00

Net Capital Change \$46,550.00

Net Annual Change \$23,280.00

Impact to Milestone Schedule

The Base System Capital amount went from \$854,790 to \$901,340 per this Change Order.
The Annual Fees amount from from \$67,850 to \$91,130 per this Change Order.
The Contract total amount went from \$922,640 to \$992,470 per this Change Order.
Milestone 6.1 was added for the items in this Change Order. See the Detailed Scope & Price Proposal and the Milestone Breakdown on the

Approved by:

GMV SYNCROMATICS

Customer

Emanuel Molinar

Emanuel Molinar

7-17-24

Print

Date

Print

Date

MATBUS (FARGO) - SCOPE & PRICE PROPOSAL (UPDATED PER CHANGE ORDER 01 FROM 7-17-24)

Base System

Fixed Route CAD/AVL				
LN	Item Description	Qty	Unit Cost	Subtotal
	Hardware, OpenMDT Plus	43	3,910	168,130
	Labor, Installation, OpenMDT Plus	43	800	34,400
	Vehicle and System Licenses, CAD/AVL	43	580	24,940
	Project Management, Training, Travel, and Unlimited Followup	1	56,820	56,820
Total, Capital				284,290

Vehicle Network Gateway				
LN	Item Description	Qty	Unit Cost	Subtotal
	Hardware, Per Bus, Vehicle Network Gateway for Onboard Systems - Cradlepoint IBR650 or approved equivalent	0	1,420	-
	Labor, Installation or Integration, Per Bus, Vehicle Network Gateway	0	415	-
	Hardware, Per Bus, Vehicle Network Gateway Integration	43	360	15,480
	Labor, Installation or Integration, Per Bus, Vehicle Network Gateway	43	175	7,525
Total, Capital				23,005

Automated Voice Annunciator				
LN	Item Description	Qty	Unit Cost	Subtotal
	Hardware, AVA System	43	2,265	97,395
	Installation, Per Bus, AVA	43	385	16,555
	Vehicle and System Licenses, Web Based AVA Controller	43	515	22,145
Total, Capital				136,095

Interior LED for AVAS Visual Announcement				
	Item Description	Qty	Unit Cost	Subtotal
	Hardware, Interior LED Sign (Amber, Red, or White)	43	1,580	67,940
	Installation, Interior LED Sign	43	405	17,415
	Hardware, Interior LED Integration Kit	0	95	-
	Labor, Integration, Interior LED Sign	0	115	-
Total, Capital				85,355

LN	Item Description	Qty	Unit Cost	Subtotal
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Destination Sign Integration for Single Sign-on

Item Description	Qty	Unit Cost	Subtotal
Hardware, Headsign Integration	43	395	16,985
Installation, Per Bus, Headsign Integration	43	195	8,385
Total, Capital			25,370

Automatic Passenger Counter

LN	Item Description	Qty	Unit Cost	Subtotal
	Hardware, IRIS APC - 2 Door Bus, 2 Sensor	43	4,310	185,330
	Installation, APC - 2 Door Bus	43	660	28,380
	Integration, APC - 2 Door Bus (Dilax)	0	195	-
	Integration and Configuration, Software, UTA APC Analytics	1	58,800	58,800
Total, Capital				272,510

GFI Farebox Integration

Item Description	Qty	Unit Cost	Subtotal
Hardware, GFI Farebox Integration - Assumes agency has J1708 integration license from Genfare.	43	475	20,425
Installation, GFI Farebox Integration	43	180	7,740
Total, Capital			28,165

Real Time Passenger Information

LN	Item Description	Qty	Unit Cost	Subtotal
	Software, Real Time Passenger Information Suite — includes desktop and mobile web application at no charge — Includes API for Arrival Predictions at no charge — Includes GTFS & GTFS-RT feed for integration with Transit App, Google Maps, Apple Maps at no charge	1	-	-
Total, Capital				-

Removal of Existing CAD/AVL System

Item Description	Qty	Unit Cost	Subtotal
Labor	33	300	9,900
Total, Capital			9,900

Electronic Signage - LCD, Integration

LN	Item Description	Qty	Unit Cost	Subtotal
	Hardware, Media Player - Flexible for cellular or ethernet connectivity	0	1,320	-

LN	Item Description	Qty	Unit Cost	Subtotal
	Installation, Media player	0	415	-
	Vehicle and System Licenses, LCD Sign Management Software	4	765	3,060
Total, Capital				3,060

Digital Vehicle Inspection				
LN	Item Description	Qty	Unit Cost	Subtotal
	Vehicle and System Licenses, Digital Vehicle Inspection	62	410	25,420
Total, Capital				25,420

Physical Covert Alarm Integration				
	Item Description	Qty	Unit Cost	Subtotal
	Hardware, Covert Alarm Button	0	210	0
	Installation, Covert Alarm Button	0	315	0
	Hardware, Covert Alarm Button Integration	43	75	3,225
	Integration, Covert Alarm Button	43	115	4,945
Total, Capital				8,170

Total Base System				901,340
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LN	Item Description	Qty	Unit Cost	Subtotal
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Annual Service Fees**Base Service Fees - Fixed Route**

LN	Item Description	Qty	Unit Cost	Subtotal
	Annual Service Fee,, Software, Cloud-hosted CAD/AVL/RTPI –Unlimited 24x7 support – Hands on dedicated account management – Fully hosted and redundant systems – Unlimited training – Hosted GTFS and GTFS-RT – Transit Analytics Software (Insights & Insights Builder) – Service Alerts System – Real-Time and Historical APIs	43	890	38,270
	Annual Service Fee, Cellular Data for Fixed Route Vehicles	43	215	9,245
	Annual Service Fee, Automated Voice Annunciator	43	130	5,590
	Annual Service Fee, Automatic Passenger Counting	43	145	6,235
	Annual Service Fee, UTA APC Analytics	1	8,510	8,510
	Annual Service Fee, LCD Sign Management Software	4	395	1,580
	Annual Service Fee, Digital Vehicle Inspection	62	350	21,700
Total per year (years 1-5)				91,130

MATBUS Milestone Schedule

Milestone #	1	2	3	4	5	6	6.1	7	Total
Description	Work Order Execution	Hardware Delivery	First Article Installations	Notice of Completion	Deployment Acceptance	Annual Fees	Change Order 01	Post Deployment Deliverable	Base System + Year 1
Deliverables	System Licenses delivered upon contract execution	Delivery of 100% of required hardware	Installation on 10% of vehicles	Installation on 100% of vehicles, validations complete	Completion of 2 weeks of Deployment Acceptance period. Includes 10% retention from Milestones 1-4	Year 1 Annual Fees (includes annual fees for items in Change Order 01)	Capital amount for: *Removal of current CAD/AVL *Arrival Predictions URL *Digital Vehicle Inspection (TransitCheck) *Covert alarm Int.	UTA APC Analytics KOM	
Estimated Date	2/1/2024	6/14/2024	7/1/2024	7/15/2024	7/30/2024	7/31/2024	7/30/2024	7/30/2024	
Milestone Value	\$ 47,085	\$ 285,843	\$ 285,843	\$ 120,400	\$ 56,820	\$ 91,130	\$ 46,550	\$ 58,800	\$ 992,470
10% Retention	\$ 4,709	\$ 28,584	\$ 28,584	\$ 12,040	\$ 73,917	\$ -	\$ -	\$ -	
Actual Milestone Value	\$ 42,377	\$ 257,258	\$ 257,258	\$ 108,360	\$ 130,737	\$ 91,130	\$ 46,550	\$ 58,800	
% of Capital & Year 1	4.3%	25.9%	25.9%	10.9%	13.2%	9.2%	4.7%	5.9%	

**Based on Change Order 01 from 7/17/24

Report of Action:
FAHR Meeting of 8/12/2024



- ☐ Purchase Policy
- ☐ Budget Adjustment/Reallocation
- ☐ Personnel Request
- ☒ Other Financial

Department: Fire

Description: Approve bid awards for Fire Station 5 Renovation, as per memo.

Net Financial Impact: Budget cost of \$2.5 million is included in the Fall 2024 appropriation bonds.
Annual debt service will be included in General Fund budget allocations.

At their meeting, FAHR endorsed this request.

Suggested Motion:

Approved bid awards for General Construction to Roers Construction in the amount of \$1,173,000, Mechanical Construction to Laney's in the amount of \$416,863, and Electrical Construction to Grotberg Electric in the amount of \$421,445. Also, approve a 15% contingency of \$301,696.20, relocation costs of \$100,000, and owner provided FF&E of \$50,000 for a total project budget of \$2,463,004.00.



Fire Department
 637 NP Avenue
 Fargo, ND 58102
 Phone: 701.241.1540 | Fax: 701.241.8125
www.FargoND.gov

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: JULY 31, 2024

SUBJECT: FIRE STATION 5 RENOVATION BID ACCEPTANCE

At the March 4, 2024 Fargo City Commission meeting, the Commission approved Task order RFP24010 for construction documents, bidding, and construction administration in the master service agreement between the City of Fargo and KLJ. Fire Department staff has worked with KLJ and EAPC to develop plans for a partial removal of fire station 5, reconstruction of the removed portion, along with updates to existing parts of the structure.

Bids on the project were opened on July 31, 2024. A total of 15 bids were received. Two for a single prime bid, eight for multiple prime – general construction, three for multiple prime – mechanical construction, and two for multiple prime – electrical construction. No bids were rejected. The bids were reviewed for mathematical errors, and none were found. All bids appear to be responsive. Additional costs for the building are owner proved FF&E at \$50,000 and Temporary Relocation costs of \$100,000 as the building will not be habitable during demolition and reconstruction. The bids came in as detailed in the table below:

Bidder Name	Single Prime	Multiple Prime Bidders		
		General Construction	Mechanical Construction	Electrical Construction
Bergstrom Electric				\$ 495,850.00
Grotberg Electric				\$ 421,445.00
Laneys			\$ 416,863.00	
Manning Mechanical Inc.			\$ 532,600.00	
Peterson Mechanical Inc.			\$ 502,900.00	
Border Construction		\$ 1,295,000.00		
Diversified Contractors Inc.		\$ 1,248,800.00		
Gast Construction		\$ 1,323,400.00		
Ledgestone Inc.		\$ 1,195,100.00		
Lee Jones and Son Construction		\$ 1,293,000.00		
Meinecke Johnson Company		\$ 1,540,000.00		
Bristlin Construction	\$ 2,304,894.00	\$ 1,296,996.00		
Roers Construction	\$ 2,032,000.00	\$ 1,173,000.00		
Total Ennngineer's Opinion of Costs	\$ 1,702,245.60	\$ 1,167,041.04	\$ 225,923.28	\$ 309,281.28

The sum of the apparent lowest, responsible bidders included in the multiple prime option were compared to the lowest single prime option provides the lowest overall price. The overall best price is \$2,011,308, which is 23.06% over the Engineer's Opinion of Costs. This does not include a contingency of 15%, \$301,969 or owner provided FF&E of \$50,000 and Relocation Fees of \$100,000. This brings the total cost of the project to \$2,463,004.00. The budget estimate that was provided for the 2025 budget was \$2,500,000 for all items. Project code BP2405-Fire Station 5 Repair has been set up.

RECOMMENDATION: Approved bid awards for General Construction to Roers Construction in the amount of \$1,173,000, Mechanical Construction to Laney's in the amount of \$416,863, and Electrical Construction to Grotberg Electric in the amount of \$421,445. Also, approve a 15% contingency of \$301,696.20, relocation costs of \$100,000, and owner provided FF&E of \$50,000 for a total project budget of \$2,463,004.00.

Enclosure(s): (1) Bid Tabulation, (1) Bid Recommendation of Award Letter (KLJ), (3) Notices to Award.



300 23rd Ave E, Suite 100
 West Fargo, ND 58078
 701 232 5353
KLJENG.COM

July 31, 2024

Tim Binfet
 Division Chief - Fargo Fire Department
 637 NP Avenue
 Fargo, ND 58102

Re: Recommendation of Award for Fire Station No. 5 Addition

Bids on the referenced project were opened on July 31, 2024. A total of 15 bids were received. Two for a single prime bid (Division 1), eight for multiple prime (Division 2) – general construction, three for multiple prime (Division 2) – mechanical construction, and two for multiple prime (Division 2) – electrical. No bids were rejected. The bids were reviewed for mathematical errors, and none were found. All bids appear to be responsive.

The sum of the apparent lowest, responsible bidders included in Division 2 were compared to the apparent lowest, responsible bidder for Division 1. The sum of the Division 2 bidders provides the lowest total project price.

The apparent low bidders submitting a bid are listed below for the three separate prime contracts.

Division 2 – Multiple Prime Bidder	Contract	Base Bid
Roers Construction	General	\$1,173,000.00
Laneys Inc	Mechanical	\$416,863.00
Grotberg Electric	Electrical	\$421,445.00
Total Base Bid		\$2,011,308.00
Engineer's Opinion of Cost		\$1,702,245.60

As bid, the total base bid construction costs are approximately \$309,000, or 18%, higher than the engineer's opinion of cost.

It is our recommendation to move forward with the award of the contract to the apparent low bidders for Division 2, if the owner determines they are responsible. The apparent low bidders are Roers Construction (General Construction), Laney's (Mechanical Construction), and Grotberg Electric (Electrical Construction). If the owner elects to not move forward with an award at this time, construction costs will continue to climb increasing the overall cost of the project. Material prices and labor continue to increase with inflation and will continue to be a concern for owners, contractors, and designers well into the foreseeable future.



300 23rd Ave E, Suite 100
West Fargo, ND 58078
701 232 5353
KLJENG.COM

If you elect to move forward with awarding the multiple prime contracts, you will find three (3) sets of the *Notice of Award* for your approval and signature. Please date (top of the document), sign and return all three (3) sets to our office. We will send them to the successful bidders for their signature and then return a copy to you for your records.

If you have any questions, please contact our office.

Sincerely,

KLJ Engineering, LLC

A handwritten signature in blue ink, appearing to read "Scott Middaugh".

Scott Middaugh, PE
Senior Project Manager

Project No.: 2404-00262

Copy To: Steven Dirksen
Enclosure(s): (1) Bid tabulation (3) Notice to Award

NOTICE OF AWARD

Date of Issuance:

Owner: City of Fargo, ND

Owner's Project No.:

Engineer: KLI Engineering LLC

Engineer's Project No.: 2404-00262

Project: Fire Station No. 5 Addition

Contract Name: Division 2 – General Construction

Bidder: Roers Construction

Bidder's Address: 200 45th St S, Fargo, ND 58103

You are notified that Owner has accepted your Bid dated **July 31, 2024** for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Partial demolition and reconstruction of a single-story fire station. The area to be demolished and reconstructed is approx. 3,000sf. The existing building is constructed with CIP foundation/slab, reinforced masonry walls, and precast hollowcore roof planks. The new building is constructed with insulated precast concrete walls and precast hollowcore roof planks. The work will include utilities, pavement, grading/seeding/planting, fencing, building construction (including structural, architectural, mechanical, electrical, and fire protection), and installation of a new fiber line.

The Contract Price of the awarded Contract is **\$1,173,000.00**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes and Unit Price Work, as applicable.

[3] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☒ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 10 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **[3]** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): Submit Certificate of Insurance and Certificate of Workers' Compensation Insurance

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: City of Fargo
By (*signature*): _____
Name (*printed*): Timothy Mahoney
Title: Mayor
Copy: Engineer

NOTICE OF AWARD

Date of Issuance:

Owner: City of Fargo, ND

Owner's Project No.:

Engineer: KIJ Engineering LLC

Engineer's Project No.: 2404-00262

Project: Fire Station No. 5 Addition

Contract Name: Division 2 – Mechanical Construction

Bidder: Laney's Inc

Bidder's Address: 55 27th St S, Fargo, ND 58103

You are notified that Owner has accepted your Bid dated **July 31, 2024** for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Partial demolition and reconstruction of a single-story fire station. The area to be demolished and reconstructed is approx. 3,000sf. The existing building is constructed with CIP foundation/slab, reinforced masonry walls, and precast hollowcore roof planks. The new building is constructed with insulated precast concrete walls and precast hollowcore roof planks. The work will include utilities, pavement, grading/seeding/planting, fencing, building construction (including structural, architectural, mechanical, electrical, and fire protection), and installation of a new fiber line.

The Contract Price of the awarded Contract is **\$416,863.00**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes and Unit Price Work, as applicable.

[3] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☒ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 10 days of the date of receipt of this Notice of Award:

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2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): Submit Certificate of Insurance and Certificate of Workers' Compensation Insurance

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: City of Fargo

By *(signature)*: _____

Name *(printed)*: Timothy Mahoney

Title: Mayor

Copy: Engineer

NOTICE OF AWARD

Date of Issuance:

Owner: City of Fargo, ND

Owner's Project No.:

Engineer: KLJ Engineering LLC

Engineer's Project No.: 2404-00262

Project: Fire Station No. 5 Addition

Contract Name: Division 2 – Electrical Construction

Bidder: Grotberg Electric

Bidder's Address: 1049 5th Ave NE, West Fargo, ND 58078

You are notified that Owner has accepted your Bid dated **July 31, 2024** for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Partial demolition and reconstruction of a single-story fire station. The area to be demolished and reconstructed is approx. 3,000sf. The existing building is constructed with CIP foundation/slab, reinforced masonry walls, and precast hollowcore roof planks. The new building is constructed with insulated precast concrete walls and precast hollowcore roof planks. The work will include utilities, pavement, grading/seeding/planting, fencing, building construction (including structural, architectural, mechanical, electrical, and fire protection), and installation of a new fiber line.

The Contract Price of the awarded Contract is **\$421,445.00**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes and Unit Price Work, as applicable.

[3] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☒ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 10 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **[3]** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): Submit Certificate of Insurance and Certificate of Workers' Compensation Insurance

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: City of Fargo

By *(signature)*: _____

Name *(printed)*: Timothy Mahoney _____

Title: Mayor _____

Copy: Engineer

Bid Opening July 31 2024 @ 11:45am
Fire Station No. 5 Addition
City of Fargo



Bidder Name	Acknowledge Addenda			Contract License	Bid Bond	Division 1: Single Prime	Division 2: Multiple Prime Bidders		
	#1	#2	#3				General	Mechanical	Electrical
Bergstrom Electric	X	X	X	X	X	\$	\$	\$	495,850.00
Border Construction	X	X	X	X	X	\$	\$ 1,295,000.00	\$	\$
Bristlin Construction	X	X	X	X	X	\$ 2,304,894.00	\$ 1,296,996.00	\$	\$
Diversified Contractors Inc.	X	X	X	X	X	\$	\$ 1,248,800.00	\$	\$
Gast Construction	X	X	X	X	X	\$	\$ 1,323,400.00	\$	\$
Grotberg Electric	X	X	X	X	X	\$	\$	\$	421,445.00
J-Tech Mechanical						\$	\$	\$	\$
Laneys	X	X	X	X	X	\$	\$	\$ 416,863.00	\$
Ledgestone Inc.	X	X	X	X	X	\$	\$ 1,195,100.00	\$	\$
Lee Jones and Son Constructio	X	X	X	X	X	\$	\$ 1,293,000.00	\$	\$
Manning Mechanical, Inc.	X	X	X	X	X	\$	\$	\$ 532,600.00	\$
Meinecke Johnson Company	X	X	X	X	X	\$	\$ 1,540,000.00	\$	\$
Peterson Mechanical Inc.	X	X	X	X	X	\$	\$	\$ 502,900.00	\$
Roers Construction	X	X	X	X	X	\$ 2,032,000.00	\$ 1,173,000.00	\$	\$
Vinco Inc.						\$	\$	\$	\$
Total Engineer's Opinion of Cost						\$ 1,702,245.60	\$ 1,167,041.04	\$ 225,923.28	\$ 309,281.28

Tabulation of Bids Prepared by

Date:

7/31/2024



**FargoCass
Public Health**
Prevent. Promote. Protect.



FARGO CASS PUBLIC HEALTH
ADMINISTRATION
1240 25th Street South
Fargo, ND 58103-2367
Phone 701.241.1360
FargoCassPublicHealth.com

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: JENN FAUL ¹⁴
DIRECTOR OF PUBLIC HEALTH

DATE: AUGUST 14, 2024

RE: NOTICE OF GRANT AWARD FOR MATERNAL AND CHILD
HEALTH SERVICES BLOCK GRANT TO THE STATES
NO: G23.1040 CFDA: 93.994
FUNDS: \$17,500
EXPIRES: 09/30/2025

The attached notice of grant award is for increasing the number of infants who are breastfed and who are breastfed exclusively through six months. Also, for increasing the number of children and adolescents who are physically active.

NO BUDGET ADJUSTMENT

If you have any questions, please contact me at 241.1380.

Suggested Motion:

Move to approve this grant award from the ND Department of Health and Human Services.

JF/lls
Attachment

**NOTICE OF GRANT AWARD**

NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES
SFN 53771 (04-2023)

Grant Number G23.1040	CFDA Name Maternal and Child Health Services Block Grant to the States		CFDA Number 93.994
FAIN Number B0447437	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 10/1/2024	Grant End Date 9/30/2025
Federal Award Date 10/27/2022	Federal Awarding Agency United States Department of Health and Human Services		
This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.			
Title of Project/Program Increase Number of infants who are breastfed and who are breastfed exclusively through six months and Increase Number of children and adolescents who are physically active		North Dakota Department of Health and Human Services (NDDHHS) Project Code 4541 S313-03	
Grantee Name Fargo Cass Public Health		Project Director Mikaela Schlosser	
Address 1240 25 th St. S		Address 600 E. Boulevard Ave Dept. 325	
City/State/ZIP Code Fargo, ND 58103-2367		City/State/ZIP Code Bismarck, ND 58505-0250	
Contact Name Larry Anenson		Contact Name Mikaela Schlosser	
Telephone Number 701-241-8575		Telephone Number 701-328-4529	
Email Address lanenson@fargond.gov		Email Address mlschlosser@nd.gov	
	NDDHHS Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$17,500	\$13,125	\$30,625
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$17,500	\$13,125	\$30,625
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimis rate _____ % (limited to 15%)	<input type="checkbox"/> Negotiated/Approved rate of _____ %
Scope of Service Grantee agrees to carry out the program in accordance with the activities stated in the Grantee's action plan.			
Reporting Requirements Reporting Requirements are defined in Attachment A.			
Special Conditions Special Conditions are defined in Attachment A.			
This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDHHS as signed by Grantee for the period of July 1, 2023 to June 30, 2025 [Finance Use Only: <input checked="" type="checkbox"/> Requirements Received; <input checked="" type="checkbox"/> Questionnaire received] and (2) applicable State and Federal regulations.			
Evidence of Grantee's Acceptance		Evidence of NDDHHS Acceptance	
Date 08/13/2024	Signature <i>Jenn Faul</i>	Date	Signature
Typed Name/Title of Authorized Representative Jenn Faul, Director of Public Health		Typed Name/Title of Authorized Representative Deanna Askew, Unit Director Family Health and Wellness	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Dirk D. Wilke, J.D., M.B.A., Executive Director of Public Health	
If attachments are referenced, they must be returned with the signed award. If you did not receive attachments as indicated, contact the Program Director identified above.			

Attachment A Continued

Public Health Services and Systems – Public health services and systems are activities and infrastructure to carry out the core public health functions of assessment, assurance, and policy development, and the 10 essential public health services. Examples include the development of standards and guidelines, needs assessment, program planning, implementation, and evaluation, policy development, quality assurance and improvement, workforce development, and population-based disease prevention and health promotion campaigns for services such as newborn screening, immunization, injury prevention, safe-sleep education and anti-smoking. State reporting on public health services and systems should not include costs for direct clinical preventive services, such as immunization, newborn screening tests, or smoking cessation.

Reference: Title V Maternal and Child Health Services Block Grant to State Program – Guidance and Forms for the Title V Application/Annual Report and Appendix of Supporting Documents

Special Conditions

- The Title V Maternal and Child Health (MCH) funds will be used primarily for preventive services such as those related to the identified state priorities. Title V MCH prohibits exclusion from participation, denial of benefits, or discrimination in any program or activity funded in whole or in part with Title V MCH monies on the basis of race, color or national origin, sex, age, religion or handicapping condition.
- Before changing/carrying out any activities not in the approved action, plan must be submitted to the Project Director for prior approval.
- Non-approved line items in budget must be submitted to the Project Director for prior approval before any purchases are incurred.
- Grantee has 25 percent budget flexibly for approved line items. Anything over 25 percent must be approved by Project Director.
- Grantee is required to use the following language (italicized below) when issuing statements, press releases, requests for proposals, bid solicitations, and other Health Resources and Services Administration (HRSA) supported publications and forums describing projects or programs funded in whole or in part with HRSA funding, including websites. Examples of HRSA-supported publications include, but are not limited to, manuals, toolkits, resource guides, case studies and issues briefs.

This project is supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) grant, Maternal and Child Health Services. This information or content and conclusions are those of the author and should not be construed as the official position or policy of, nor should any endorsements be inferred by HRSA, HHS or the U.S. Government.



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Information Services
Fargo City Hall
225 4th Street North
Fargo, ND 58102-4817
www.FargoND.gov

August 15, 2024

Honorable Board of
City Commissioners
City of Fargo
225 4th St N
Fargo, ND 58102

Dear Commissioners;

At the August 1st Commission Meeting, the Fargo City Commission authorized the purchase of the "Phosphorus Unified xIoT Security Management Platform" [RFP: 24272].

In coordination with the City attorneys, IS worked through the language of the Master Services Agreement (MSA) and the Statement of Work (SOW). Attached is the agreed upon language for the MSA.

To complete the purchase, the attached MSA and statement of Work need to be signed by the City of Fargo.

Suggested Motion:

Move to approve signing of the MSA and SOW with Doosan Digital Innovation America, LLC for the purchase of the "Phosphorus Unified xIoT Security Management Platform."

Thank you,



Ron Gronneberg
CIO

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT ("**Agreement**") is made between City of Fargo (a North Dakota municipal corporation), with its offices located at 225 4th Street North, Fargo, ND 58102 ("**Customer**") and Doosan Digital Innovation America, LLC, a Delaware limited liability company ("**Provider**"), with a place of business at 2475 Mill Center Parkway STE 400, Buford, GA 30518, (Customer and Provider will be collectively referred to as the "**Parties**" and individually, as a "**Party**"), dated as of the date of the last signature required to execute this Agreement ("**Effective Date**").

For and in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1 Definitions

"**Affiliates**" of a Party means any parent, subsidiary or affiliate of such Party (which shall include with respect to the Company, without limitation, Provider and of all its direct and indirect subsidiaries and affiliates).

"**Customer Materials**" means any documents, data, know-how, methodologies, software and other materials provided to Provider by Customer or its Affiliates, including computer programs, reports and specifications.

"**Deliverables**" means all documents, work product and other materials (other than Pre-Existing Materials and Provider Developments) that are delivered to Customer or its Affiliates under this Agreement or prepared by or on behalf of Provider in the course of providing the Products and/or performing the Services.

"**Developments**" means all Deliverables, technological innovations, discoveries, materials, inventions, information, drawings, designs, formulae, know-how, tests, specifications, processes, production methods, improvements, methodologies, tools, sketches, samples, records, computer programs, notebooks, tracings, photographs, negatives, reports, findings, documentation, recommendations, data, data compilations, media, deliveries, working notes and memoranda of every description and any Intellectual Property Rights inherent therein or appurtenant thereto, in each case (i) delivered by Provider to Customer or its Affiliates under this Agreement or a Statement of Work; or (ii) made, conceived, created, developed, prepared or authored by Provider alone or with others while this Agreement is in effect, arising directly out of or relating specifically to, and provided or implemented expressly and solely for, Customer in connection with the Services.

"**Intellectual Property Rights**" means all patents, patent rights, copyrights, moral rights, trade secret rights, trademark, service mark and trade dress rights and all other intellectual property rights, as may exist now and/or hereafter come into existence, including derivative rights, and all renewals and extensions thereof.

"**Losses**" mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"**Personnel**" personnel (employees, contractors, and sub-contractors) who shall be suitably skilled, experienced and qualified to perform the Services.

“Pre-Existing Materials” means all documents, data, know-how, methodologies, software and other materials, including computer programs, reports and specifications, provided by or used by Provider in connection with performing the Services, in each case developed or acquired by the Provider prior to the commencement of this Agreement.

“Products” means any hardware, software, documentation or other tangible good made, manufactured, owned, licensed or otherwise legally made available by Provider to Customer pursuant to a relevant purchase, license or other customer agreement.

“Provider Developments” means all technological innovations, discoveries, materials, inventions, information, drawings, designs, formulae, know-how, tests, specifications, processes, production methods, improvements, methodologies, tools, sketches, samples, records, computer programs, notebooks, tracings, photographs, negatives, reports, findings, documentation, recommendations, data, data compilations, media, deliveries, working notes and memoranda of every description and any Intellectual Property Rights inherent therein or appurtenant thereto, whether or not made, conceived, created, developed, prepared or authored by Provider during the Term or in the course of rendering the Services, which by their nature are not expressly or specifically created for the sole benefit of Customer.

“Services” means any professional or other services to be provided by Provider under this Agreement, as described in more detail in a Statement of Work, and Provider's obligations under this Agreement.

“Statement of Work” or **“SOW”** means each Statement of Work substantially entered into and executed by the Parties from time to time in accordance with and pursuant to this Agreement.

2 Services.

2.1 Services. Provider shall provide to Customer the Services and Products described in each Statement of Work in accordance with the terms and conditions of this Agreement. The Services and Products shall be furnished from time to time upon request by Customer, which shall be confirmed in writing in a SOW. Notwithstanding anything contained in this Agreement or a SOW to the contrary, the parties acknowledge and agree that the Services and Products are provided to Customer for its benefit and for the benefit of Customer's Affiliates and, at Customer's discretion, any Affiliate of Customer may receive the benefits of the Services provided under any SOW and may enforce any rights of Customer pursuant to such SOW or this Agreement; *provided, however*, that any assignment of rights or delegation of duties from Provider to any Affiliate thereof shall not relieve Customer of its obligations set forth herein or in any applicable SOW.

2.2 Statement of Work. Each SOW shall include the following information, if applicable:

- (a) a detailed description of the Services to be provided pursuant to the SOW;
- (b) a detailed description of any Products deemed by Provider as reasonably necessary to perform the Services described in subsection 2.2(a) above;
- (c) the date upon which the Services will commence and the term of such SOW;
- (d) the fees to be paid to Provider under the SOW;
- (e) an implementation plan, including a timetable;
- (f) project milestones and payment schedules;
- (g) any criteria for completion of the Services;
- (h) procedures for testing and acceptance of the Services and Deliverables by Customer; and
- (i) any other terms and conditions agreed upon by the Parties in connection with the Services to be performed pursuant to such SOW.

- 2.3 Change Orders. If either party wishes to change the scope or performance of the Services or delivery of Products within a SOW, it shall submit details of the requested change to the other in writing. Provider shall, within a reasonable time after such request (and, if such request is initiated by Customer, not more than five (5) business days after receipt of Customer's written request), provide a written estimate to Customer of: (i) the likely time required to implement the change; (b) any necessary variations to the fees and other charges for the Services or Products required to be rendered and/or delivered in connection with the change; (c) the likely effect of the change on the Services and Products; and (d) any other impact the change might have on the performance of the SOW in which the change is requested and this Agreement. Promptly after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing and executed by both Parties.
- 2.4 Review and Acceptance. Review and Acceptance terms shall be stated in each SOW. All Products, Services and Deliverables provided by Provider shall materially conform to the specifications described in the applicable SOW. If no acceptance criteria are specified in the applicable SOW, acceptance of any Products, Services or Deliverables will be based on Customer's good faith satisfaction, consistent with the requirements of the SOW. If such Products, Services or Deliverables are reported by Customer as not acceptable or not conforming to the applicable specifications described in the SOW, Provider shall be given reasonable explanation from Customer as to the perceived nonconformity and, following good faith negotiation with Customer, shall address all such agreed-upon non-conformities within a reasonable period of time not to exceed thirty (30) days (unless a different period is provided in the SOW or by mutual agreement by the Parties). If Provider fails to remedy any nonconformity within the period specified within this section or within the period specified within the SOW, the Parties shall, in good faith, negotiate a manner to address the continued agreed-upon nonconformities which may include, without limitation, a reduction to the fees and charges payable by Customer in an amount agreed upon by Provider and Customer and charges specified in the SOW minus the impact and cost of the nonconformity to Customer.
- 2.5 Provider Obligations.
- 2.5.1 Provider shall provide personnel, (employees, contractors, and sub-contractors) who shall be suitably skilled, experienced and qualified to perform the Services. In the event that Provider personnel is found to be unacceptable to Customer, Customer shall notify Provider of such fact and Provider shall work with Customer to resolve the problem using all necessary actions up to and including removal of such personnel and providing a replacement acceptable to Customer.
- 2.5.2 Before the date on which the Services are to start, Provider shall obtain, and, at all times during the Term of this Agreement, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services.
- 2.5.3 Provider shall comply at all times with, and ensure that all Provider personnel comply with, all applicable Customer policies that are communicated to Provider.
- 2.5.4 Provider shall obtain Customer's written consent, which consent shall not be unreasonably withheld or delayed, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and agents of Provider, other than Provider's employees, to provide any Services to Customer (each such approved subcontractor or other third party, a "**Permitted Subcontractor**"). Customer's approval shall not relieve Provider of its obligations under the Agreement, and Provider shall remain fully

responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Provider's own employees. Nothing contained in this Agreement shall create any contractual relationship between Customer and any Provider subcontractor or supplier. Provider shall require each Permitted Subcontractor to be bound in writing by the confidentiality and intellectual property assignment or license provisions of this Agreement.

- 2.5.5 Provider shall comply with all applicable data privacy laws in its handling and storage of any personally identifiable information in the possession of Customer, including but not limited to California's California Consumer Privacy Act of 2018 and the California Privacy Rights Act, each as amended.

2.6 Customer Obligations.

- 2.6.1 Customer shall provide Provider with access to appropriate internal resources and information if reasonably necessary for delivery and implementation of the Products and performance of the Services.
- 2.6.2 Customer shall provide, subject to Section 2.5.3, access to Customer's premises, and office accommodation and other facilities as may reasonably be requested by Provider and agreed with Customer in writing in advance, for the purposes of performing the Services.

3 **Fees; Billing; Expenses.**

3.1 Fees.

- 3.1.1 In consideration of the supply of Products and provision of the Services by the Provider and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the applicable Statement of Work.
- 3.1.2 Where the Products and/or Services are provided on a time and materials basis: (a) fees payable for the Services shall be calculated in accordance with Provider's daily or hourly fee rates set forth in the applicable Statement of Work and (b) Provider shall issue invoices to Customer monthly in arrears for its fees for the immediately preceding month in accordance with Section 3.3.
- 3.1.3 Where Products and/or Services are provided for a fixed price, the total fees for the Products and/or Services shall be the amount set out in the applicable Statement of Work. Unless otherwise specified in the applicable SOW, the total price shall be paid to Provider in accordance with Section 3.3, and Provider shall issue an invoice for the total amount due and payable by Customer prior to or at commencement of the Services.

- 3.2 Expenses. Customer agrees to reimburse Provider for all actual, documented and reasonable out-of-pocket expenses reasonably incurred by Provider in performance of the Services; provided that Provider obtains prior written consent of Customer and such expenses conform to Customer's standard travel and expense policy, as communicated to Provider from time to time. At Customer's request, Provider shall promptly provide all receipts for such expenses. All such expenses shall be invoiced and payable in accordance with Section 3. Customer shall not be responsible for, and shall not pay, any travel or reimbursable expenses to Provider in which Provider did not receive prior written approval.

- 3.3 **Billing.** Provider shall issue invoices to Customer only in accordance with the terms of this Section 3. Each invoice shall include (i) a description of the Products and/or Services, (ii) the dates on which on which such Products are delivered and/or Services are performed, (iii) all fees, taxes, costs, expenses and other charges claimed with respect to such Services that are separately identified, (iv) the SOW number and (v) a remittance address. Customer agrees to pay properly invoiced and undisputed amounts to Provider within thirty (30) days after receipt of such invoice. No payments will be made to the Provider in advance of the Products and/or Services delivered to the Customer without prior written agreement between Customer and Provider.

4 Intellectual Property Rights; Ownership.

- 4.1 **Developments.** Customer is, and shall be, the sole and exclusive owner of all right, title and interest in and to the Developments, including all Intellectual Property Rights therein. Provider agrees, and will cause its personnel to agree, that with respect to any Developments that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Developments are hereby deemed a "work made for hire" for Customer. To the extent that any of the Developments do not constitute a "work made for hire", Provider hereby irrevocably assigns, and shall cause its personnel to irrevocably assign to Customer, in each case without additional consideration, all right, title and interest throughout the world in and to the Developments, including all Intellectual Property Rights therein. The Provider shall cause its personnel to irrevocably waive, to the extent permitted by applicable law, any and all claims such person or entity may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Developments. It is understood and Provider agrees that the use of these materials in any manner by Customer or its assigns will not result in any additional claim for compensation by Provider. Provider will make prompt and complete disclosure to the Customer of all Developments. Upon the request of Customer, Provider shall, and shall cause its personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist Customer to prosecute, register, perfect or record its rights in or to any Developments.
- 4.2 **Pre-Existing Materials and Provider Developments.** Provider and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to the Pre-Existing Materials and the Provider Materials, including all Intellectual Property Rights therein. Unless subject to a separate license or conveyance agreement between Provider and Customer (in which case the terms of such agreement shall supersede and prevail over this Section 4.2), Provider hereby grants Customer and its Affiliates an irrevocable, perpetual, fully paid-up, royalty-free, transferable, worldwide license to copy, modify, distribute and otherwise use any Pre-Existing Materials to the extent incorporated in, combined with or otherwise necessary for the use or operation of the Developments. All other rights in and to the Pre-Existing Materials are expressly reserved by Provider.
- 4.3 **Customer Materials.** Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein. Provider shall have no right or license to use any Customer Materials except solely during the Term of the Agreement to the extent necessary to provide the Services to Customer, in which case Customer grants to Provider a fully paid-up, royalty-free, transferable, worldwide license to copy, modify, distribute and otherwise use any such Customer Materials solely as may be deemed reasonably necessary in order to install, implement, operate or otherwise incorporate the Products and/or render the Services called for under an applicable SOW. All other rights in and to the Customer Materials are expressly reserved by Customer.

5 Confidential Information.

- 5.1 Confidential Information. For the purposes of this Agreement, "Confidential Information" means trade secret, proprietary, commercial and financial information as defined by North Dakota Century Code section 44-04-18.4, including but not limited to any information, file, program or data, disclosed in written, graphic, electronic or oral form, or by any other means, and whether directly or indirectly by a Party ("Disclosing Party") or its Affiliates to the other Party ("Receiving Party") or its Affiliates whether before or after the date of this Agreement including, without limitation, information relating to the Disclosing Party's or its Affiliates' business, business methods, research, projects, work in progress, future developments, financial matters, human resources, financial, legal, operational or other business matters, its present or future products, services, customers or consultants' products, services, customers or prospects, suppliers, processes, plans or intentions, know-how, research and development, design rights, trade secrets, market opportunities and/or business affairs.
- 5.2 Receiving Party's Obligation.
- 5.2.1 Receiving Party shall not disclose or otherwise make available Confidential Information of Disclosing Party to any third party without the prior written consent of Disclosing Party; provided, however, that Receiving Party may disclose the Confidential Information of Disclosing Party to its Affiliates, officers, employees, agents and legal advisors who have a "need to know", who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 5. Receiving Party shall be responsible for any unauthorized or improper use or disclosure by its Affiliates, officers, employees, agents and legal advisors.
- 5.2.2 Receiving Party shall use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement or, in the case of Customer, to make use of the Services and Developments.
- 5.2.3 Receiving Party shall immediately notify Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.
- 5.2.4 Upon the expiration or termination of this Agreement, or upon the request of the Disclosing Party for the return of any tangible embodiments of all or any portion of its Confidential Information (which the Receiving Party does not then require to perform its obligations hereunder), the Receiving Party will promptly return such Confidential Information (whether in hard copy, diskette, or any other electronic form, and including any copies, extracts, descriptions, and summaries thereof) or, with the Disclosing Party's written consent, will promptly destroy it (any copies, extracts, descriptions, and summaries thereof) and provide the Disclosing Party with written certification of destruction.
- 5.2.5 The obligations under Sections 5.2.1 through 5.2.4 shall not apply to information which was: (a) already, or does fall into the public domain through no wrongful act, fault or omission by the Receiving Party or its Affiliates; (b) in Receiving Party's or its Affiliates' possession prior to the date of receipt from the Disclosing Party, and was free from any obligation to keep such information confidential; (c) published prior to the date it was received from the Disclosing Party; (d) rightfully received by Receiving Party or its Affiliates from a third party without restriction and without breach of this Agreement; (e) developed by the Receiving Party or its Affiliates independently of and without access to or use or benefit of any Confidential Information of Disclosing Party; or (f) disclosed pursuant to a requirement or request of a government agency or in connection with a judicial proceeding.
- 5.2.6 If Receiving Party learns that it is or may be required by applicable court order, law or regulation to disclose any Confidential Information, then Receiving Party will: (i) attempt

to obtain a protective order or other appropriate relief in lieu of disclosing such Confidential Information; (ii) as promptly as possible after learning of a possible disclosure requirement, and in any case prior to making disclosure, notify the Disclosing Party of the disclosure requirement so that the Disclosing Party may seek a protective order or other appropriate relief; (iii) provide such cooperation and assistance as the Disclosing Party may reasonably request in any effort by the Disclosing Party to obtain such relief; and (iv) take reasonable steps to limit the amount of Confidential Information so disclosed and to protect its confidentiality.

5.3 This Section 5 shall not affect or limit any separate confidentiality, secrecy or nondisclosure agreement(s) entered into between Customer and Provider prior to the Effective Date and such agreements will remain in full force and effect separate from this Agreement.

6 Representations and Warranties.

6.1 Each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation or organization;
- (b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and
- (d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

6.2 Provider further represents and warrants to Customer that:

- (a) it shall perform the Services using personnel of required skill, experience and qualifications, shall use its best efforts to perform the Services to Customer's satisfaction, but in no event in less than a professional and workmanlike manner in accordance with generally recognized industry standard and shall devote adequate resources to meet its obligations under this Agreement;
- (b) it is in compliance with, and shall perform the Services in compliance with, all applicable laws;
- (c) Customer will receive good and valid title to all Deliverables, free and clear of all encumbrances and liens of any kind;
- (d) (i) none of the Products, Services, Deliverables and Customer's use thereof infringe upon, or will infringe upon, any Intellectual Property Rights of any third party, and, (ii) as of the date hereof, there are no pending or threatened claims, litigation or other proceedings pending against Provider by any third party based on an alleged violation of such Intellectual Property Rights; and
- (e) the Products, Services and Deliverables will be in material conformity in all respects with all requirements or specifications stated in this Agreement and the applicable Statement of Work.

6.3 EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, (A) EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND (B) PROVIDER DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL PROVIDER BE LIABLE TO CUSTOMER FOR ANY CLAIMS, LOSSES OR OTHER DAMAGES ARISING FROM (1) ANY USE BY CUSTOMER OF THE PRODUCTS AND/OR SERVICES IN A MANNER IN WHICH SUCH PRODUCTS OR SERVICES WERE NOT INTENDED OR SPECIFIED UNDER THE APPLICABLE SOW, (2) ANY MODIFICATION OF THE PRODUCTS OR SERVICES PERFORMED OR ORDERED OR INSTRUCTED BY CUSTOMER WITHOUT PROVIDER'S PRIOR CONSENT, OR (3) ANY INSTALLATION BY CUSTOMER (OR PERFORMED AT CUSTOMER'S REQUEST WITHOUT PROVIDER'S PRIOR CONSENT) OR AGENT OF ANY OTHER HARDWARE OR SOFTWARE APPLICATION, APPLIANCE OR MODULE WITHIN, ALONGSIDE OR IN COMBINATION WITH PROVIDER'S PRODUCTS OR SERVICES.

7 Indemnification.

7.1 Provider shall defend, indemnify and hold harmless Customer and its Affiliates and their respective officers, directors, employees, agents, successors and permitted assigns from and against all Losses arising out of or relating to: (a) any claims or allegations that any portion of the Products, Services, Deliverables or Developments infringes, misappropriates or otherwise violates any Intellectual Property Right of a third party, (b) any personal injury, death of any person or damage to property in any manner related to the management, conduct and operation of Provider's business or Provider's performance of the Services, (c) Provider's breach of any representation, warranty or covenant contained in this Agreement, (d) Provider's breach of its confidentiality obligations hereunder, (e) the negligence or willful misconduct of Provider under this Agreement and (f) any obligation on the part of the Customer for any federal or state taxes, FICA, withholding, unemployment insurance, disability insurance or other charges the Customer is required to pay in connection with any compensation paid to Provider under this Agreement.

7.2 Customer shall promptly notify Provider of any such claim for which indemnification will be sought; provided, however, that Customer's failure to so notify shall not relieve Provider of its obligations under this Section 7 except to the extent that Provider can demonstrate that it has been materially prejudiced as a result of such failure. Provider shall have the right, at Provider's sole expense, to assume and control the defense of such claim, in which event Customer shall have the right, but not the obligation, to participate in such defense at its own expense. Provider may not settle any such claim without the prior written consent of Customer which consent may not be unreasonably withheld.

8 Limitation of Liability

8.1 EXCEPT AS OTHERWISE PROVIDED IN SECTION 8.2, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES.

8.2 The exclusions and limitations in Section 8.1 shall not apply to:

- (a) damages or other liabilities arising out of or relating to Provider's failure to comply with its obligations under Section 4.1;
- (b) damages or other liabilities arising out of or relating to a Party's failure to comply with its obligations under Section 5;

(c) damages or other liabilities arising out of or relating to a party's gross negligence, willful misconduct or intentional acts; and

(d) the indemnification obligations under Section 7.1(a), 7.2 (a), (b), (d), (e) or (f).

9 Term; Termination

9.1 Term. Unless earlier terminated in accordance herewith, this Agreement shall commence as of the Effective Date and shall continue thereafter for a period of three (3) years from the Effective Date (the "**Initial Term**"). The Parties may mutually agree to renew this Agreement for additional one (1) year periods (each, a "**Renewal Term**"). The Initial Term together with each Renewal Term, if any, shall be referred to collectively as the "**Term**".

9.2 Termination. This Agreement and/or any SOW may be terminated without penalty upon the occurrence of any of the following:

- (a) written mutual consent of the Parties;
- (b) by either Party effective at the expiration of the Initial Term, or a Renewal Term, as appropriate, in the event that the Parties have not reached agreement to renew this Agreement at least ninety (90) days prior to the expiration of such applicable Term;
- (c) by either Party effective after fifteen (15) business days' written notice to the other Party ("**Defaulting Party**") upon Defaulting Party's failure to fulfill any of its material obligations hereunder; provided, however, that if during the foregoing notice period Defaulting Party remedies such failure, this Agreement and/or the applicable SOW will continue with full force and effect as if no notice had been given; or
- (d) by either Party immediately upon the occurrence to the other Party of any the following: (a) insolvency, (b) filing of a petition in bankruptcy, (c) appointment of a receiver or trustee, (d) execution of an assignment for the benefit of creditors, or (e) any other event comparable to (a) through (d) of this subsection.

9.3 Effect of Termination. Termination of this Agreement shall automatically terminate all SOWs. Termination of this Agreement shall not relieve or release either Party from any rights, liabilities or obligations that occurred prior to the effective date of such termination. Upon expiration or termination of this Agreement, Provider shall (i) promptly deliver to Customer all Developments (whether complete or incomplete) for which Customer has paid and all Customer Materials, (ii) provide reasonable cooperation and assistance to Customer in transitioning the Services to an alternate service provider, (iii) invoice Company for all fees for Services rendered under this Agreement or SOW, as applicable, through the effective date of termination; and (iv) on a pro rata basis, repay all fees and expenses paid in advance for any Services or Developments which Provider has not provided as of the termination date.

9.4 Survival. The rights and obligations of the parties set forth in Sections 9.3, 9.4 and Sections 2.5.4, 4, 5, 6, 7, 8, 9.3, 11 and 12, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

10 Force Majeure.

10.1 Any delay or failure of either Party to perform its obligations under this Agreement will be excused if, and to the extent that, it is caused by an event or occurrence beyond the reasonable control of the Party and without its fault or negligence including, but not limited to: (a) acts of God, (b) actions by a governmental authority, (c) fires, floods, windstorms, explosions, (d) riots, wars, acts of terrorism, (e) industry-wide strikes with a direct impact on this Agreement, or (f) court orders (g) pandemics/endemics (each, a “**Force Majeure Event**”); provided that the impacted Party shall (i) give written notice of the Force Majeure Event, which states the anticipated duration of the delay, to the other Party as soon as possible after the Force Majeure Event (but in no event more than five (5) business days thereafter), (ii) use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized and (iii) resume the performance of its obligations as soon as reasonably practical after the removal of the cause. If the impacted Party is Provider, Provider will, within ten (10) days of the Force Majeure event, provide adequate assurances to Customer that the delay will not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Provider does not provide adequate assurance that the delay will cease within thirty (30) days, Provider may immediately terminate this Agreement, or any SOW hereunder, without liability to Provider.

11 Disputes and Governing Law.

11.1 Governing Law. This Agreement and any disputes or controversies arising out of or relating to this Agreement will be governed by and construed according to the internal laws of the State of North Dakota, without regard to its conflict of law principles.

11.2 Disputes. All unresolved claims, disputes or other controversies arising out of or relating to this Agreement or the Services shall initially be submitted to a senior executive from each Party for resolution by mutual agreement. Such submission shall occur promptly upon written request by either Party, but in no event later than five (5) calendar days after such request. Should the senior executives fail to arrive at a mutually acceptable resolution of the controversy within thirty (30) calendar days of submission, either Party may litigate the controversy in the appropriate court in accordance with Section 11.4.

11.3 The Parties unconditionally waive any and all right to trial by jury in any action, suit, proceeding or counterclaim arising in connection with, out of or otherwise relating to this Agreement or SOW.

11.4 Continuing Obligation. Provider’s obligation to perform and Customer’s obligation to pay undisputed fees under this Agreement shall remain in effect during the resolution of disputes.

11.5 Jurisdiction; Venue. Any legal suit, action or proceeding arising out of or related to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America located within the City of Fargo or the courts of the State of North Dakota. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any suit, action or proceeding and waives any objection based on improper venue or *forum non conveniens*. Service of process, summons, notice or other document by mail at such Party’s address set forth herein shall be effective service of process of any suit, action or other proceeding brought in any such court.

12 Miscellaneous.

12.1 Relationship of the Parties; Independent Contractor. Nothing in this Agreement shall be construed to create a joint venture, association, partnership, employee/employer relation or other formal business or agency arrangement between the Parties. Neither Party is authorized to assume or create any obligation on behalf of the other Party or to bind the other Party to any contract,

agreement or undertaking with any third party. Provider agrees that it is an independent contractor and shall at all times be solely responsible for itself and its employees and subcontractors as to workmanship, accidents, injuries, wages, benefits, supervision and control. Nothing in this Agreement shall be interpreted or construed as creating or establishing an employment relationship between Customer and Provider's employees. Provider shall be solely responsible for (i) payment of all compensation to their employees in compliance with all applicable laws, (ii) the withholding of federal, state, and local taxes from such compensation and the payment of all such withheld amounts to the appropriate agencies or authorities, (iii) payment to the appropriate agencies or authorities of state unemployment insurance, federal unemployment insurance, FICA and state disability insurance, (iv) paying workers' compensation insurance, and (v) providing their employees with all necessary and appropriate benefits attendant to his, her or their employment by Provider. Provider shall have no liability for any of Provider's debts, liabilities or obligations.

- 12.2 **Severability.** If any provision of this Agreement or any part of such provision is held invalid or unenforceable, the remainder of this Agreement will not be affected thereby and each remaining provision or part thereof will be valid and enforceable to the fullest extent permitted by law. Upon a determination that any term or provision is invalid or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby may be consummated as originally contemplated to the greatest extent possible.
- 12.3 **No Implied Waiver.** No waiver by any Party of any provision of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement will in no way affect the right to require such performance at any time thereafter.
- 12.4 **Cumulative Rights.** Customer's rights and remedies under this Agreement are cumulative and are in addition to, and not in substitution for, any other or further rights and remedies provided at law or in equity.
- 12.5 **Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned, transferred, delegated or subcontracted by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, Customer may freely assign its rights and obligations under this Agreement to an Affiliate without the consent of Provider.
- 12.6 **No Advertising.** Provider will not, without first obtaining the written consent of Customer, in any manner advertise or publish the fact that Provider has contracted to furnish Customer the Products and/or Services covered by this Agreement, nor use any trademarks or trade names of Customer.
- 12.7 **Set-Off.** In addition to any right of setoff or recoupment provided by law, all amounts due to Provider by Customer will be considered net of indebtedness of Provider and its Affiliates to Customer and its Affiliates; and Customer has the right to set off against or to recoup from any amounts due to Provider and its Affiliates from Customer and its Affiliates.
- 12.8 **Notices.** Any notice, request, consent or other document to be given under this Agreement by either Party shall be in writing and addressed to the other Party at its addresses as set forth in the preamble above or at such other address as shall be specified in writing by the Parties. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or e-mail of a PDF document or certified or registered mail (in each case, return receipt requested, postage prepaid). A notice shall be effective

only (a) upon receipt by the receiving Party and (b) if the Party giving such notice has complied with the requirements of this Section.

- 12.9 Captions: Construction. The headings in this Agreement are for convenience of reference only and do not affect the meaning of this Agreement in any manner. The Parties acknowledge that this is a negotiated document. Neither Party to this Agreement shall be deemed to be the drafter of this Agreement, and this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing an instrument to be drafted.
- 12.10 Non-Solicitation. Provider and Customer agrees that it shall not, directly or indirectly, hire or contract with any employee or former employee of Customer, made known to Provider through this Agreement within one hundred eighty (180) days after the termination of this Agreement. Notwithstanding the foregoing, nothing in this clause shall prohibit Customer or Provider from hiring any Provider Employee or Subcontractor of Provider who, without solicitation or recruitment by Customer, responds to any advertisement for employment in a newspaper, electronic media or otherwise generally available public media.
- 12.11 Third Party Beneficiaries. Provider acknowledges that Customer is entering into this Agreement for its benefit and for the benefit of its Affiliates. Except as set forth in the foregoing sentence, in Section 2.1 and Section 7, the Parties do not confer any rights or remedies upon any person or entity other than the Parties to this Agreement and their respective successors and permitted assigns.
- 12.12 Entire Agreement: Amendment. This Agreement, the Exhibits, together with any Statements of Work, attachments, or supplements specifically referenced herein, constitutes the entire agreement between the Parties and supersedes all previous communications, representations, or agreements, either oral or written, between the Parties with respect to the subject matter hereof. No agreement or understanding varying or expanding this Agreement will be binding upon either Party unless it is in writing and signed by a duly authorized representative thereof.
- 12.13 Interpretation. In the event of a conflict between the provisions of this Agreement and the provisions of a Statement of Work, the provisions of the Statement of Work shall prevail with respect to the Services provided under this Agreement.
- 12.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- 12.15 Corporate Social Responsibility. Provider acknowledges they will comply with and follow to the best of their ability the Doosan Code of Conduct and Corporate Social Responsibility (CSR) governance and strategy outlined on our website here <https://www.doosandigitalinnovation.com/en/intro/overseas-corporation/united-states>

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have executed this Agreement as of the Effective Date.

CUSTOMER:

PROVIDER:

CITY OF FARGO

**DOOSAN DIGITAL
INNOVATION AMERICA, LLC**

By: _____

By: _____

Name: _____

Name: Joe Jaskowski

Title: _____

Title: Head of DDIA

Date: _____

Date: 8/7/2024

Attest: Steve Sprague, City Auditor



STATEMENT OF WORK

City of Fargo

Prepared by Doosan Digital Innovation America (DDIA)





Statement of Work: City of Fargo - Phosphorus

Introduction

This statement of work (SOW) is between Doosan Digital Innovation America, LLC ("DDIA"), located at 250 E Beaton Dr, West Fargo, ND 58078, and City of Fargo, located at 225 4th St N, Fargo ND 58102 is governed by the terms of that certain Master Services Agreement signed by and between DDIA and City of Fargo, as amended (the "MSA"). The terms of the MSA are incorporated herein by reference. Capitalized terms used herein and not defined shall have the meanings ascribed to them in the MSA. The terms of this SOW shall prevail over any conflicting or inconsistent terms in the MSA to the extent necessary to resolve such conflict or inconsistency.

Statement of Work Description

This SOW outlines the purchase of Phosphorus xIoT license subscriptions and associated support services proposed to the City of Fargo.

Scope

The following items are in the scope of this SOW:

A. Sale of Licenses

- 1 Year xIoT platform license subscription.

B. Support Services

- Introduction Call: Review Phosphorus support and services and virtual appliance details.
- Verification of deployment: Virtual appliance has been successfully installed and first Asset Discovery.
- Training: Advanced training to other teams.
- Onboarding: Scheduled regular cadence meetings.

Deliverables

Include a detailed list of deliverables and a description of each as applicable.

- License Keys: Provision of license keys for the purchased licenses.
- Delivery of user manuals, installation guides, and other relevant documentation.
- Support Access: Access to support services as per the agreed support level.



Schedule and Milestones

Start Date: Upon creation of virtual appliance by Phosphorus.

Completion Date: Completed installation for City of Fargo.

Key Assumptions

This Agreement is based on the following assumptions, expectations, and dependencies:

A. Provider Responsibilities

- Ensure timely delivery of Phosphorus platform.
- Provide support services in accordance with the agreed-upon contract term.
- Phosphorus maintains records of all support interactions.
- Provide regular updates on any changes to the application or support services.
- Phosphorus agrees to use commercially reasonable best efforts to provide device support for devices that are discovered and currently not fully supported in its product.

B. Client Responsibilities

- Ensure timely payment for licenses and support services (per MSA).
- Provide accurate information necessary for the provision of Phosphorus platform.
- Report any issues or problems promptly to the support team.

SLAs and Warranties

Annual device and platform support is provided by Phosphorus and follows the terms and conditions noted here - <https://phosphorus.io/terms-of-service>.

Pricing

Notwithstanding anything contained in the Agreement to the contrary, City of Fargo shall pay DDIA the fees set forth below for the Services described in this SOW. All costs listed below are based on the scope and assumptions included in this statement of work and the terms outlined in the approved MSA.



Description	Qty	List Price	Unit Price	Total Annual Cost
Phosphorus Fullscope Operational Platform for OT, IoT, IoMT, and IIoT Term: 1 Year	1,500	\$50.00	\$40.00	\$60,000
Sales Tax	1			Exempt (with certificate)
Total				\$60,000

*Renewal pricing will be quoted annually based on customer approval.

*Additional unit price volume discounts are based on the information below:

Tiered Pricing below (Valid Thru 07/31/2025):

- 1251-1500 licenses = \$42/unit
- 1501-2500 licenses = \$40/unit
- 2501-5000 licenses = \$35/unit
- 5001+ licenses = \$32/unit

The invoice will be submitted to City of Fargo Manager for approval. All invoices will be accompanied by all required supporting documentation in accordance with the statement of work.

Acceptance

This statement of work, when executed by an authorized representative of both parties, shall be deemed to be effective as of the Effective Date.

City of Fargo

Signature: _____

Name: _____

Title: _____

Date: _____

Doosan Digital Innovation America, LLC

Signature: _____

Name: _____

Title: _____

Date: _____

Joe Jaskowskiak

Head of DDIA

8/7/2024

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City of Fargo Staff Report			
Title:	Prairie Farms Third Addition	Date: Update:	06/26/2024 8/15/2024
Location:	5897, 5923, and 5945 31st Street South	Staff Contact:	Donald Kress, current planning coordinator
Legal Description:	Lots 1, 2, and 3, Block 6, Prairie Farms Addition		
Owner(s)/Applicant:	Designer Homes of Fargo Moorhead, LLC / Brian Pattengale	Engineer:	Houston Engineering, Inc.
Entitlements Requested:	Minor Subdivision (Replat of Lots 1, 2, and 3, Block 6, Prairie Farms Addition, to the City of Fargo, Cass County, North Dakota)		
Status:	City Commission Consent Agenda: August 19 th , 2024		

Existing	Proposed
Land Use: Residential	Land Use: Residential
Zoning: SR-4	Zoning: No change
Uses Allowed: Allows detached houses, daycare centers up to 12 children, attached houses, duplexes, parks and open space, religious institutions, safety services, schools, and basic utilities	Uses Allowed: No change
Maximum Density Allowed: 12.1 dwelling unit per acre	Maximum Density Allowed: No change

Proposal:

The applicant requests one entitlement:

1. A **minor subdivision**, to be known as Prairie Farms Third Addition, replat of Lots 1, 2, and 3, Block 6, Prairie Farms Addition, to the City of Fargo, Cass County, North Dakota

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.

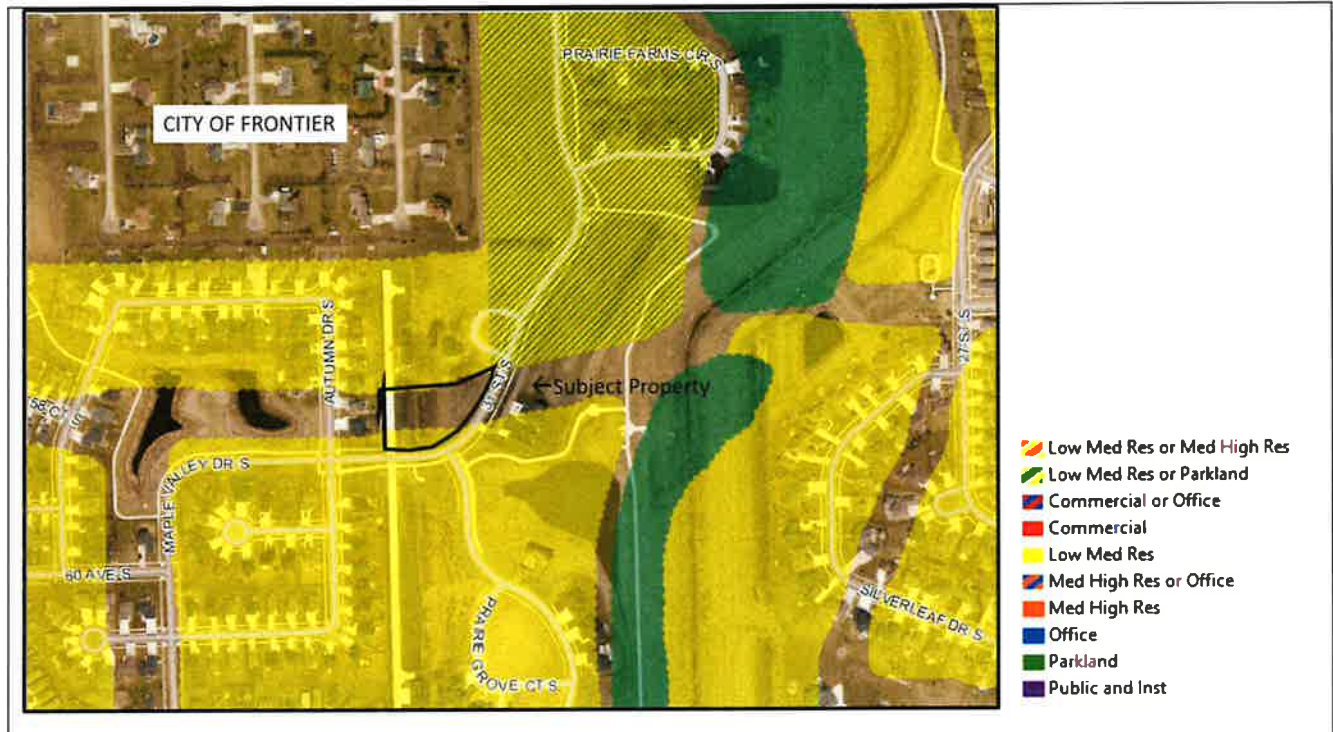
Surrounding Land Uses and Zoning Districts:

- North: SR-4 with residential uses
- East: SR-4 with residential uses and P/I, Public/Institutional with park and open spaces uses (Fargo Park District property)
- South: P/I, Public/Institutional with park and open spaces uses (Fargo Park District property)
- West: SR-2, Single Dwelling Residential, with residential uses

Area Plans:

The subject property is located within the 2001 Growth Plan South Remainder, which designates this property as Low/Medium Density Residential. This land use designation includes the current SR-3 zoning.

(continued on next page)



Context:

Schools: The subject property is located within the Fargo School District and is served by Centennial Elementary, Discovery Middle and Davies High schools.

Neighborhood: The subject property is located within the Maple Valley neighborhood.

Parks: Maple Valley Park, located at 5899 Autumn Drive South, is approximately 0.05 mile west of the subject property and provides amenities of grill; picnic table; playground, ages 2-5; playground, ages 5-12; and a shelter.

Pedestrian / Bicycle: A shared-use path is located south across Maple Valley Drive South from the subject property. This path is a part of the metro area bikeways system.

MATBUS Route: The subject properties are not location along a MATBUS route.

Staff Analysis:

The existing lots were platted as part of the Prairie Farms Addition in 2014. The lots have not been developed. The current owner wishes to reconfigure the property lines to make the lots more attractive to build on. The chart below shows the comparison between the area of the existing lots and the area of the proposed lots.

PROPOSED LOT	AREA	FORMERLY LOT	AREA
1	34,381	3	27,453
2	23,231	2	26,628
3	20,805	1	24,336

ACCESS: The individual lots will not have driveways directly accessing 31st Street South. A 24-foot wide access easement, depicted on the plat, will run from the northeast corner of Lot 1 to the southeast corner of Lot 3 to provide access to all three lots. There is an existing 30-foot wide access and utility easement to the rear (west side) of these lots that was created with the Prairie Farms Addition plat. This easement includes a paved driveway. This easement will remain.

(continued on next page)

Minor Subdivision

The LDC stipulates that the following criteria is met before a minor plat can be approved:

1. **Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The requested minor subdivision replats the existing three lots into a different three-lot configuration for residential development. The current zoning is SR-4, Single Dwelling Residential. No zone change is proposed. The subject property is located within the 2001 Growth Plan South Remainder which designates the land use as "Low/Medium Density Residential." In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received and responded to two inquiries about the application. Staff has reviewed this request and finds that this application complies with standards of Article 20-06 and all applicable requirements of the Land Development Code. **(Criteria Satisfied)**

2. **Section 20-0907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. Staff will prepare an updated amenities plan that will tie this project back to previous amenities plans of the Prairie Farms subdivisions.
(Criteria Satisfied)

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and approve the proposed subdivision plat, **Prairie Farms Third Addition** as outlined within the staff report, as the proposal complies with the adopted 2001 Growth Plan South Remainder, the standards of Article 20-06, Section 20-0907.B. and C and all other applicable requirements of the Land Development Code."

Planning Commission Recommendation: July 2nd, 2024

At the July 2nd, 2024 Planning Commission hearing, that Commission, by a vote of 8-1 with one Commissioner absent and one Commission seat vacant, moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed subdivision plat, **Prairie Farms Third Addition** as outlined within the staff report, as the proposal complies with the adopted 2001 Growth Plan South Remainder, the standards of Article 20-06, Section 20-0907.B. and C and all other applicable requirements of the Land Development Code.

Attachments:

1. Zoning Map
2. Location Map
3. Preliminary Plat

Minor Subdivision

Prairie Farms Third Addition

5897, 5923 & 5945 31st Street South

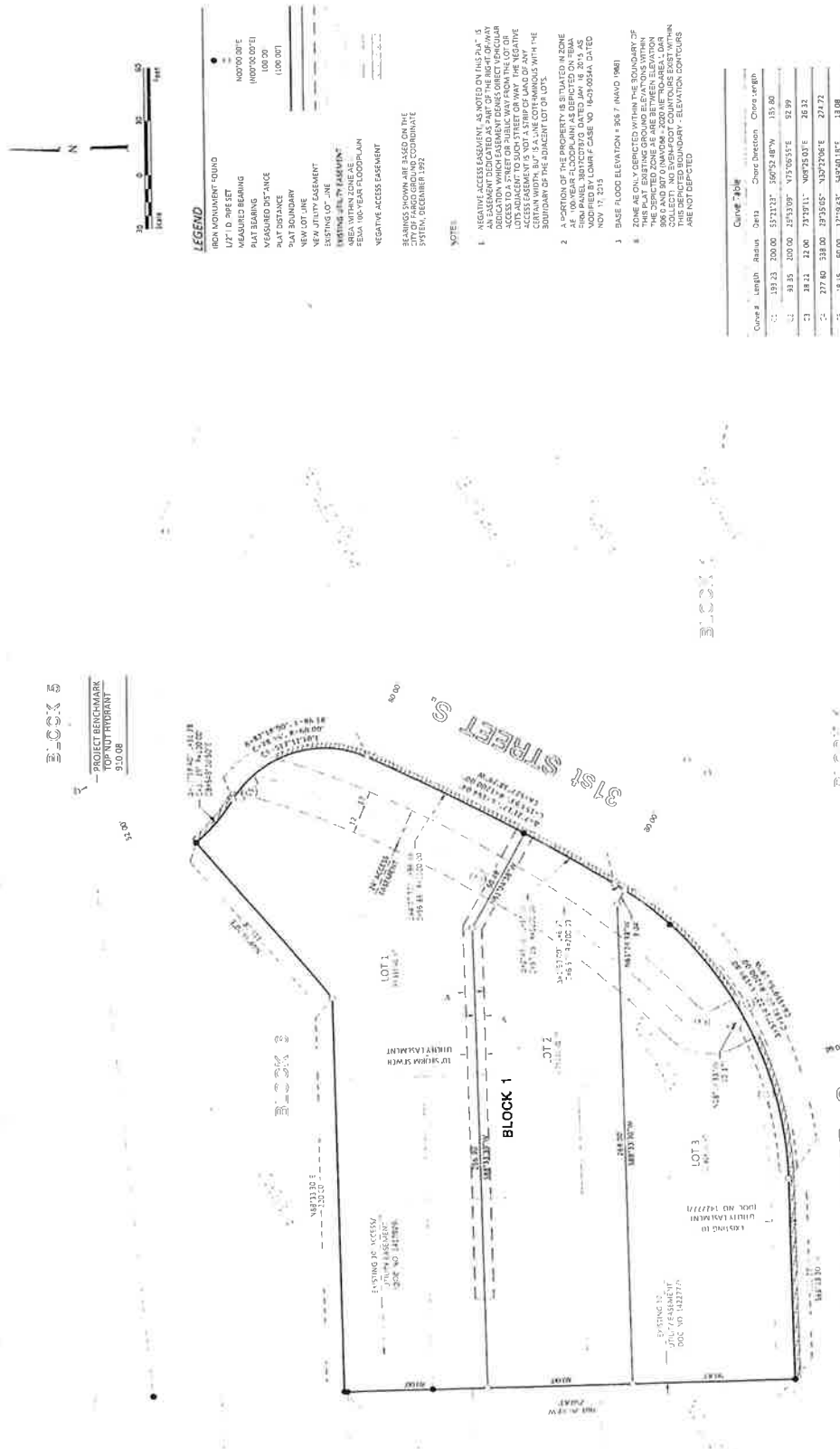


Minor Subdivision

Prairie Farms Third Addition

5897, 5923 & 5945 31st Street South





HOUSTON
ENGINEERING, INC.

PRAIRIE FARMS THIRD ADDITION
A MINOR SUBDIVISION
BEING A REPLAT OF LOTS 1, 2 & 3, BLOCK 6, PRAIRIE FARMS ADDITION
TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA

OWNER'S CERTIFICATE AND DEDICATION

NOW ALL PERSONS BY THESE PRESENTS That Designer Homes of Fargo-Moorhead, LLC, a North Dakota limited liability company, is the owner and proprietor of the following described tract of land:

Lots 1, 2 and 3 Block 6 Prairie Farms Addition, to the City of Fargo, Cass County, North Dakota

Said tract contains 1.800 acres, more or less

And that said party has caused the same to be surveyed and platted as PRAIRIE FARMS THIRD ADDITION to the City of Fargo, Cass County, North Dakota and does hereby dedicate to the public, for public use, the Storm Sewer Easement and the Negative Access Easements as shown on this plat and does hereby dedicate to the current and future owners of the lots within this plat the Negative Easements as shown on this plat.

DESIGNER HOMES OF FARGO-MOORHEAD, LLC
Owner

Notary Public

State of North Dakota

County of Cass

On this 15th day of July, 2024, before me personally appeared Robert A. Lynde, President of Designer Homes of Fargo-Moorhead, LLC, a North Dakota limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said limited liability company.

Notary Public

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT

I, Curtis A. Schneider, Professional Land Surveyor under the laws of the State of North Dakota, do hereby certify that this plat is a true and correct representation of the survey of said subdivision and the monuments for the guidance of future surveys have been located or placed in the ground as shown.

Dated this 28th day of June, 2024.

Curtis A. Schneider, Professional Land Surveyor No. 2723

State of North Dakota

County of Cass

On this 28th day of June, 2024, before me personally appeared Curtis A. Schneider, Professional Land Surveyor under the laws of the State of North Dakota, known to me to be the person who is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said subdivision.

Notary Public

CITY ENGINEER'S APPROVAL

Approved by the Fargo City Engineer this _____ day of _____, 20____

Tom Kinkarua, PE, City Engineer

State of North Dakota

County of Cass

On this _____ day of _____, 20____, before me personally appeared Tom Kinkarua, PE, City Engineer, known to me to be the person who executed the within instrument and acknowledged to me that he executed the same as City Engineer.

Notary Public

FARGO PLANNING COMMISSION APPROVAL

Approved by the City of Fargo Planning Commission this _____ day of _____, 20____

Rocky Schneider, Chair
Fargo Planning Commission

State of North Dakota

County of Cass

On this _____ day of _____, 20____, before me personally appeared Rocky Schneider, Chair, Fargo Planning Commission, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of the Fargo Planning Commission.

Notary Public

FARGO CITY COMMISSION APPROVAL

Approved by the Board of City Commissioners and ordered filed this _____ day of _____, 20____

Timothy J. Mahoney, Mayor

Notary Public

State of North Dakota

County of Cass

On this _____ day of _____, 20____, before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo and Steven Bergquist, City Auditor, City of Fargo, known to me to be the persons who are described in and who executed the within instrument and acknowledged to me that they executed the same on behalf of the City of Fargo.

Notary Public



FARGO POLICE DEPARTMENT

A SAFE AND UNIFIED COMMUNITY BUILT ON TRUST, ACCOUNTABILITY AND INCLUSION

OFFICE OF THE CHIEF

MEMORANDUM

COPY

TO: City Commissioners

FROM: Chief David B. Zibolski *DZ*

DATE: August 15, 2024

RE: Bias Motivation and Hate Crime 2nd Quarter Report.

Dear Commissioners,

For the August 19, 2024 City Commission agenda, and pursuant to City Ordinance, I would like to provide the hate crime investigations 2nd quarter report. I will be happy to answer any further questions at that time.

24-37931 Menacing; 5000 block of 40 Ave S: The two victims are homeless and were staying under the bridge located in the 5000 block of 40 Ave S. The victims are bi-sexual and dating one another. The victims stated a group of African American juveniles confronted them three times throughout 6/6/2024. Both stated this group insulted them the first time for being poor and homeless. Eventually they insulted them for being homosexual. Both stated, during the last altercation, several members of this group were holding blunt objects and toy nerf guns. The juveniles did not threaten the victims with violence, but made them feel in fear for their safety. Neither could give any specific details about the suspects. There are no investigative leads are available.

24-25252 Disorderly Conduct; [REDACTED]: This incident occurred on 4/17 /24. [REDACTED] is a biological female who identifies as a male. [REDACTED] lives with her intimate partner, [REDACTED]. At the time of the police report, [REDACTED]'s nephew, [REDACTED], lives with [REDACTED] and [REDACTED]. [REDACTED] is [REDACTED]'s biological father. Recently, [REDACTED] gained full custody of [REDACTED]. [REDACTED] called [REDACTED] for the purpose of arranging a transfer of [REDACTED] into his custody. The phone conversation did not go well and turned into an argument. During the argument, [REDACTED] made derogatory comments to [REDACTED] regarding her being transgender. The name-calling was a result of anger which developed during the phone conversation and hate was not the primary motivation for [REDACTED]'s phone call. One could easily argue the name-calling is constitutionally-protected free speech. Also, [REDACTED] could have hung up the phone at any time. The elements of the listed offense were not met and, therefore, the case was not prosecuted and is now inactive. The bias motivation was removed from this report.

RECOMMENDED MOTION:

Receive and file the Bias Motivation and Hate Crime 2nd Quarter Report.



PUBLIC WORKS/OPERATIONS

20

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

Aug 14, 2024

The Honorable Board of City Commissioners
City of Fargo
225 Fourth Street N
Fargo, ND 58102

RE: Fuel Purchase for 1st and 2nd Quarters of 2025 (RFP24274)

Commissioners:

The Fuel Procurement Committee, comprised of the Public Works Director of Operations, the Fleet Services Manager and Transit Fleet Manager, monitors the City of Fargo's current and projected fuel use and the fuel market to determine when conditions are favorable to lock in fuel prices for 80% of the city's projected fuel uses.

On Aug 1, 2024, the Fuel Procurement Committee received bids for 270,000 gallons of #2 Diesel and 142,000 Gallons of Unleaded Gasoline. The award was made to Northdale Oil, Inc with a submitted low bid of \$1,031,160.00 without tax. (RFP24274).

Attached for your review is the Bid Tab from Aug 1, 2024 and the Fuel Contract.

RECOMMENDED MOTION: I/we hereby move to authorize and execute the Forward Fuel Contract (RFP24274) for the 1st and 2nd Quarters of 2025.

Respectfully Submitted,

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

Allan Erickson
Fleet Services Manager

2025 1st/2nd Quarter BID TAB

Farstad Oil		\$1,066,392.00	
Mansfield		\$1,034,471.60	
Northdale Oil		\$1,031,160.00	Winning Bid

Mansfield		Without Tax	Without Tax
<u>1st Quarter</u>			
#2 Diesel Fuel	135,000	\$2.6430	\$ 356,805.0000
No-Lead Ethonal 89 Octane	71,000	\$2.2408	\$ 159,096.8000
<u>2nd Quarter</u>			
#2 Diesel Fuel	135,000	\$2.6057	\$ 351,769.5000
No-Lead Ethonal 89 Octane	71,000	\$2.3493	\$ 166,800.3000
		Avg \$/Gal	
Total Gallons #2	270,000	\$2.6244	\$708,574.5000
Total Gallons No-Lead	142,000	\$2.2951	\$325,897.1000
			\$ 1,034,471.60

Northdale Oil		Without Tax	Without Tax
<u>1st Quarter</u>			
#2 Diesel Fuel	135,000	\$2.6200	\$ 353,700.0000
No-Lead Ethonal 89 Octane	71,000	\$2.2300	\$ 158,330.0000
<u>2nd Quarter</u>			
#2 Diesel Fuel	135,000	\$2.6200	\$ 353,700.0000
No-Lead Ethonal 89 Octane	71,000	\$2.3300	\$ 165,430.0000
		Avg \$/Gal	
Total Gallons #2	270,000	\$2.6200	\$707,400.0000
Total Gallons No-Lead	142,000	\$2.2800	\$323,760.0000
			\$ 1,031,160.00

Farstad Oil		Without Tax	Without Tax
<u>1st Quarter</u>			
#2 Diesel Fuel	135,000	\$2.6140	\$ 352,890.0000
No-Lead Ethonal 89 Octane	71,000	\$2.4000	\$ 170,400.0000
<u>2nd Quarter</u>			
#2 Diesel Fuel	135,000	\$2.7150	\$ 366,525.0000
No-Lead Ethonal 89 Octane	71,000	\$2.4870	\$ 176,577.0000
		Avg \$/Gal	
Total Gallons #2	270,000	\$2.6645	\$719,415.0000
Total Gallons No-Lead	142,000	\$2.4435	\$346,977.0000
			\$ 1,066,392.00

City of Fargo

FORWARD CONTRACT

Contractor: Northdale Oil
3000 Heartland Dr
Grand Forks, ND 58201

Buyer: City of Fargo
 225 4th ST. N
 Fargo, ND 58102

	Delivery Period	Quantity	Product	Price/Gallon
	2025			
	1st Quarter			
1	Jan 1 – Mar 31	135,000	#2 Diesel Fuel	262
2	Jan 1 – Mar 31	71,000	No-lead Ethanol 87 Octane	223
	2nd Quarter			
3	Apr 1 – June 30	135,000	#2 Diesel Fuel	262
4	Apr 1 – June 30	71,000	No-lead Ethanol 87 Octane	2330

Price: Quoted price is per gallon and inclusive of:

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

Demurrage Charge: \$ 55 per hour commencing with the second (2nd) hour.

Measurement: Terminal Meter Tickets (Gross Gallons)

Terms: Net 10 Days from Invoice Date

Sales Representative: Tyler Stockton
Northdale Oil

Buyer Representative: Allan Erickson
 City of Fargo

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

City of Fargo Fuel Bid for 1st and 2nd Quarter of 2025
Due by 9:00 AM Central Time, August 1, 2024
Please list below your prices on a quarterly basis.

\$ Per Gallon will **INCLUDE**

Any local freight/delivery charges.

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

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

Federal Oil Spill Recovery Fee

<u>1st Quarter (Jan 1 – Mar 31)</u>	<u>Gallons</u>	<u>Cost/Gallon</u>
#2 Diesel Fuel	135,000	<u>2.62</u>
No-Lead Ethanol 87 Octane	71,000	<u>2.23</u>
 <u>2nd Quarter (Apr 1 – June 30)</u>		
#2 Diesel Fuel	135,000	<u>2.62</u>
No-Lead Ethanol 87 Octane	71,000	<u>2.33</u>
 Total Gallons #2	270,000	<u>\$707,400</u>
Total Gallons No-Lead	<u>142,000</u>	<u>\$323,780</u>
	350,000	
TOTAL		<u>\$1,031,180</u>

Demurrage Charge per hour after the first hour

\$55

Vendor:

Northdale Oil

Signature:

[Signature]

Title:

Procurement Manager

Date:

8/1/24

Time:

9 AM

Buyer:

[Signature] 8/1/24
Fleet Manager

Definitions:

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

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

Efficiency Payments:

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

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

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

Delivery of Fuel

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

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

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

Additional Products and Fuel Additives

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

Failure to Perform:

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

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

Excused Performance:

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

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

Contractor Warrants:

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

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

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

Notices:

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

Contractor:

Buyer:

Northdale Oil, Inc.	City of Fargo
203 14 th St NE	225 4 th St N
East Grand Forks, MN 56721	Fargo, ND 58102

Transfer or Assignment:

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

Severability:

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

Applicable Law:

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

Consequential and Incidental Damages:

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

Applicable Federal Clauses

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

No Government Obligation to Third Parties:

The Buyer and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Buyer, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud & False or Fraudulent Statements & Related Acts:

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, Program Fraud Civil Remedies, 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or cause to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records and Reports:

Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the

contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a

period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

Federal Changes:

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Buyer and FTA, and they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Civil Rights and Equal Opportunity:

The City of Fargo is an Equal Opportunity Employer. As such, the City of Fargo agrees to comply with all applicable Federal civil rights laws and implementing regulations.

Apart from inconsistent requirements imposed by Federal laws or regulations, the City of Fargo agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

Nondiscrimination: In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Race, Color, Religion, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Age: In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities: In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Termination Provisions:

The City reserves the right to terminate this agreement for cause by written notices to the Contractor. Cause for termination will be documented failure(s) of the Contractor to provide services in the quantity and/or quality required by the agreement. Contractor will, within ten (10) days, correct the failure or present the City with a plan to correct the failure. In the event Contractor does not correct failure or complete its plan to correct failure, then the City may terminate this agreement by notifying Contractor of date of termination. Said termination shall not diminish the City of Fargo's rights under law or equity.

This Contract may be terminated for cause by either party upon seven (7) days' written notice in the event of substantial failure to perform through no fault of the terminating party.

In the event of any termination, City of Fargo shall pay the agreed rate only for services delivered up to the date of termination. City of Fargo has no obligation to Contractor, of any kind, after the date of termination.

Disadvantaged and Small Business Enterprise:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a) Withholding monthly progress payments;
- b) Assessing sanctions;
- c) Liquidated damages; and/or
- d) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

In connection with the performance of this service, the Contractor will cooperate with the City of Fargo in the utilization of disadvantaged business enterprises including women- owned business enterprises for the duration of the contract and will use its best efforts to insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by City of Fargo for purchases pertaining to this Contract to the best of the Contractor's ability and will provide the City of Fargo with the necessary certification and records for reporting purposes. When the majority of the contract is labor, which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

The Contractor will be required to report its DBE participation obtained through race- neutral means throughout the period of performance.

The Contractor must promptly notify the City of Fargo whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City of Fargo.

Fostering Small Business Participation. The City of Fargo has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the City of Fargo. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.

Incorporation of FTA Terms:

The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 (as amended), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Fargo requests which would cause City of Fargo to be in violation of the FTA terms and conditions.

Debarment, Suspension, Ineligibility and Voluntary Exclusion:

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Breach of Contract and Dispute Resolution:

Disputes: Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City, the City Administrator. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Fargo City Commission, 225 4th St N, Fargo, ND 58102. A hearing will be scheduled with the Fargo City Commission at the next regularly scheduled meeting. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at said hearing. The decision of the Fargo City Commission shall be binding upon the Contractor and the Contractor shall abide by the decision.

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

Claims of Damages: Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies: Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of North Dakota.

Rights and Remedies: The duties and obligations imposed by this Agreement/Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Lobbying Restrictions:

The Proposer certifies that: No Federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreement) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31,

U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure

Clean Air and Federal Water Pollution Control Act:

The Contractor agrees:

It will not use any violating facilities;

It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"

It will report violations of use of prohibited facilities to FTA; and

It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

Contract Work Hours & Safety Standards Act:

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

Substance Abuse Requirements: Drug and Alcohol Testing:

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of North Dakota or the City of Fargo, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before the start of the contract period and to submit the Management Information System (MIS) reports before the start of the contract to the City of Fargo Fleet Manager. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Energy Conservation:

Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).

Safe Operation of Motor Vehicles:

Seat Belt Use: The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company- owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

Distracted Driving: The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Entire Agreement:

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

DESTINATION IS CITY OF FARGO FUELING STATIONS

Dated this ____ day of _____, 2024.

CONTRACTOR

BUYER

By: _____

Dr. Tim Mahoney Mayor

It: _____

(Both Parties are Signatories)



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Water Treatment Plant
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

August 14, 2024

Honorable Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

Subject: Resolution of Governing Body of Applicant - Project WA2402 Clean Water SRF Loan Application

Dear Commissioners:

Water Utility staff is seeking approval of the attached 'Resolution of Governing Body of Applicant' for Project WA2402, Advance Metering Infrastructure (AMI). The resolution authorized the Water Utility Director to complete the Clean Water State Revolving Fund (CWSRF) loan application to secure loan funds for the project.

At a later date, a loan agreement will be brought to the Fargo City Commission and ND Industrial Commission for approval contingent on meeting requirements of CWSRF staff and the ND Public Finance Authority. The primary repayment source for the CWSRF loan will be Infrastructure Sales Tax (Fund 450).

Your consideration is greatly appreciated in this matter.

Sincerely,

Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Approve the 'Resolution of Governing Body of Applicant' for Project WA2402 Clean Water SRF Loan Application

RESOLUTION OF GOVERNING BODY OF APPLICANT

(Suggested Format)

RESOLUTION NO. _____

Resolution authorizing filing of application with the North Dakota Department of Environmental Quality for a loan under the Clean Water Act and/or the Safe Drinking Water Act.

WHEREAS, under the terms of the Clean Water Act and/or the Safe Drinking Water Act, the United States of America has authorized the making of loans to authorized applicants to aid in the construction of specific public projects: Now, Therefore, BEIT
RESOLVED _____
City of Fargo City Commission
(Governing Body of Applicant)

1. That Troy B. Hall be and is hereby authorized to execute and file an application
(Designated Official)

on behalf of City of Fargo, North Dakota with the North Dakota Department of Environmental
(Legal Name of Applicant)

Quality for a loan to aid in the construction of:

Installation of a new water meter system in the City of Fargo with improved technology to remotely read water consumption by customers throughout the City. The new water meter system will improve workflow efficiency, help promote water conservation, and improve customer service within the City of Fargo.

(Brief Project Description)

2. That Troy B. Hall Water Utility Director
(Name of Authorized Representative) *(Title)*

be and is hereby authorized and directed to furnish such information as the North Dakota Department of Environmental Quality may reasonably request in connection with the application, which is herein authorized to be filed, to sign all necessary documents, and, on behalf of loan recipient, to accept loan offer and receive payment of loan funds in an estimated amount of \$ 15,000,000.

That the City of Fargo, North Dakota hereby expresses its official intent to use
(Legal Name of Applicant)

proceeds of this loan to reimburse construction expenditures made prior to the issuance of its municipal securities to the North Dakota Public Finance Authority.

CERTIFICATE OF RECORDING OFFICER

The undersigned duly qualified and acting Water Utility Director of the
(Title of Officer)

City of Fargo, North Dakota does hereby certify that the attached resolution is a true
(Legal Name of Applicant)

and correct copy of the resolution, authorizing the filing of application with the North Dakota Department of Environmental Quality, as regularly adopted at a legally convened meeting of the

City of Fargo, North Dakota duly held on the 19th day of August, 20 24;
(Name of Governing Body of Applicant)

and further that such resolution has been fully recorded in the journal of proceedings and records in my office.

In WITNESS WHEREOF, I have hereunto set my hand this 19th day of August, 2024.

Signature of Recording Officer*

Title of Recording Officer City Auditor

*The signature needs to match the signature used for the FIND pre-application



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August 14, 2024

Honorable Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

Subject: Resolution of Governing Body of Applicant – Facility Plan for Lead Service Line Replacement

Dear Commissioners:

Water Utility staff is seeking approval of the attached 'Resolution of Governing Body of Applicant' to authorize the City of Fargo Water Utility Director to submit an application to the North Dakota Department of Environmental Quality (NDDEQ) to request assistance for Lead and Copper Rule Revisions (LCRR) related items. This assistance is 100 percent paid by State and/or Federal funds. There is no cost to the City of Fargo, but will require Water Utility staff time to help complete the work.

This NDDEQ assistance will be used in two (2) ways for the City of Fargo application:

- Preparation of a Lead Service Line Replacement Plan
- Preparation of a Facility Plan for Lead Service Line Replacement

The Facility Plan for Lead Service Line Replacement (LSLR) is required for a future application to request federal grant funding for LSLR in Fargo. The LSLR planning documents will be completed by Engineering consultants from an authorized list provided by the NDDEQ.

Your consideration is greatly appreciated in this matter.

Sincerely,

Troy B. Hall

Water Utility Director

SUGGESTED MOTION:

Approve the 'Resolution of Governing Body of Applicant' to apply for assistance with a Facility Plan for Lead Service Line Replacement.

RESOLUTION OF GOVERNING BODY OF APPLICANT
(Suggested Format)

Resolution authorizing filing of an application with the North Dakota Department of Environmental Quality (NDDEQ) for assistance performing a lead service line inventory in compliance with the Lead and Copper Rule Revisions.

Public Water System City of Fargo	Designated Official Troy B. Hal
--------------------------------------	------------------------------------

WHEREAS the public water system named above (the "entity") is a community public water system or non-transient non-community water system regulated by the NDDEQ, the governing body of this entity authorizes the above-named designated official to submit an application to the NDDEQ to request assistance with a lead service line inventory, lead service line replacement plan, facility plan to prepare for a DWSRF loan, and/or to conduct non-regulatory sampling as described in the application. The entity will provide to the NDDEQ and the NDDEQ's designated service provider physical access to records, public easements, public rights-of-way, and the entity will provide any other information needed to perform the necessary work.

If on-site investigation of service lines (such as potholing or hydrovacing) is performed by the NDDEQ's designated service provider or one of its subcontractors, the entity will waive permit fees.

CERTIFICATE OF RECORDING OFFICER

The undersigned duly qualified and acting Water Utility Director of the City of Fargo
(title of officer) (public water system)
does hereby certify that the resolution is a true and correct copy of the resolution as regularly adopted at a legally-convened meeting of the entity's governing body held on the 19th day of August, 2024; and further that such resolution has been fully recorded in the journal of proceedings and records in my office.

In WITNESS WHEREOF, I have hereunto set my hand this 19th day of August, 2024.

(SEAL)
If applicant has
an official seal,
impress here.

Signature of Recording Officer
Title of Recording Officer City Auditor