

FARGO CITY COMMISSION AGENDA
Monday, August 7, 2023 - 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, July 24, 2023 and Special Meeting, July 31, 2023).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Sole Source Procurement with Hamre, Rodriguez, Ostrander & Prescott, P.C. for a third party review of the Project Participation Agreement (PPA) associated with the RRVWSP (SSP23144).
- 2. 2nd reading and final adoption of an Ordinance Amending Section 25-1506 of Article 25-15 of Chapter 25 of the Fargo Municipal Code, Relating to Licenses-Classifications; 1st reading, 7/24/23.
- 3. Extension to Settlement Agreement and Release with James and Joyce Lepine for property located at 714 Hackberry Drive.
- 4. Resolution Establishing Commercial Pedal Car Fees.
- 5. Site Authorizations for Games of Chance:
 - a. Fargo Youth Hockey Association at Country Inn & Suites.
 - b. Fargo Metro Baseball Association at Applebee's Grill and Bar – North Fargo.
 - c. Fargo Metro Baseball Association at Applebee's Grill and Bar – 13th Avenue.
 - d. Fargo Metro Baseball Association at Applebee's Grill and Bar – 45th Street.
- 6. Applications for Games of Chance:
 - a. NDSU Foundation for a raffle and raffle board on 9/30/23.
 - b. New Life Center for a raffle on 9/19/23.
 - c. St. John Paul II Catholic Schools for a calendar raffle from 8/25/23 to 10/13/23.
 - d. Sts. Anne and Joachim Church for a raffle on 11/12/23.
 - e. El Zagal Outdoors Unlimited for a raffle on 8/10/23 and 8/31/23.
 - f. Fargo Davies High School for a calendar raffle from 11/21/23 to 2/17/24.
 - g. Fargo Davies High School for a calendar raffle from 8/24/23 to 5/21/24.
- 7. Negative Final Balancing Change Order No. 1 in the amount of -\$135,525.50 for Project No. UR-21-B1.
- 8. Negative Final Balancing Change Order No. 4 in the amount of -\$32,550.47 for Project No. UR-21-A1.

9. Bid award to Excavating, Inc. – Fargo in the amount of \$150,490.00 for Project No. FM-15-F3.
10. Bid advertisement for Project No. BP-23-0.
11. ND Department of Transportation Cost Participation, Construction and Maintenance Agreements - LPA Federal Aid Project for Project Nos. SN-23-A1 and SN-23-B1.
12. Addendum to Encroachment Agreement with TD Companies, LLC d/b/a TD Companies, LLC – 7th Ave – Series 2 for property located at 704 38th Street North.
13. Developer Agreement with EagleRidge Development, LLC for Veterans Industrial Park Subdivision.
14. Developer Agreement with Four Horseman, LLC for Radio Second Addition.
15. Memorandum of Offer to Landowner for Easement (Temporary Construction Easement) with Jonathon K. and Sadie M. Erickson (Project No. FM-19-C).
16. Change Order No. 1 in the amount \$55,411.82 for Improvement District No. PN-22-M1.
17. Change Order No. 1 in the amount of \$167,295.00 for Improvement District No. UN-23-A1.
18. Change Order No. 3 in the amount of \$15,000.00 for Improvement District No. BN-22-C1.
19. Negative Final Balancing Change Order No. 1 in the amount of -\$7,527.50 for Improvement District No. AN-21-A1.
20. Negative Final Balancing Change Order No. 2 in the amount -\$1,847.80 for Improvement District No. TN-22-A1.
21. Easement (Temporary Construction Easement) with Kurt Altenburg (Improvement District No. BR-24-A1).
22. Easement (Temporary Construction Easement) with Jeffrey Ware and Jay Jansen (Improvement District No. BR-24-A1).
23. Easement (Temporary Construction Easement) with Bruce Thompson (Improvement District No. BR-24-A1).
24. Memorandum of Offer to Landowner for Easement (Temporary Construction Easement) with Southgate Properties, LLP (Improvement District No. BR-23-G2).
25. Memorandum of Offer to Landowner for Easement (Temporary Construction Easement) with Dakota Boys & Girls Ranch Foundation (Improvement District No. BR-23-G2).
26. Contract and bond for Improvement District No. BN-23-C1.
27. Bid award and Contract with Amy's Windows in the amount of \$122,550.00 for the Fargo Public Library Sunshades Replacement Project (RFP23090).
28. Purchase of ten copiers from Advanced Business Solutions in the amount of \$114,149.80 utilizing the State contract (PBC23131).

29. Amendment No. 2 to Professional Services Agreement with Berry, Dunn, McNeil and Parker, LLC (RFP21029).
30. Purchase of Service Agreement with Families United for Self-Employment (FUSE) Independent Contractor Victoria Johnson (SSP23149).
31. Notice of Subaward from the ND Department of Environmental Quality for Water Pollution – EPA Block (ALN #66.605).
32. Financial Award from the ND Housing Finance Agency for the ND Homeless Grant.
33. Memorandum of Understanding with the ND Department of Health and Human Services.
34. Notice of Grant Award from the ND Department of Health and Human Services for Monkeypox vaccination and education (ALN #93.354).
35. Market adjustments for Maintenance Technician I, II and III positions in all departments and the Maintenance Supervisor position in Facilities Management effective 8/7/23.
36. Resolution Approving Plat of Commerce on 12th Eighth Addition.
37. Resolution Approving Plat of Green Acres Second Addition.
38. Bid award to Northdale Oil, Inc. for fuel purchasing in the 1st and 2nd Quarters of 2024 and execute the Forward Fuel Contract (RFP23119).
39. Bid award to RDO Equipment in the amount of \$119,000.00 for one tractor loader backhoe (RFP23137).
40. Bid award to Nelson Auto Center in the amount of \$64,982.14 for the purchase of one Ford F-450 (PBC23377).
41. Request to carry encumbered funds from the 2022 vehicle replacement budget forward to the 2023 budget.
42. Amendment to Joint Powers Agreement for Transit Support with North Dakota State University for the 2023-2024 school year.
43. Contract Agreement with Peterson Mechanical, Inc. for the tankless hot water heater project at the Water Treatment Plant (Project No. WA2206) (RFP23105).
44. Sole Source Procurement with Avista Technologies, Inc. for the annual purchase of the Reverse Osmosis System chemicals to be used in the Membrane Water Treatment Plant (SSP23126).
45. Sole Source Procurement with Zenon Environmental Corporation for annual replacement of the ultrafiltration modules in the Membrane Water Treatment Plant (SSP23127).
46. Bills.

REGULAR AGENDA:

47. **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).

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

48. **PUBLIC HEARING** – Special Assessments for Maintenance of Skyway System.
49. **PUBLIC HEARING** – Special Assessment of Nuisance Abatement Fees.
50. Update on the 10th Street and University Drive Corridor Study.
51. Update on HB 1340 (Firearms).
52. Recommendation to adopt a Resolution Establishing Procedure for Issuance of Additional Liquor Licenses.
53. Recommendation to approve the Mayor's 2024 Preliminary Budget and set the Public Hearing date for Monday, September 18, 2023 at 5:15 p.m.
54. Recommendation for appointment to the Liquor Control Board.
55. Applications for Property Tax Exemptions for Improvements Made to Buildings:
- a. Mark and Mary Hartje, 214 21st Avenue North (5 year).
 - b. Chad and Angeline Walswick, 2709 11th Street South (5 year).
 - c. Renae Mathison, 1644 11th Street North (5 year).
 - d. Robert and Patricia Edlund, 3202 Hickory Street North (5 year).
 - e. Christopher and Breanna Volk, 1805 6th Avenue South (5 year).
 - f. Brent and Mary Jo Qualey, 813 South Drive South (5 year).
 - g. Darnell Lundstrom and Judith Hornseth, 508 23rd Avenue South (5 year).
 - h. Wade Lindgren, 1022 28th Street South (5 year).
 - i. Michael and Beth Astrup, 129 Eagle Street North (5 year).
 - j. Todd Evensen and Melissa Benson, 1819 23rd Street South (5 year).
 - k. Ronald Holmquist, 306 28th Avenue North (5 year).
 - l. D. James and Cynthia O'Day, 2991 Peterson Parkway North (5 year).
 - m. Stanley and Lori Morlock, 901 19th Street South (5 year).
 - n. Jeffrey and Heather Rotar, 1249 4th Street North (5 year).
56. Liaison Commissioner Assignment Updates.

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

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

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REPORT OF ACTION

FINANCE COMMITTEE

Location: Water Treatment Plant

Agenda Item: PPA Special Consulting Services

Presenter: Troy Hall

<u>Routing</u>	<u>Date</u>
Finance Committee	<u>7/24/2023</u>
City Commission	<u>8/1/2023</u>

Troy Hall and City Attorney, Erik Johnson requested approval for a sole source request for assistance in the review of the proposed Project Participation Agreement (PPA) associated with the Red River Valley Water Supply Project (RRWSP).

The PPA was prepared by the Garrison Diversion Conservation District (GDCCD) and addresses the local user cost-share responsibilities. This project is complex and it is critical to utilize the knowledge and expertise of a third party specialist who needs to understand the subject matter to conduct a thorough review.


Mayor Mahoney clarified that LAWA represents all parties but no one is working directly for the City of Fargo's interest.

The motion before the Finance Committee is to move the request forward to the City Commission for approval for Legal Services and sold source procurement with Hamre, Rodriguez, Ostrander & Prescott P.C. for third party review of a PPA associated with the RRWSP.

MOTION:

Brenda Derrig moved to approve, second by Michael Redlinger and all members present voted in favor.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Tim Mahoney, Mayor	<u>X</u>	<u>X</u>		
Dave Piepkorn, City Commissioner	<u>X</u>	<u>X</u>		
Mike Redlinger, City Administrator	<u>X</u>	<u>X</u>		
Brenda Derrig, Assistance City Administrator	<u>X</u>	<u>X</u>		
Susan Thompson, Assistant Finance Director	<u>X</u>	<u>X</u>		
Tanner Smedshammer, Purchasing Manager	<u>X</u>	<u>X</u>		
Steve Sprague, City Auditor	<u>X</u>	<u>X</u>		


 Mike Redlinger, City Administrator

July 21, 2023

MEMORANDUM

To: Finance Committee

From: Troy Hall, Water Utility Director
Ian McLean, Assistant City Attorney
Erik Johnson, Assistant City Attorney

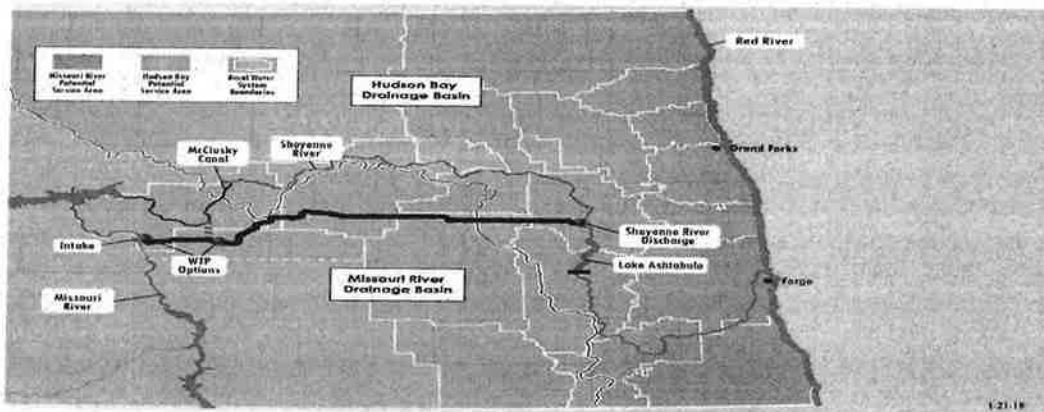
Re: Sole Source Procurement for Third Party Review of RRVWSP PPA – Hamre, Rodriguez, Ostrander & Prescott, P.C.

Attached for your reference, please find an Agreement for Legal Services with Hamre, Rodriguez, Ostrander & Prescott, P.C. (HROP) for third party review of the proposed Project Participation Agreement (PPA) associated with the Red River Valley Water Supply Project (RRVWSP). The PPA was prepared by the Garrison Diversion Conservancy District (GDCD) and addresses the local user cost-share responsibilities for the project including design, construction, operation and maintenance. The PPA is comprised of twenty sections and eleven exhibits containing legal, technical and financial details related to the project. Since Fargo (including West Fargo and Cass Rural Water District) is the largest local user of the project, it is critical to utilize the knowledge and expertise of a third party specialist to conduct a thorough review of the PPA.

Background

The Red River Valley Water Supply Project (RRVWSP) is a project to deliver Missouri River water to the Red River Valley and central North Dakota. The project is necessary due to the susceptibility of existing regional water supplies under drought conditions. Thus, the project is critical for our region to establish a secure water supply and ensure climate resiliency during periods of drought.

The RRVWSP is a State and Local project with the GDCD representing the State of North Dakota and LAWA representing the local water users. Fargo, as a member of LAWA and a key sponsor of the RRVWSP, has previously approved four interim financing agreements, Series A, B, C and D to enable the start of construction on three major project components. The three components include the Missouri River Intake, Transmission Pipeline and the Sheyenne River Discharge.



Red River Valley Water Supply Project – Plan Overview

Proposal – Agreement for Legal Services

A summary of completed exhibit reviews completed to-date and the potential for additional third party reviews has been attached as Exhibit A. Exhibit A summarizes the internal PPA review efforts, as well as, potential additional third party reviews and the objectives of the additional reviews.

The proposed scope of work would include a third party review of the exhibits as reflected below:

<u>PPA Exhibit</u>	<u>Description</u>	<u>Previous Review</u>	<u>Third Party Review</u>
A	Project Elements	x	x
B	User Nominations	x	
C	Prior Expenses by Users	x	
D	Capital Cost Responsibility	x	x
E	Cost Responsibility	x	x
F	StateMod Assumptions	x	x
G	Operational Framework	x	x
H	Debt Repayment Obligations	x	x
I	Maps	x	
K	Graphic	x	

The proposed Agreement for Legal Services has been attached for your reference as Exhibit B.

Plan of Financing - Third Party Review

The plan of financing for the third party PPA review is the annual Water Utility Budget for 2023 and 2024. Since the review work will include legal, technical and financial information, a requirement of hours was not able to be estimated at this time due to the detailed nature of the reviews involving both hydraulic and financial models, Corps of Engineers, Garrison Diversion, Department of Water Resources, etc. Thus, the contract will be performed on a time and material basis for up to \$75,000 in third party fees. In the event that the fees will exceed \$75,000, the item will be brought back to the Finance Committee and City Commission.

The billing rates contained in the proposal are as follows:

Special Council Dingess	\$325.00/hr.
Shareholders (Hamre)	\$300.00/hr.
Senior Special Council (Scott & Petitt)	\$275.00/hr.
Legal Assistants (Sullivan & Fournier)	\$70.00/hr.

SUGGESTED MOTION:

Approve the attached Agreement for Legal Services and sole source procurement with Hamre, Rodriguez, Ostrander & Prescott, P.C. for third party review of a PPA associated with the RRVWSP. Funding for third party review services will come from the annual Water Utility budgets in 2023 and 2024.

Your consideration in this matter is greatly appreciated.

C: Denise Kolpack, Water Utility Liaison Commissioner
Michael Redlinger, City Administrator
Brenda Derrig, Assistant City Administrator
Ian McLean, Assistant City Attorney

Summary of PPA and Potential Party Review Options

PPA Exhibit	Description of Exhibit	Previous Review	Possible Review
A – Project Elements	Project Elements and Capital/O&M Cost Estimates	Capital costs were initially vetted at a high level through 2018 HDR Value Engineering Study. O&M costs vetted through the Operations Subcommittee of the TAC. More validation of the costs has occurred since 2018 with obtaining \$80M in hard bids.	Engineering Review. Could perform an overall independent review of costs but it would likely cost a few tens of thousands. Bid results from the planned 2023 bidding will be the next validation of overall project costs and may be as valuable as a third party review.
B – User Nominations	1-page tabular summary of nominations	These are 2016 nominations updated for what was known in 2021.	No Review. These will all be updated during the coming biennium. Further review by a 3 rd party is not needed.
C – Prior Expenses by Users	Statement of Facts of what expenses Users have incurred through Series A, B, and C.	Developed by AE2S and reviewed by Garrison and LAWA.	No Review. Further review by 3 rd party not needed as exhibit is simply a statement of fact.
D – Capital Cost Responsibility	Significant exhibit in that it assigns capital cost allocation through a tiered system to Users.	Mostly developed by AE2S with review by Garrison, Vogel, BA and LAWA.	Legal Review. Possibly beneficial to have outside party review language of exhibit for clarity and defensibility of fairness. The underlying capital costs do not need review as they are covered in Exhibit A.
E - OMA&R Cost Responsibility	Significant exhibit in that it assigns operational cost allocation through a tiered system to Users.	Mostly developed by AE2S with review by Garrison, Vogel, BA and LAWA.	Legal Review. Possibly beneficial to have outside party review language of exhibit for clarity and defensibility of fairness. The underlying O&M costs do not need review as they are covered in Exhibit A.
F – StateMod Assumptions	Technical and lengthy documentation of StateMod	Developed by Wilson Water Group. Reviewed by BA and BV. The model was built on the original model developed by BOR. Modeling assumptions have been presented to the TAC for validation, but TAC has not done a review of the actual model.	Engineering Review. Review of this exhibit would require a specialized surface water modeling firm. Review would essentially be reviewing the design flow basis of the overall project. Most likely would hire a niche modeling firm like Wilson Water Group. This would likely cost a few tens of thousands of dollars, depending on the scope. We can help ID a firm if this is desired and work with

Exhibit A

PPA Exhibit	Description of Exhibit	Previous Review	Possible Review
G – Operational Framework.	Summary of roles and responsibilities of various project stakeholders	Mostly developed by BA. Reviewed by BV, Garrison and the Operations Subcommittee of LAWA.	<p>the firm. I would envision this type of review to be similar to a VE. We would spend a day presenting the whole modeling process, give the review firm a few days, and then hear their conclusions.</p> <p>No Review or LAWA Review. As this is a preliminary document mostly focused on roles and responsibilities and Garrison, LAWA, the Users, ND DWR and USACE. This document does not by itself to present a risk to future Users as LAWA can help determine the final roles and responsibilities. The larger risk is that USACE or ND DWR making policy decisions that impact the project Users. Document may not require 3rd party legal or technical review. We have discussed these policy decisions in the last couple of weeks.</p>
H – Debt Repayment Obligations	Repayment obligations for future debt.	Developed by AE2S and reviewed by Garrison and LAWA.	<p>Financial Review There are various cost models that support the cost allocations in the PPA. A 3rd party review of the models could be completed with a focus on two questions. 1) Does the model accurately represent the cost allocations described elsewhere in the PPA? 2) Does the model accurately calculate the cost allocations? Such a review could be completed by a firm that supports municipal financial planning.</p>
I – Maps of Project	Three layout maps	Maps extensively reviewed as part of RRVWSP Preliminary Design and ENDAWS EIS	No review needed.
K – Flow of Funds	Graphic	Developed by AE2S.	No review needed.



188 Inverness Drive West, Suite 430
Englewood, Colorado 80112-5204
Telephone: (303) 779-0200
mail@hroplaw.com

AGREEMENT FOR LEGAL SERVICES

This Agreement for Legal Services (“Agreement”) is between Hamre, Rodriguez, Ostrander & Prescott, P.C., subsequently referred to as “Law Firm” and The City of Fargo, North Dakota, whose address is 225 Fourth Street North, Fargo North Dakota 58201, subsequently referred to as “Client”, “Fargo” or “you.” The Law Firm and Client are collectively referred to as the “Parties.”

Client has requested Law Firm provide it with legal advice and assistance regarding the structure and substance of agreements with and among members of the Lake Agassiz Water Association “LAWA” and other water rights-related issues pertaining to multi-party water projects bringing water from Lake Ashtabula and the Sheyenne River to Fargo and LAWA water providers in the Red River of the North basin.

Because the Client is a governmental entity, the Law Firm has requested that one person be designated as the point of contact to bind the Client with respect to giving direction to Law Firm regarding the representation of Client in such matter and receiving advice and work product from Law Firm. This is done to avoid confusion, duplication of effort and conflicting instructions. The person so designated to act for the Client is ___[Name ___], ___[Title]___.

To avoid misunderstanding, Client and Law Firm wish to formalize their agreement regarding fees and representation by this written Agreement.

Client and Law Firm agree as follows:

A. The Parties agree that the Law Firm’s engagement is limited to performance of services referenced above. Because Law Firm is not your general counsel, the Law Firm’s acceptance of this engagement does not involve an undertaking to represent you or your interest in any other matter.

B. To enable the Law Firm to represent you effectively, you agree to cooperate fully with the Law Firm in all aspects relating to the matter, and to fully and accurately disclose to us all facts and documents that may be relevant to the matter or that we may otherwise request. You will also make yourself reasonably available to attend meetings, conferences, and other proceedings. You also agree to pay our statements for services and other charges stated below.

C. John M. Dingess, Special Counsel to, and former shareholder of Law Firm, will have primary responsibility for your representation due to his past involvement with Fargo and his North

Exhibit B

Dakota licensure. Other Law Firm attorneys and legal assistants may also be involved in the representation when appropriate in the circumstances, Should the project and matters related thereto continue for a substantial time the Parties anticipate primary responsibility for your representation may shift to other attorneys of Law Firm who may then be licensed to provides such services. The Law Firm will provide legal counsel to you in accordance with this Agreement and in reliance upon information and guidance provided by you, to keep you reasonably informed of progress and developments, and to respond to your inquiries. We will use E-mail to communicate with you, or on your behalf, during the course of the representation. It is widely understood that ordinary internet E-mail is inherently insecure. If you would like us to engage in something more secure than ordinary internet E-mail, please contact us and indicate so, otherwise we will presume that ordinary internet E-mail is acceptable.

D. Either at the commencement or during the course of our representation, the Law Firm may express opinions or beliefs concerning various courses of action and the results that might be anticipated. Any such statement made by any attorney of the Law Firm is intended to be an expression of opinion only, based on information available to us at the time, and should not be construed by you as a promise or guarantee.

E. The Law Firm makes no warranty as to the adequacy of service rendered to the Client by attorneys other than those affiliated with the Law Firm.

F. Client agrees to pay a per hour fee as set forth below for all work done by the Law Firm and the staff. The Law Firm typically reviews its timekeeper billing rates in June of each year as part of our planning process for the coming year. Rates are subject to change on July 1 of every year after the year of execution of this Agreement as a result of this planning process. Not every rate changes every year, but we would like you to be aware in advance of that process. Any rate changes will require Client's consent, and such changed may be memorialized by a letter agreement.

a)	Special Counsel Dingess	\$325.00
b)	Shareholders (Hamre)	\$300.00
b)	Senior Special Counsel (Scott & Petitt)	\$275.00
c)	Legal Assistants (Sullivan & Fournier)	\$70.00

Because of the distance between North Dakota and Colorado, any charge for attorney time resulting from travel by common carrier to and from the Client will be at one half the then affective billing rate.

Additional charges would include, among other items, engineering, geologist, landmen or other consultants approved by the Client (if Client desires to have such consultants retained by Law Firm), online and access fees for computer database research in excess of flat-rate charges normally incurred by the Firm, court filing fees (including computer filing charges), service of process costs, court reporter fees, expert fees, computerized legal research expenses, long distance telephone charges, delivery charges, facsimile charges (long distance only), copying, postage, including federal express, travel (by common carriers but costs of travel by personal automobile

will not be charged) and lodging. The Client will receive an itemized statement showing the work that the Law Firm has done and all of the costs incurred on the account each month.

The Parties agree the legal fees for the services herein contemplated will not exceed a total of \$75,000.00 without first obtaining a specific written agreement allowing for any such increase.

G. The Law Firm's representation of you shall commence upon your execution of this Agreement.

H. The Law Firm's fees will be billed on the amount of time spent on your behalf. Statements normally will be issued for monthly work performed and expenses recorded on our books during the previous month. Law Firm will send such statements in PDF format to the following E-mail address(es): _____. Payment is due promptly upon receipt of our statement. If any statement remains unpaid for more than 90 days, we may suspend performing services for you until arrangements satisfactory to us have been made for payment of outstanding statements and the payment of future fees and expenses or terminate the representation. As discussed, the fees and costs relating to this matter are not predictable. Accordingly, the Law Firm makes no commitment concerning the maximum fees and costs that will be necessary to resolve or complete this matter. It is also expressly understood that payment of the Law Firm's fees and costs is in no way contingent upon the outcome in the matter.

I. With regard to costs and fees for discovery, the Law Firm is not now making any estimates. If the matters related to the legal services specified above are later to be litigated then this Agreement will be supplemented with estimates for those costs and fees.

J. Although litigation is not anticipated, Client has been informed and understands that if litigation occurs, a court may award attorney fees in addition to the amount of recovery being claimed. Client understands that the fee agreement should contain a provision as to how any specially awarded attorney fees will be accounted for and handled. Fees awarded will be applied to the bill of the Law Firm. Un-awarded fees will be the responsibility of the Client.

K. Although litigation is not anticipated, Client has been informed and understands that if litigation occurs, a court sometimes awards costs and attorney fees to the opposing party. Client has been informed and understands that should that happen in this representation, Client will be responsible to pay such award. Client understands that an award against it will be paid out of the proceeds of any amount collected on Client's behalf.

L. Client may terminate the Law Firm's representation at any time by notifying us. Your termination of our services will not affect your responsibility for payment of outstanding statements and accrued fees and expenses incurred before termination, or incurred thereafter in connection with orderly transition of the matter. If such a termination occurs, your documents and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own internal files pertaining to the matter will be retained. The Law Firm files include, for example, Law Firm administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, and internal lawyers' work product, including investigative reports, prepared by or for the internal use of lawyers. All such documents retained

by the Law Firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of such documents or other materials (including, without limitation, copies of any electronic files provided to us by you) and retained by us seven years after the conclusion of a particular matter. Client has been advised and understands that nearly all of Law Firm's documents and Client files are kept only in digital form.

M. Client acknowledges the Law Firm may withdraw from representation in this matter at any time if: client insists on presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification or reversal of existing law; client insists that the Law Firm pursue a course of conduct that is illegal or that is prohibited under the disciplinary rules; by other conduct render it unreasonably difficult for the Law Firm to carry out its employment; client insists that the Law Firm engage in conduct that is contrary to the judgment and advice of the Law Firm and its attorneys; or deliberately disregards an agreement or obligation to the Law Firm as to expenses or fees for services rendered. In the event of withdrawal from employment the Law Firm will take reasonable steps to avoid foreseeable prejudice to the rights of Client including giving due notice to the Client, allowing reasonable time for employment of other counsel, and delivering all papers and properties to which Client is entitled.

N. This Agreement contains the entire agreement between the Client and the Law Firm regarding the Law Firm's fees and representation of Client. Except as provided in Paragraph F above, this Agreement shall not be modified or revoked except by written agreement signed by the Client and the Law Firm.

O. This Agreement shall be binding upon the Client and the Law Firm and their legal representatives, successors and assigns.

P. This Agreement shall be construed and governed by the laws of the State of Colorado.

Q. Client acknowledges reading and signing this Agreement and receiving a copy.

DATED this _____ day of June, 2023.

CITY OF FARGO, NORTH DAKOTA

By:

[Name]

[Title]

[E-mail Address]

HAMRE, RODRIGUEZ, OSTRANDER & PRESCOTT, P.C.

By:

Austin Hamre
Shareholder, Director
ahamre@hroplaw.com

ACKNOWLEDGED

By:

John M. Dingess
Special Counsel
jdingess@hrodllaw.com



SOLE SOURCE REQUEST FORM (SSP)

Requested by:	Troy Hall / Ian McLean	Department:	Water / Attorney
Date of Request:	7/20/2023	Phone Number:	701-476-6741
E-mail:	thall@fargond.gov		
Dept Head Signature:		Estimated Amount of Purchase:	Hourly, \$75,000

Sole Source Purchase Requirement:

A contract less than \$50,000 may be awarded without competition when the purchasing manager determines in writing, after conducting a good-faith review of available sources, that there is only one source for the required supply, service, or material. Any sole source procurement greater than \$50,000 must also be approved by the Board of City Commissioners prior to a vendor award using this method.

Product or Service description of the features or capabilities unique to the vendor or brand being requested:

The Water Utility and City Attorney are requesting assistance with a third party review of the proposed Project Participation Agreement (PPA) associated with the Red River Valley Water Supply Project (RRVWSP). The PPA was prepared by the Garrison Diversion Conservancy District (GDCCD) and addresses the local user cost-share responsibilities for the project including design, construction, operation and maintenance. The PPA is comprised of twenty sections and eleven exhibits containing legal, technical and financial details related to the project. Since Fargo (including West Fargo and Cass Rural Water District) is the largest local user of the project, it is critical to utilize the knowledge and expertise of a third party specialist to conduct a thorough review of the PPA.

Vendor Name:	Hamre, Rodriguez, Ostrander & Prescott, P.C.		
Address:	188 Inverness Drive West, Suite 430		
City:	Englewood	State:	Colorado
		Zip Code:	80112-5204
Contact Person:	John Dingess	Title:	Special Council
Telephone:	303-779-0200	Email:	mail@hroplaw.com
Purchasing Manager Approval:			
Sole Source (SSP) Number:			

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 25-1506 OF ARTICLE 25-15
OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE,
RELATING TO LICENSES-CLASSIFICATIONS

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 25-1506 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby amended as follows:

* * * *

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

J. Class FA.—A Class "FA" license shall authorize the licensee to sell "on-sale" only, subject to the following restrictions and conditions:

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- 1. A Class "FA" licensee may sell alcoholic beverages in a restaurant which holds a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages. Meals must be prepared by the licensee or its employees on the licensed premises from ingredients purchased by the licensee. Food not prepared by the licensee that is sold on the licensed premises shall not be included in gross receipts derived from food sales.

* * * *

Section 2. Effective Date.

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

Dr. Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading and Final Passage:

CITY ATTORNEY

Nancy J. Morris

ASSISTANT CITY ATTORNEYS

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

3

August 3, 2023

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

RE: Extension of Occupancy Agreement

Dear Mayor and Commissioners,

Presented for your approval is an extension to the occupancy agreement for the property located at 714 Hackberry Drive. Occupancy was permitted pursuant to a Settlement Agreement and Release until July 31, 2023. The sellers have agreed to vacate the property and relinquish possession to the City before noon on Friday, September 1, 2023, allowing sufficient time for the City contractor to proceed with site control and levee construction yet this season.

Suggested Motion: I move to approve the Extension to Settlement Agreement and Release, permitting the sellers to remain in the purchased property until no later than noon on Friday, September 1, 2023.

Please feel free to contact me if you have any questions, comments, or concerns.

Regards,


Nancy J. Morris

NJM/lmw

Enclosure

Extension to Settlement Agreement and Release

JAMES AND JOYCE LEPINE, hereinafter “Seller”, whether one or more, as seller of that certain property located at 714 Hackberry Drive South, Fargo, North Dakota, hereinafter “Premises”, and the **CITY OF FARGO, NORTH DAKOTA**, hereinafter “City”, as the buyer of said property, entered into an Settlement Agreement and Release, the terms of which are incorporated herein. The Settlement Agreement and Release provides that Seller may remain in possession of the Premises until July 31, 2023, unless the time of possession is extended by written agreement executed by both parties. The parties agree to extend the Occupancy term of the Settlement Agreement and Release.

NOW, THEREFORE, it is hereby agreed by and between the parties as follows:

1. Seller and City agree that Seller shall be permitted to continue to reside in the Premises located at 714 Hackberry Drive South, Fargo, North Dakota, until **September 1, 2023**.
2. Seller understands and agrees that failure to surrender possession of Premises to City on or before 12:00 noon on Friday, September 1, 2023, shall result in a liquidated damage amount of \$500 per day, payable to the City immediately upon City securing possession of the property. Failure to pay such sums due shall be deemed a breach, authorizing City to seek judgment for the full amount due and owing, plus interest accruing at a rate of 1 ½ % per month.
3. All other terms of the Settlement Agreement and Release remain in full force and effect.

Dated this 1st day of August, 2023.


James Lepine


Joyce Lepine

Dated this ____ day of August, 2023.

THE CITY OF FARGO, a North Dakota municipal
corporation

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

ATTEST:

Steven Sprague, City Auditor

4

AUDITOR'S OFFICE

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

MEMORANDUM

TO: Board of City Commissioners
FROM: Steven Sprague, City Auditor
SUBJECT: Resolution establishing Commercial Pedal Car fees
DATE: August 3, 2023

The City of Fargo recently passed on ordinance establishing operations of a Commercial Pedal Car business. The attached resolution sets the fees for operating a Commercial Pedal Car in the City of Fargo.

Recommended Motion:

Please approve the attached resolution.

COMMISSIONER _____ introduced the following resolution and moved its adoption:

RESOLUTION

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

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 purpose; and

WHEREAS, Article 3(G) of the Home Rule Charter of the City of Fargo, North Dakota grants the City of Fargo power to provide for the adoption, amendment, and repeal of ordinances and resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof; and

WHEREAS, The Auditors Office of the City of Fargo is tasked with licensing various business operations in Chapter 25 of the Fargo Municipal Code; and

WHEREAS, Fargo Municipal Code Section 25-38 provides for the licensure of Commercial Pedal Car Vehicles within the city of Fargo as follows:

No person or business may engage in a commercial pedal car business without first obtaining a commercial pedal car business license and fully comply with this Article.

WHEREAS, The Board of City Commissioners wishes to establish a license fee.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO that the Commercial Pedal Car license requirements and fees for a Commercial Pedal Car Vehicle License shall be set as follows:

1. A license fee in the amount of \$100.00 shall be required yearly for all persons engaged in a Commercial Pedal Car Vehicle business.
2. A Commercial Pedal Car vehicle license will be issued to approved applicants. Licensees shall be eligible to receive up to three (3) vehicle decals, which must be affixed to the vehicle prior to operation in a easily observable location. Additional pedal car vehicle decals may be obtained for a fee of \$15 per additional decal.
3. A Commercial Pedal Car driver's license shall be required, however, there shall be no fee for this license.

Dated this ____ day of _____, 2023.

Dr. Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER _____, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS _____. The following were absent and not voting: _____, and the following voted against the same: _____, whereupon the resolution was declared duly passed and adopted.



Auditor's Office

225 4th Street North
Phone: 701-241-1304
MVanyo@fargond.gov

APPLICATION FOR COMMERCIAL PEDAL CAR VEHICLES

Business Name (ND Secretary of State Registration)

Business Address

Phone Number

Required documents:

- For a partnership, the names and addresses of the partners must also be given, and one of the partners shall sign the application. For an LLC or corporation, the applicant shall also provide the names and addresses of the principal officers, and the president and secretary shall sign the application.
- North Dakota State Contractor's License
- Evidence of certification by an employee of a bicycle repair shop located within the city of Fargo of the safety and roadworthiness of the commercial pedal car vehicle.
- Certificate of Liability Insurance in the minimum amount of two million dollars (\$2,000,000). Proof of Insurance shall name the city of Fargo as an additional insured.

The following standards must be adhered to at all times:

- Hours of operation shall be from 10:00am to 10:00pm May through September and 10:00am to 8:00pm October through April. The prohibitions of hours of operation may be waived for special events upon proper application to the City Auditor.
- Commercial Pedal Car Vehicle Operator must hold a valid drivers license.
- A valid/license/sticker visible in the proper registration area.
- No commercial pedal car vehicle shall travel at a speed greater than 25 miles per hour.
- All beverages must be in cans not exceeding 16 ounces. No glassware of any kind shall be allowed on a commercial pedal car, including but not limited to bottles, plastic cups, or other drinking glasses.
- No music or amplified sound shall be played, nor yelling or conversation be conducted, in such a manner that violates Article 11-02 of the Fargo Municipal Code.
- No more than two (2) alcoholic beverages may be permitted per passenger.

Affidavit by Responsible Party

By signing below, I hereby acknowledge under penalty of perjury that all information contained in this application is complete, true and accurate.

Owner Signature: _____ Date: _____

Additional Signature(s): _____

License Fee \$100 (Annual License, Not Pro-rated.)

City Auditor



GAMING SITE AUTHORIZATION
ND OFFICE OF ATTORNEY GENERAL
SFN 17996 (4-2023)

5a

G - _____ (_____) _____
Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization
Fargo Youth Hockey Association

This organization is authorized to conduct games of chance under the license granted by the North Dakota Attorney General at the following location

Name of Location
Country Inn & Suites

Street
3316 13th Ave S

City
Fargo

ZIP Code
58103

County
Cass

Beginning Date(s) Authorized
7/1/23

Ending Date(s) Authorized
6/30/24

Number of Twenty-One tables, if zero, enter "0" 0

Specific location where games of chance will be conducted and played at the site (required)
Against east and north wall of common area in view of bar

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

RESTRICTIONS FOR CITY/COUNTY USE ONLY

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

- | | | |
|---|--|---|
| <input type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input type="checkbox"/> Sports Pools |
| <input type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input type="checkbox"/> Twenty-One |
| <input type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input type="checkbox"/> Poker |
| <input type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input type="checkbox"/> Paddlewheel with Tickets |
| <input type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input type="checkbox"/> Paddlewheel Table |
| <input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device | | |

Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

APPROVALS

Attorney General	Date
Signature of City/County Official	Date <u>8/7/23</u>
PRINT Name and official position of person signing on behalf of city/county above <u>Steven Sprague/City Auditor</u>	

INSTRUCTIONS:

1. City/County - Retain a **copy** of the Site Authorization for your files.
2. City/County - Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval

RETURN ALL DOCUMENTS TO:

Office of Attorney General
Licensing Section
600 E Boulevard Ave, Dept. 125
Bismarck, ND 58505-0040
Telephone: 701-328-2329 OR 800-326-9240



GAMING SITE AUTHORIZATION
 ND OFFICE OF ATTORNEY GENERAL
 SFN 17996 (4-2023)

56

G - _____ (_____) _____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization
Fargo Metro Baseball Association

This organization is authorized to conduct games of chance under the license granted by the North Dakota Attorney General at the following location

Name of Location
Applebee's Grill & Bar -North Fargo

Street 2001 16th St. N	City Fargo	ZIP Code 58102	County ND
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Beginning Date(s) Authorized 8/8/2023	Ending Date(s) Authorized 6/30/2024	Number of Twenty-One tables, if zero, enter "0" 0
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Specific location where games of chance will be conducted and played at the site (required)
Southeast corner of bar area

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

RESTRICTIONS FOR CITY/COUNTY USE ONLY

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

<input type="checkbox"/> Bingo	<input type="checkbox"/> Club Special	<input type="checkbox"/> Sports Pools
<input type="checkbox"/> ELECTRONIC Quick Shot Bingo	<input type="checkbox"/> Tip Board	<input type="checkbox"/> Twenty-One
<input type="checkbox"/> Raffles	<input type="checkbox"/> Seal Board	<input type="checkbox"/> Poker
<input type="checkbox"/> ELECTRONIC 50/50 Raffle	<input type="checkbox"/> Punchboard	<input type="checkbox"/> Calcuttas
<input type="checkbox"/> Pull Tab Jar	<input type="checkbox"/> Prize Board	<input type="checkbox"/> Paddlewheel with Tickets
<input type="checkbox"/> Pull Tab Dispensing Device	<input type="checkbox"/> Prize Board Dispensing Device	<input type="checkbox"/> Paddlewheel Table
<input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device		

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
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If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

APPROVALS

Attorney General	Date
Signature of City/County Official	Date 8/7/23
PRINT Name and official position of person signing on behalf of city/county above Steven Sprague/City Auditor	

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GAMING SITE AUTHORIZATION
 ND OFFICE OF ATTORNEY GENERAL
 SFN 17996 (4-2023)

50

G - _____ (_____) _____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization
Fargo Metro Baseball Association

This organization is authorized to conduct games of chance under the license granted by the North Dakota Attorney General at the following location

Name of Location
Applebee's Grill & Bar - 13th Ave

Street 2800 13th Ave SW	City Fargo	ZIP Code 58103	County Cass
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Beginning Date(s) Authorized 8/8/2023	Ending Date(s) Authorized 6/30/2024	Number of Twenty-One tables, if zero, enter "0" 0
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Specific location where games of chance will be conducted and played at the site (required)
Southwest corner of bar area

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

RESTRICTIONS FOR CITY/COUNTY USE ONLY

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

<input type="checkbox"/> Bingo	<input type="checkbox"/> Club Special	<input type="checkbox"/> Sports Pools
<input type="checkbox"/> ELECTRONIC Quick Shot Bingo	<input type="checkbox"/> Tip Board	<input type="checkbox"/> Twenty-One
<input type="checkbox"/> Raffles	<input type="checkbox"/> Seal Board	<input type="checkbox"/> Poker
<input type="checkbox"/> ELECTRONIC 50/50 Raffle	<input type="checkbox"/> Punchboard	<input type="checkbox"/> Calcuttas
<input type="checkbox"/> Pull Tab Jar	<input type="checkbox"/> Prize Board	<input type="checkbox"/> Paddlewheel with Tickets
<input type="checkbox"/> Pull Tab Dispensing Device	<input type="checkbox"/> Prize Board Dispensing Device	<input type="checkbox"/> Paddlewheel Table
<input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device		

Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

APPROVALS

Attorney General	Date
Signature of City/County Official	Date 8/7/23
PRINT Name and official position of person signing on behalf of city/county above Steven Sprague/City Auditor	

INSTRUCTIONS:

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 600 E Boulevard Ave, Dept. 125
 Bismarck, ND 58505-0040
 Telephone: 701-328-2329 OR 800-326-9240



GAMING SITE AUTHORIZATION
 ND OFFICE OF ATTORNEY GENERAL
 SFN 17996 (4-2023)

(Sd)

G - _____ (_____) _____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization
Fargo Metro Baseball Association

This organization is authorized to conduct games of chance under the license granted by the North Dakota Attorney General at the following location

Name of Location
Applebee's Grill & Bar - 45th St

Street 2350 45th St S	City Fargo	ZIP Code ND	County 58104
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Beginning Date(s) Authorized 8/8/2023	Ending Date(s) Authorized 6/30/2024	Number of Twenty-One tables, if zero, enter "0" 0
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Specific location where games of chance will be conducted and played at the site (required)
Southeast corner room in bar area with machines along north wall of that room

If conducting **Raffle** or **Poker** activity provide date(s) or month(s) of the event(s) if known

RESTRICTIONS FOR CITY/COUNTY USE ONLY

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

<input type="checkbox"/> Bingo	<input type="checkbox"/> Club Special	<input type="checkbox"/> Sports Pools
<input type="checkbox"/> ELECTRONIC Quick Shot Bingo	<input type="checkbox"/> Tip Board	<input type="checkbox"/> Twenty-One
<input type="checkbox"/> Raffles	<input type="checkbox"/> Seal Board	<input type="checkbox"/> Poker
<input type="checkbox"/> ELECTRONIC 50/50 Raffle	<input type="checkbox"/> Punchboard	<input type="checkbox"/> Caicuttas
<input type="checkbox"/> Pull Tab Jar	<input type="checkbox"/> Prize Board	<input type="checkbox"/> Paddlewheel with Tickets
<input type="checkbox"/> Pull Tab Dispensing Device	<input type="checkbox"/> Prize Board Dispensing Device	<input type="checkbox"/> Paddlewheel Table
<input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device		

Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

APPROVALS

Attorney General	Date
Signature of City/County Official	Date 8/7/23

PRINT Name and official position of person signing on behalf of city/county above

Steven Sprague/City Auditor

INSTRUCTIONS:

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RETURN ALL DOCUMENTS TO:

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 Licensing Section
 600 E Boulevard Ave, Dept. 125
 Bismarck, ND 58505-0040
 Telephone: 701-328-2329 OR 800-326-9240



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 GAMING DIVISION
 SFN 9338 (5-2023)

(Handwritten initials)

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 NDSU Foundation		Dates of Activity (Does not include dates for the sales of tickets) 9/30/2023	
Organization or Group Contact Person Lexi Warren	E-mail Lexi.Warren@NDSUFoundation.com	Telephone Number 701.231.6802	
Business Address 1241 N. University Drive	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Holiday Inn		County Cass	
Site Physical Address 3803 13th Ave. S	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 - 9/30 Raffle board - 9/30			

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle Board	Mystery Trip	4,909.00
Raffle Board	Premier Liquor Basket	2,000.00
Paddle Raffle	Scheels Gift Card	1,500.00
<i>Paddle Raffle 14K Custom Necklace</i>		Total (limit \$40,000 per year) \$10,004 8,409.00

Intended Uses of Gaming Proceeds
Academic scholarships for North Dakota State University students

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

Printed Name of Organization Group's Permit Organizer Josh Andres	Telephone Number 701.231.6854	E-mail Address josh.andres@ndsufoundation.com
Signature of Organization Group's Permit Organizer <i>(Handwritten Signature)</i>	Title Asst. VP of Finance/Controller	Date 7/24/2023



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 GAMING DIVISION
 SFN 9338 (5-2023)

7/21/23

(66)

Applying for (check one)

Local Permit Restricted Event Permit*

Games to be conducted

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

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

ORGANIZATION INFO

Name of Organization or Group New Life Center		Dates of Activity (Does not include dates for the sales of tickets) 09/19/2023	
Organization or Group Contact Person Amy Gedrose	E-mail amy.gedrose@fargonic.org	Telephone Number 701-532-4421	
Business Address 1902 3rd Ave N	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different) PO Box 1067	City Fargo	State ND	ZIP Code 58107

SITE INFO

Site Name Delta Hotels by Marriott Fargo	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.) Paddle Game Raffle at annual fundraising event on Tuesday, September 19, 2023			

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

Game Type	Description of Prize	Exact Retail Value of Prize
Paddle Raffle	Week long stay at lake cabin, basket filler items	4,000.00
Paddle Raffle	Night Stay at local hotel, dinner gift card, filler items	800.00
Paddle Raffle	Night stay at local hotel, dinner gift card, filler items	800.00
Total (limit \$40,000 per year)		\$ 5,600.00

Intended Uses of Gaming Proceeds

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

Yes No

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

Yes No

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

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

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

Yes No

Printed Name of Organization Group's Permit Organizer Amy Gedrose	Telephone Number 701-532-4421	E-mail Address amy.gedrose@fargonic.org
Signature of Organization Group's Permit Organizer <i>[Signature]</i>	Title CEO	Date Jul 20, 2023



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 LICENSING SECTION
 SFN 9338 (09-2021)

(bc)

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*

Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit allowed per year.

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

Name of Organization or Group of People permit is issued to St. John Paul II Catholic Schools	Dates of Activity 08/25/2023-10/13/2023	If raffle, provide drawing date Multiple (See Below)	
Organization or Group Contact Person Liz Bassett	Title or Position Special Events Coordinator	Telephone Number 701-893-3242	
Business Address 5600 25th Street S	City Fargo	State ND	ZIP Code 58104
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) Delta Hotels by Marriott			
Site Address 1635 42nd Street SW	City Fargo	ZIP Code ND	County 58103

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle 08/25/2023	Cash prize up to \$500	\$500
Raffle 09/15/2023	Cash Prize up to \$1,000	\$1,000
Raffle 09/29/2023	Cash Prize up to \$500	\$500
Raffle 10/13/2023	Cash Prize up to \$500	\$500
Total (limit \$40,000 per year)		\$2,500

Intended Uses of Gaming Proceeds
 Help fund athletic needs at Shanley High School

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 any 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 of \$40,000 per 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 used for political purposes.)
 Yes No

Organization or Group Contact Person

Name Liz Bassett	Title Special Events Coordinator	Telephone Number 701-893-3242	E-mail Address liz.bassett@jp2schools.org
Signature of Organization or Group's Top Official 		Title Special Events Coordinator	Date 07/26/2023



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 GAMING DIVISION
 SFN 9338 (5-2023)

✓

Applying for (check one)
 Local Permit Restricted Event Permit*

Games to be conducted
 Bingo Raffle Raffle Board Calendar Raffle Sports Pool Poker* Twenty-One* Paddlewheels*

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

ORGANIZATION INFO

Name of Organization or Group Sts. Anne & Joachim Church		Dates of Activity (Does not include dates for the sales of tickets) November 12, 2023	
Organization or Group Contact Person Rob Asheim	E-mail rasheim@stsaaj.org	Telephone Number 701-235-5757	
Business Address 5202 25th St. S.	City Fargo	State ND	ZIP Code 58104
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Sts. Anne & Joachim Church		County Cass	
Site Physical Address 5202 25th St. S.	City Fargo	State ND	ZIP Code 58104
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; November 12, 2023			

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	All Cash - See attached	\$22,500
Total (limit \$40,000 per year)		\$

Intended Uses of Gaming Proceeds

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)
 Yes No

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1 - June 30 (If yes, the organization or group does not qualify for a local permit or restricted event permit)
 Yes No

Has the organization or group received a local permit from an city or county for the fiscal year July 1 - June 30 (If yes, indicate the total retail value of all prizes previously awarded)
 No Yes - Total Retail Value: (This amount is part of the total prize limit for \$40,000 per fiscal year)

Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be for political purposes.)
 Yes No

Printed Name of Organization Group's Permit Organizer Rob Asheim	Telephone Number 701-235-5757	E-mail Address rasheim@stsaaj.org
Signature of Organization Group's Permit Organizer 	Title Business Manager	Date 7-19-23



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

oe

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) 8/10 & 8/31	
Organization or Group Contact Person Roger Ellsworth	E-mail rogerellsworth11@gmail.com	Telephone Number 612-849-2888	
Business Address 1429 North 3rd Street	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name EL ZAGAL SHRINE TEMPLE		County Cass	
Site Physical Address 1429 North 3rd Street	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 10, 2023 and August 31, 2023			

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	Meat	1250.00
Total (limit \$40,000 per year)		\$

Intended Uses of Gaming Proceeds
Donation to Fargo North Sports

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 Roger Ellsworth	Title President	Telephone Number 612-849-2888	E-mail Address rogerellsworth11@gmail.com
Signature of Organization or Group's Top Official <i>Roger Ellsworth</i>		Title Club President	Date 7-31-23



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 GAMING DIVISION
 SFN 9338 (5-2023)

(6f)

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 Fargo Davies High School		Dates of Activity (Does not include dates for the sales of tickets) 11.21.23 to 2.17.24	
Organization or Group Contact Person Lenny Ohlhaus	E-mail ohlhaus@farg.k12.nd.us	Telephone Number 701.446.5608	
Business Address 7150 25th St S	City Fargo	State ND	ZIP Code 58104
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Schools Arena	County Cass
Site Physical Address 5225 31st Ave S	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.)
50/50 See Hockey Schedule attached Boys/Girls Hockey - Davies

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

Game Type	Description of Prize	Exact Retail Value of Prize
50/50 Raffle	1/2 money collected	
Total (limit \$40,000 per year)		\$ 4,000

Intended Uses of Gaming Proceeds
Fundrais

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 a 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

Printed Name of Organization Group's Permit Organizer Lenny Ohlhaus	Telephone Number	E-mail Address ohlhaus@farg.k12.nd.us
Signature of Organization Group's Permit Organizer <i>Lenny Ohlhaus</i>	Title AD	Date 7.31.23



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 GAMING DIVISION
 SFN 9338 (5-2023)

Log

Applying for (check one)

Local Permit Restricted Event Permit*

Games to be conducted

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

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

ORGANIZATION INFO

Name of Organization or Group <i>Farjo Davies High School</i>		Dates of Activity (Does not include dates for the sales of tickets) <i>8/24/23 to 5/21/24</i>	
Organization or Group Contact Person <i>Leany Ohlhaus</i>	E-mail <i>ohlhaus@farjo.k12.nd.us</i>	Telephone Number <i>701.446.5600</i>	
Business Address <i>7150 25th St. S</i>	City <i>Farjo</i>	State <i>ND</i>	ZIP Code <i>58103</i>
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name <i>Davies High School</i>	County <i>Carr</i>
Site Physical Address <i>7150 25th St S</i>	City <i>Farjo ND</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.)

50/50 See calendar for how events on Campus

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>1/2 money collected.</i>	
Total (limit \$40,000 per year)		<i>\$ 10,000</i>

Intended Uses of Gaming Proceeds

Fundraising

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 52860 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be for political purposes.)

Yes No

Printed Name of Organization Group's Permit Organizer <i>Leany Ohlhaus</i>	Telephone Number <i>701.446.5600</i>	E-mail Address <i>ohlhaus@farjo.k12.nd.us</i>
Signature of Organization Group's Permit Organizer <i>Leany Ohlhaus</i>	Title <i>AD</i>	Date <i>7.31.23</i>

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. UR-21-B1 Type: Negative Final Balancing Change Order #1

Location: Citywide Date of Hearing: 7/31/2023

<u>Routing</u>	<u>Date</u>
City Commission	8/7/2023
PWPEC File	X
Project File	Roger Kluck

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, regarding Negative Final Balancing Change Order #1 in the amount of \$-135,525.50, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #1 in the amount of \$-135,525.50, bringing the total contract amount to \$210,284.50.

On a motion by Mark Williams, seconded by Steve Sprague, the Committee voted to recommend approval of Negative Final Balancing Change Order #1 to Master Construction.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Negative Final Balancing Change Order #1 in the amount of \$-135,525.50, bringing the total contract amount to \$210,284.50 to Master Construction.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Storm Sewer Utility

	<u>Yes</u>	<u>No</u>
Developer meets City policy for payment of delinquent specials	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

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<input checked="" type="checkbox"/>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
Michael Redlinger, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Interim Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


Tom Knakmuhs, P.E.
City Engineer



**CHANGE ORDER REPORT
UTILITY REHAB/RECONSTRUCTION
PROJECT NO. UR-21-B1
VARIOUS LOCATIONS CITY WIDE**

Final Balancing
Change Order

Change Order No 1 Change Order Date 7/21/2023
Contractor Master Construction Co 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

Section	Line No	Item Description	Unit	Orig		Prev		Curr		Tot		Unit Price (\$)	C/O Ext Price (\$)
				Cont Qty	C/O Qty	Cont Qty	C/O Qty	Cont Qty	C/O Qty				
Site 10 - 4640 Timberline Dr S		Sediment Control Log 6" to 8" Dia	LF	-30	0	60	-60	0	0	0	0	\$5.00	-\$300.00
				Site 10 - 4640 Timberline Dr S Sub Total								-\$300.00	
Site 11 - DR 27 3310 38 Ave S		Sediment Control Log 6" to 8" Dia	LF	-30	0	60	-60	0	0	0	0	\$5.00	-\$300.00
				Site 11 - DR 27 3310 38 Ave S Sub Total								-\$300.00	
Site 8 - 21st Ave S & St S (Cemetery)		Sediment Control Log 6" to 8" Dia	LF	-30	0	60	-60	0	0	0	0	\$5.00	-\$300.00
				Site 8 - 21st Ave S & 5th St S (Cemetery) Sub Total								-\$300.00	
Site 7 - 16th Ave S & Lindenwood Dr S		Sediment Control Log 6" to 8" Dia	LF	-30	0	60	-60	0	0	0	0	\$5.00	-\$300.00
				Site 7 - 16th Ave S & Lindenwood Dr S Sub Total								-\$300.00	
Site 1 - 3702 10th St N		Sediment Control Log 6" to 8" Dia	LF	-30	0	60	-60	0	0	0	0	\$5.00	-\$300.00
				Site 1 - 3702 10th St N Sub Total								-\$300.00	
Site 2 - Trolwood Repair Outfall		Sediment Control Log 6" to 8" Dia	LF	-30	0	60	-60	0	0	0	0	\$5.00	-\$300.00
				Site 2 - 3702 10th St N Sub Total								-\$300.00	

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Curr Cont Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Site 5 - LS 26 Woodland Dr N		Inlet Protection - Existing Inlet	EA	2		2	-2	0		\$250.00	-\$300.00
Site 4 - 32nd Ave N & Eagle St		Inlet Protection - Existing Inlet	EA	3		3	-3	0		\$250.00	-\$500.00
Site 9 - 4102 Timberline Dr S		Inlet Protection - Existing Inlet	EA	3		3	-3	0		\$250.00	-\$750.00
Site 2 - Trollwood Repair Outfall		Rem & Repl Pavement 6" Thick Reinf Conc	SY	25		25	-25	0		\$100.00	-\$2,500.00
Site 1 - 3702 10th St N		Rem & Repl Pavement 6" Thick Reinf Conc	SY	25		25	-25	0		\$100.00	-\$2,500.00
Site 2 - Trollwood Repair Outfall		Topsoil - Strip & Spread	CY	108		80	-80	0		\$30.00	-\$2,400.00
Site 6 - 6th Ave S & 3rd St S		Topsoil - Strip & Spread	CY	108		15	-15	0		\$25.00	-\$375.00
Site 5 - LS 26 Woodland Dr N		Fill - Import	CY	600		35	-35	0		\$40.00	-\$1,400.00
Site 4 - 32nd Ave N & Eagle St		Fill - Import	CY	600		35	-35	0		\$30.00	-\$1,050.00

Section	Line No	Item Description	Unit	Orig		Prev		Curr		Tot		C/O Ext Price (\$)		
				Cont Qty	C/O Qty	Cont Qty	C/O Qty	Cont Qty	C/O Qty	Cont Qty	C/O Qty			
Site 11 - DR 27 3310 38 Ave S		F&I Erosion Control Blanket Type 2	SY	75		75	-75			0		-\$525.00		
						Site 11 - DR 27 3310 38 Ave S Sub Total							-\$525.00	
	Site 10 - 4640 Timberline Dr S		F&I Erosion Control Blanket Type 2	SY	45		45	-45			0		-\$315.00	
							Site 10 - 4640 Timberline Dr S Sub Total							-\$315.00
		3	Topsoil - Strip & Spread	CY	146	0	30	8			38		\$25.00	
		4	Seeding Type B	SY	4664	0	700	-297			403		-\$445.50	
5	Mulching Type 1 Hydro	SY	4814	0	700	-297			403		-\$297.00			
6	F&I Rip Rap Rock	CY	550	0	75	-18			57		-\$3,150.00			
						Site 1 - 3702 10th St N Sub Total							-\$3,692.50	
Site 2 - Trollwood Repair Outfall	10	Seeding Type B	SY	4763	0	750	-248			502		-\$496.00		
	11	Mulching Type 1 Hydro	SY	4913	0	750	-248			502		-\$496.00		
	12	F&I Rip Rap Rock	CY	585	0	275	-183			92		-\$32,025.00		
						Site 2 - Trollwood Repair Outfall Sub Total							-\$33,017.00	
Site 3 - Golf Course Ave	15	Topsoil - Strip & Spread	CY	149	0	50	-9			41		-\$90.00		
	16	Fill - Import	CY	660	0	200	-140			60		-\$4,200.00		
	17	F&I Type A Repair Band 27" thru 36" Dia	EA	2	0	2	2			4		\$4,200.00		
	18	Seeding Type B	SY	5093	0	1000	-168			832		-\$336.00		
19	Mulching Type 1 Hydro	SY	5243	0	1000	-168			832		-\$336.00			
21	F&I Rip Rap Rock	CY	529	0	75	-39			36		-\$6,825.00			
						Site 3 - Golf Course Ave Sub Total							-\$7,587.00	
Site 4 - 32nd Ave N & Eagle St	23	Topsoil - Strip & Spread	CY	132	0	15	9			24		\$180.00		
	25	Seeding Type B	SY	5037	0	1000	-224			776		-\$448.00		
26	Mulching Type 1 Hydro	SY	5187	0	1000	-224			776		-\$448.00			

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Curr Cont Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Site 5 - LS 26 Woodland Dr N	28	F&I Rip Rap Rock	CY	518	0	30	-5	25	25	\$175.00	-\$875.00
	Site 4 - 32nd Ave N & Eagle St Sub Total										
	30	Topsoil - Strip & Spread	CY	130	0	20	2	22	22	\$20.00	\$40.00
	31	F&I Type A Repair Band 60" Plus Dia	EA	1	0	1	1	2	2	\$4,000.00	\$4,000.00
	32	Seeding Type B	SY	4774	0	1200	-687	513	513	\$2.00	-\$1,374.00
	33	Mulching Type 1 Hydro	SY	4924	0	1200	-687	513	513	\$2.00	-\$1,374.00
34	Sediment Control Log 6" to 8" Dia	LF	30	0	30	30	60	60	\$5.00	\$150.00	
Site 5 - 6th Ave S & 3rd St S	35	F&I Rip Rap Rock	CY	518	0	75	-50	25	25	\$175.00	-\$8,750.00
	Site 5 - LS 26 Woodland Dr N Sub Total										
	37	Seeding Type B	SY	4412	0	1200	-1049	151	151	\$2.00	-\$2,098.00
	38	Mulching Type 1 Hydro	SY	4562	0	1200	-1049	151	151	\$2.00	-\$2,098.00
Site 6 - 6th Ave S & 3rd St S	39	F&I Rip Rap Rock	CY	529	0	75	-39	36	36	\$175.00	-\$6,825.00
	Site 6 - 6th Ave S & 3rd St S Sub Total										
	41	Topsoil - Strip & Spread	CY	123	0	40	-25	15	15	\$25.00	-\$625.00
Site 7 - 16th Ave S & Lindenwood Dr S	42	Fill - Import	CY	610	0	50	-40	10	10	\$40.00	-\$1,600.00
	44	Seeding Type B	SY	4661	0	900	-500	400	400	\$2.00	-\$1,000.00
	45	Mulching Type 1 Hydro	SY	4811	0	900	-500	400	400	\$2.00	-\$1,000.00
Site 7 - 16th Ave S & Lindenwood Dr S Sub Total											
Site 8 - 21st Ave S & 5th St S (Cemetery)	52	Seeding Type B	SY	4532	0	1100	-829	271	271	\$2.00	-\$1,658.00
	53	Mulching Type 1 Hydro	SY	4682	0	1100	-829	271	271	\$2.00	-\$1,658.00
	54	F&I Rip Rap Rock	CY	511	0	75	-57	18	18	\$175.00	-\$9,975.00
Site 8 - 21st Ave S & 5th St S (Cemetery) Sub Total											
-\$13,291.00											

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Curr Cont Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Site 9 - 4102 Timberline Dr S	56	Topsoil - Import Special	CY	15	0	15	-11	4	4	\$50.00	-\$550.00
	57	Overseeding	SY	150	0	150	-133	17	17	\$4.00	-\$532.00
	58	Seeding Type B	SY	4299	0	30	8	38	38	\$2.00	\$16.00
	59	Mulching Type 1 Hydro	SY	4449	0	180	-142	38	38	\$2.00	-\$284.00
Site 9 - 4102 Timberline Dr S Sub Total -\$1,350.00											
Site 10 - 4640 Timberline Dr S	62	Topsoil - Strip & Spread	CY	178	0	100	-30	70	70	\$20.00	-\$600.00
	63	Fill - Import	CY	760	0	200	-40	160	160	\$40.00	-\$1,600.00
	64	Seeding Type B	SY	4761	0	100	400	500	500	\$2.00	\$800.00
	65	Mulching Type 1 Hydro	SY	4911	0	100	400	500	500	\$2.00	\$800.00
66	F&I Rip Rap Rock	CY	548	0	75	-20	55	55	\$175.00	-\$3,500.00	
Site 10 - 4640 Timberline Dr S Sub Total -\$4,100.00											
Site 11 - DR 27 3310 38 Ave S	68	Topsoil - Strip & Spread	CY	120	0	75	-63	12	12	\$20.00	-\$1,260.00
	69	Fill - Import	CY	620	0	400	-380	20	20	\$40.00	-\$15,200.00
	71	Seeding Type B	SY	4794	0	1200	-667	533	533	\$2.00	-\$1,334.00
	72	Mulching Type 1 Hydro	SY	4944	0	1200	-667	533	533	\$2.00	-\$1,334.00
	73	F&I Rip Rap Rock	CY	511	0	100	-82	18	18	\$175.00	-\$14,350.00
Site 11 - DR 27 3310 38 Ave S Sub Total -\$33,478.00											

Summary.

Source Of Funding

Net Amount Change Order # 1 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

Storm Sewer Fund

-\$135,525.50

\$0.00

\$345,810.00

\$210,284.50

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

APPROVED

[Signature]
For Contractor *Master Construction*
Title *Controller*

APPROVED DATE

Department Head

Mayor

Attest

T. Cole



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. UR-21-A1 Type: Negative Final Balancing Change Order #4
Location: Citywide Date of Hearing: 7/31/2023

Table with 2 columns: Routing, Date. Rows include City Commission (8/7/2023), PWPEC File (X), and Project File (Roger Kluck).

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, regarding Negative Final Balancing Change Order #4 in the amount of \$-32,550.47, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #4 in the amount of \$-32,550.47, bringing the total contract amount to \$129,484.84.

On a motion by Mark Williams, seconded by Steve Sprague, the Committee voted to recommend approval of Negative Final Balancing Change Order #4 to Northern Improvement.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Negative Final Balancing Change Order #4 in the amount of \$-32,550.47, bringing the total contract amount to \$129,484.84 to Northern Improvement.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Storm Sewer Utility

Table with 2 columns: Question, Yes/No. Rows include 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

Table with 5 columns: Name, Present, Yes, No, Unanimous. Lists committee members and their voting status.

ATTEST:

C: Kristi Olson

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



**CHANGE ORDER REPORT
STORM SEWER REPAIRS & INCIDENTALS
PROJECT NO. UR-21-A1
VARIOUS LOCATIONS**

Final Balancing
Change Order

Change Order No **4** Change Order Date **7/21/2023**
Contractor **Northern Improvement Co**

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

EXPLANATION OF CHANGE Change Order # 4

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 (\$)
Site 2 Deer Creek Drainage		Temp Construction Entrance	EA	1		1	-1	0	\$1,000.00	-\$1,000.00
		Inlet Protection - Existing Inlet	EA	2		2	-2	0	\$205.00	-\$410.00
				Site 2 Deer Creek Drainage Sub Total						-\$1,410.00
Change Order 1		Inlet Protection - Existing Inlet	EA	2		2	-2	0	\$205.00	-\$410.00
					Change Order 1 Sub Total					
Site 2 Deer Creek Drainage		Excavation	CY	1115	0	500	-500	0	\$8.65	-\$4,325.00
					Site 2 Deer Creek Drainage Sub Total					
Change Order 1		Excavation	CY	1115	0	50	-50	0	\$15.00	-\$750.00
					Change Order 1 Sub Total					
Site 1 307 43 1/2 St S Pond	2	Topsoil - Strip & Spread	CY	421	0	250	-75	175	\$15.00	-\$1,125.00
	3	Excavation	CY	1400	0	1400	-1115	285	\$17.50	-\$19,512.50
	5	Mulching Type 1 Hydro	SY	-1963	0	700	1616	2316	\$0.45	\$727.20


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 (\$)
	6	Seeding Type B	SY	-561	0	700	1616	2316	\$1.30	\$2,100.80
	9	Sediment Control Log 6" to 8" Dia	LF	350	0	330	-90	240	\$3.00	-\$270.00
Change Order 1	11	Topsoil - Strip & Spread	CY	666	0	500	-80	420	\$10.00	-\$800.00
	13	Mulching Type 1 Hydro	SY	-3018	0	1600	-339	1261	\$0.46	-\$155.94
	14	Seeding Type B	SY	-1616	0	1600	-339	1261	\$0.35	-\$118.65
								Change Order 1 Sub Total		-\$1,074.59
Site 2 Deer Creek Drainage	20	Temp Fence - Safety	LF	600	0	600	900	1500	\$3.15	\$2,835.00
	25	Topsoil - Strip & Spread	CY	1755	0	2100	-591	1509	\$8.00	-\$4,728.00
	27	Fill - Import	CY	1155.01	44.99	1200	-232	968	\$24.50	-\$5,684.00
	29	Mulching Type 1 Hydro	SY	4323	0	7200	1402	8602	\$0.46	\$644.92
	30	Seeding Type A	SY	7200	0	7200	1402	8602	\$0.35	\$490.70
	32	Sediment Control Log 6" to 8" Dia	LF	290	0	200	-20	180	\$3.00	-\$60.00
								Site 2 Deer Creek Drainage Sub Total		-\$6,501.38

Summary.

Source Of Funding
 Net Amount Change Order # 4 (\$)
 Previous Change Orders (\$)
 Original Contract Amount (\$)
 Total Contract Amount (\$)

storm sewer fund
 -\$32,550.47
 \$20,113.31
 \$141,922.00
 \$129,484.84

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

APPROVED 
 For Contractor
 Title *NICE PRESIDENT*

APPROVED DATE 
 Department Head
 Mayor
 Attest



9

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, 2023

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Project No. FM-15-F3

Dear Commissioners:

Bids were opened at 11:45 am on Wednesday, August 2, 2023, for Demolition, Levee Construction, Site Restoration & Incidentals, Project No. FM-15-F3, located at 714 Hackberry Drive South.

The bids were as follows:

Excavating, Inc - Fargo	\$150,490.00
LinnCo	\$159,677.00
Master Construction Co Inc	\$179,960.00
Industrial Builders Inc	\$192,960.00
Engineers Estimate	\$170,020.00

Private financial security is not needed.

No protests have been received.

This office recommends award of the contract to Excavating, Inc - Fargo. in the amount of \$150,490.00 as the lowest and best bid.

Sincerely,

Thomas Knakmuhs, PE
City Engineer



Engineer's Statement Of Cost
Project # FM-15-F3
Demolition, Levee Construction, Site Restoration & Incidentals

#714 Hackberry Drive South

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

NOW THEREFORE Thomas Knakmuhs, do hereby certify as follows:

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

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

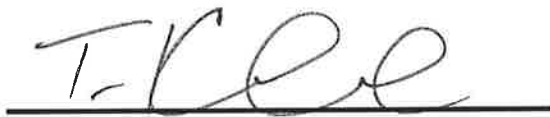
Demolition, Levee Construction, Site Restoration & Incidentals Project # FM-15-F3 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
Flood Mitigation					
1	Mobilization	LS	1.00	7,500.00	7,500.00
2	Traffic Control - Type 1	LS	1.00	2,100.00	2,100.00
3	Stormwater Management	LS	1.00	4,000.00	4,000.00
4	Inlet Protection - Existing Inlet	EA	4.00	225.00	900.00
5	Remove Pavement All Thicknesses All Types	SY	380.00	21.00	7,980.00
6	Rem & Repl Curb & Gutter	LF	30.00	77.50	2,325.00
7	Eliminate Sewer Service	EA	1.00	3,800.00	3,800.00
8	Eliminate Water Service	EA	1.00	3,800.00	3,800.00
9	Sediment Control Log 6" to 8" Dia	LF	70.00	4.25	297.50
10	F&I Asphalt Pavement FAA 43 w/ PG58H-34	Ton	40.00	304.00	12,160.00
11	Remove Landscaping	LS	1.00	5,000.00	5,000.00
12	Remove Tree	EA	4.00	240.00	960.00
13	Demolition	EA	1.00	23,900.00	23,900.00
14	Remove Foundation All Types	EA	1.00	19,500.00	19,500.00
15	Site Access Protection	LS	1.00	700.00	700.00
16	Inspection Trench	CY	680.00	11.05	7,514.00
17	Excavate & Haul - Excess Material	CY	200.00	7.65	1,530.00
18	Fill - Import	CY	2,000.00	14.85	29,700.00
19	F&I Sidewalk 4" Thick Reinf Conc	SY	36.00	115.00	4,140.00
20	Topsoil - Import	CY	250.00	17.85	4,462.50
21	Site Grading	LS	1.00	980.00	980.00

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
22	Seeding Type C	SY	2,500.00	0.67	1,675.00
23	Mulching Type 1 Hydro	SY	2,500.00	0.62	1,550.00
24	F&I Decid Tree 1" Dia	EA	8.00	502.00	4,016.00
Flood Mitigation Total					150,490.00
Total Construction in \$					150,490.00
Contingency 10.00%					15,049.00
Misc. Costs					1,162,096.00
Total Estimated Costs					1,327,635.00
Sales Tax Funds - Flood Control - 460					1,327,635.00
Unfunded Costs					0.00

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

Date: 08/02/2023



Thomas Knakmuhs

City Engineer



COVER SHEET
CITY OF FARGO PROJECTS

10

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of project as it will appear in the contract:

Monarch Photo Bldg Demo

Project No. BP-23-0

Call For Bids	<u>August 7</u>	<u>2023</u>
Advertise Dates	<u>August 16, 23 & 30</u>	<u>2023</u>
Bid Opening Date	<u>September 13</u>	<u>2023</u>
Substantial Completion Date	<u>May 17</u>	<u>2024</u>
Final Completion Date	<u>June 14</u>	<u>2024</u>

- X PWPEC Report (Attach Copy)
- X Engineer's Report (Attach Copy)
- X Direct City Auditor to Advertise for Bids
- X Bid Quantities (Attach Copy for Auditor's Office Only)
- N/A Notice to Property Owners (Dan Eberhardt)
- N/A Supplemental Funding Language Included

Project Engineer Roger Kluck

Phone No. (701) 241-1545

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

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



**ENGINEER'S REPORT
MONARCH PHOTO BLDG DEMO
PROJECT NO. BP-23-0
2414 7 AVE N**

Nature & Scope

Demolition of existing commercial building acquired by City.

Purpose

Prepare site for future integration into Public Works master plan.

Feasibility

The estimated cost of construction is \$438,970.00. The cost breakdown is as follows:


402-Building Demolition			
Construction Cost			\$438,970.00
Fees			
Contingency	5%		\$21,948.50
Total Estimated Cost			\$460,918.50
Funding			
Building Project Funds - 402	100.00%		\$460,918.50

Project Funding Summary			
Building Project Funds - 402	100.00%		\$460,918.50
Total Estimated Project Cost			\$460,918.50

This project does not have any alternate or optional containers.

We believe this project to be cost effective.





Thomas Knakmuhs, PE
City Engineer

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PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No.: SN-23-A1 & SN-23-B1 Type: Cost Participation and Maintenance Agreement
NDDOT Project Nos. TAU-8-984(172) & TAU-8-984(174)

Location: Bison Village & Hackberry Drive S Date of Hearing: 7/31/2023

Routing Date
City Commission 8/7/2023
PWPEC File X
Project File Jeremy Gorden

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

- Bison Village Shared Use Path Project
City Project No. SN-23-A1
NDDOT Project No. TAU-8-984(172)
Red River Shared Use Path Project Phase 1
Along Red Rive adjacent to Hackberry Drive S
City Project No. SN-23-B1
NDDOT Project No. TAU-8-984(174)

Funding for the projects will consist of Federal Highway Funds from the NDDOT's Transportation Alternatives Program, Sales Tax Funds, and Fargo Park District Funds. These Projects are set to be bid in Bismarck on November 17, 2023 and the projects are scheduled to have a substantial completion date of October 15, 2024.

Staff is recommending approval of the CPM Agreements.

On a motion by Bruce Grubb, seconded by Steve Sprague, the Committee voted to recommend approval of the CPM Agreements with the NDDOT.

RECOMMENDED MOTION

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

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Federal Hwy Fund, Sales Tax & Fargo Park District Funds

Table with 2 columns: Question, Yes/No. Rows include 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

Table with 5 columns: Name, Present, Yes, No, Unanimous. Lists committee members: Tim Mahoney, Mayor; Nicole Crutchfield, Director of Planning; Steve Dirksen, Fire Chief; Michael Redlinger, City Administrator; Ben Dow, Director of Operations; Steve Sprague, City Auditor; Tom Knakmuhs, City Engineer; Susan Thompson, Interim Finance Director.

ATTEST:

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

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Jeremy Gorden, PE, PTOE
Division Engineer - Transportation
Date: July 27, 2023
Re: Approval of Cost, Participation and Maintenance (CPM) Agreements with NDDOT for Two Shared Use Path Projects – Project Nos. SN-23-A1 and SN-23-B1

I have attached two CPM Agreements from the Local Government Division of the NDDOT for the following projects in town:

Bison Village Shared Use Path Project
City Project No. SN-23-A1
NDDOT Project No. TAU-8-984(172)

Red River Shared Use Path Project Phase 1
Along Red River adjacent to Hackberry Drive S
City Project No. SN-23-B1
NDDOT Project No. TAU-8-984(174)

Funding for the projects will consist of Federal Highway Funds from the NDDOT's Transportation Alternatives Program (TAP), Sales Tax Funds and Fargo Park District Funds.

The Bison Village Project construction cost breakout is as follows:

Estimated Project Cost	\$ 423,493
Federal Share	\$ 338,794 (capped)
City Share	\$ 42,349
Fargo Park District Share	\$ 42,349

The Red River Phase 1 Project construction cost breakout is as follows:

Estimated Project Cost	\$ 344,511
Federal Share	\$ 275,608 (capped)
City Share	\$ 34,451
Fargo Park District Share	\$ 34,451

These projects are set to be bid in Bismarck on November 17, 2023 and the projects are scheduled to have a substantial completion date of October 15, 2024.

Recommended Motion:

I recommend approval of the CPM Agreements.

Attachments

MEMO TO: Chad Orn
Deputy Director of Planning

FROM: Pam Wenger
Local Government Division

DATE: 07/13/2023

SUBJECT: Cost Participation, Construction, and Maintenance (CPM) Agreement for Project TAU-8-984(174) – PCN 23778 – Fargo Red River Shared Use Path Phase 1.

Contract # 38230916

- The purpose of this agreement is to provide a pedestrian facility in Fargo along the Red River between Harwood Drive S and 35th Ave S.
- Estimated contract amount \$344,511 - 80.93% Federal Funds/19.07% LPA Funds with no Transportation Alternative (TA) limit.

Contract routing:

Pam Wenger – Contract Owner

Kent Leben

Paul Benning

Shannon Sauer

Fargo City Engineer – TOM KNAKMUHS - TKnakmuhs@FargoND.gov

Fargo City Officials

Legal

Chad Orn

Stacey Hanson

38/pjw

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

Federal Award Information – to be provided by NDDOT

Assistance Listing No: 20.205

Assistance Listing Title: Highway Planning & Construction

Award Name: Federal Aid Highway Program

Awarding Fed. Agency: Federal Highway Admin

NDDOT Program Mgr: Wenger, Pamela J.

Telephone: 701-328-4787

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

For NDDOT use only.

FHWA Authorization date:

**Project No. TAU-8-984(174) PCN: 23778 LPA: FARGO
Location: RED RIVER SHARED USE PATH PHASE 1
Type of Improvement: SHARED USE PATH Length: 0.45**

This agreement is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and the Local Public Agency (LPA) of Fargo, North Dakota, hereinafter referred to as the LPA, who agree that:

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

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

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

Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project cost. The total cost of the project is \$344,511, with the LPA's estimated share being \$65,698.

Additional Funding Clause
N/A

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



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

PART I

LPA Obligation:

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

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the LPA of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. Seq.).

Include the following paragraph verbatim in any subcontracts they sign relative to this project:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the solicitation, award, and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NDDOT deems appropriate.

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



PART II

Contracting and Construction:

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

PART III

Post Construction:

After the project is completed the LPA agrees to:

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



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

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

PART IV

General:

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

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

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



5. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.
6. All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at the respective places of business as set forth below or at a place designated hereafter in writing by the parties.

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

Fargo City Engineer
City of Fargo
225 4th St. N.
Fargo, ND 58102

7. The LPA is advised that its signature on this contract or agreement certifies that any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.
8. This agreement constitutes the entire agreement between the parties. No waiver consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The LPA, by the signature below of its authorized representative, hereby acknowledges that the LPA has read this agreement, understands it, and agrees to be bound by its terms and conditions.



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

APPROVED:

LPA/STATES ATTORNEY (TYPE OR PRINT)

SIGNATURE

DATE

LPA of City of Fargo

* _____

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

SIGNATURE

* Mayor
TITLE

DATE

ATTEST:

Steve Sprague
AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

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

APPROVED as to substance:

Paul Benning
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT) *kl*

Paul Benning
SIGNATURE

07/15/23 *DW*
DATE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE *SS*

DATE

*Mayor, President or Chairperson of Commission

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



CERTIFICATION OF LOCAL MATCH

It is hereby certified that the LPA of City of Fargo will provide non-federal funds, whose source is identified below, as match for the amount the LPA is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided by LPA. Please designate the source(s) of funds in the LPA budget that will be used to match the federal funds obligated for this project through the North Dakota Department of Transportation.

Source:

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

ATTEST:

Steve Sprague
AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED:

LPA of City of Fargo

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

SIGNATURE

* Mayor
TITLE

DATE

*Mayor, President or Chairperson of Commission

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



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

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

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



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

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

Pertinent Non-Discrimination Authorities:

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



Risk Management Appendix

Routine* Service Agreements with Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: **State** – State of North Dakota, its agencies, officers and employees

Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees

Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$500,000 per person and \$2,000,000 per occurrence**. The minimum limits of liability required of the State are **\$500,000 per person and \$2,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$500,000 per person and \$2,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 07-23



Certificate Of Completion

Envelope Id: C7AE2AA68B87487FBAC258AAA6614D0F

Status: Sent

Subject: Contract #38230916: Please DocuSign: Cost Participation, Construction & Maintenance Agreement

Contract Number: 38230916

PCN: 23778

Source Envelope:

Document Pages: 11

Signatures: 1

Envelope Originator:

Certificate Pages: 4

Initials: 3

Sara Susie

AutoNav: Enabled

608 E Boulevard Ave

EnvelopeId Stamping: Enabled

Bismarck, ND 58505

Time Zone: (UTC-06:00) Central Time (US & Canada)

ssusie@nd.gov

IP Address: 165.234.92.5

Record Tracking

Status: Original

Holder: Sara Susie

Location: DocuSign

7/13/2023 3:47:32 PM

ssusie@nd.gov

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD

Location: DocuSign

Signer Events

Pam Wenger

pwenger@nd.gov

Carahsoft OBO North Dakota Department of Transportation CLOUD

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

Signature

PW

Signature Adoption: Pre-selected Style
Using IP Address: 165.234.252.245

Timestamp

Sent: 7/13/2023 3:50:16 PM

Viewed: 7/13/2023 3:57:19 PM

Signed: 7/13/2023 3:57:42 PM

Authentication Details

SMS Auth:

Transaction: 9ccf65e6-1bea-4346-a2de-908f6a7bd294

Result: passed

Vendor ID: TeleSign

Type: SMSAuth

Performed: 7/13/2023 3:57:07 PM

Phone: +1 701-202-0432

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Kent Leben

khleben@nd.gov

Title Here

Carahsoft OBO North Dakota Department of Transportation CLOUD

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

kl

Signature Adoption: Pre-selected Style
Using IP Address: 165.234.252.245

Sent: 7/13/2023 3:57:53 PM

Viewed: 7/14/2023 3:47:41 PM

Signed: 7/14/2023 3:48:08 PM

Authentication Details

SMS Auth:

Transaction: 17c0f789-2812-4146-a084-697ba7ec7458

Result: passed

Vendor ID: TeleSign

Type: SMSAuth

Performed: 7/14/2023 3:47:30 PM

Phone: +1 701-320-8811

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Signer Events

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

Signature



Signature Adoption: Pre-selected Style
Using IP Address: 165.234.252.245

Timestamp

Sent: 7/14/2023 3:48:16 PM
Viewed: 7/15/2023 7:00:17 AM
Signed: 7/15/2023 7:00:25 AM

Authentication Details

SMS Auth:
Transaction: 249e3e64-6e09-4d55-952c-ba1cb906d04c
Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 7/15/2023 7:00:06 AM
Phone: +1 701-214-2502

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

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



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

Sent: 7/15/2023 7:00:38 AM
Viewed: 7/17/2023 9:16:58 AM
Signed: 7/17/2023 9:17:09 AM

Authentication Details

SMS Auth:
Transaction: 00f0f5c2-5896-4443-bc0a-da930135bd0c
Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 7/17/2023 9:16:49 AM
Phone: +1 701-426-9825

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Signer Events

Clint Morgenstern
 cdmorgenstern@nd.gov
 Security Level: Email, Account Authentication (None), Authentication
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Chad Orn
 corn@nd.gov
 Security Level: Email, Account Authentication (None), Authentication
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Stacey Hanson
 smhanson@nd.gov
 Security Level: Email, Account Authentication (None), Authentication
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Signature

Timestamp

In Person Signer Events

Editor Delivery Events

Sara Susie
 ssusie@nd.gov
 Richland County Chairperson
 Carahsoft OBO North Dakota Department of Transportation CLOUD
 Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Signature

Status

VIEWED
 Using IP Address: 165.234.252.245

Timestamp

Timestamp

Sent: 7/13/2023 3:47:47 PM
 Viewed: 7/13/2023 3:48:08 PM
 Completed: 7/13/2023 3:50:15 PM

Agent Delivery Events

TOM KNAKMUHS
 TKnakmuhs@FargoND.gov
 Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Status

Timestamp

Sent: 7/17/2023 9:17:19 AM
 Resent: 7/21/2023 8:47:44 AM
 Viewed: 7/21/2023 8:59:16 AM

Intermediary Delivery Events

Certified Delivery Events

Pam Wenger
 pwenger@nd.gov
 Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Status

Timestamp

Status

Timestamp

Carbon Copy Events

Legal Admin
 dotlegaladmin@nd.gov
 Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Legal Admin
dotlegaladmin@nd.gov
Security Level: Email, Account Authentication
(None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

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Envelope Updated	Security Checked	7/13/2023 3:50:15 PM
Envelope Updated	Security Checked	7/13/2023 3:50:15 PM
Envelope Updated	Security Checked	7/13/2023 3:50:16 PM
Envelope Updated	Security Checked	7/13/2023 3:50:16 PM
Envelope Updated	Security Checked	7/13/2023 3:50:16 PM

Payment Events

Status

Timestamps

MEMO TO: Chad Orn
Deputy Director for Planning

FROM: Pam Wenger
Local Government Division

DATE: 07/11/2023

SUBJECT: Cost Participation, Construction, and Maintenance Agreement for Project
TAU-8-984(172) 23238 – Fargo Bison Village/10th St Shared Use Path

The purpose of this contract is to provide a pedestrian facility in Fargo.

Contract #38220587

Estimated contract amount \$423,493 - 80.93% Federal Funds/19.07% LPA Funds

38/pjw

Contract routing:

Pam Wenger – Contract Owner

Paul Benning

Shannon Sauer

City Engineer

City Auditor

State's Attorney

City Mayor

Clint Morgenstern

Chad Orn

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

Federal Award Information – to be provided by NDDOT

CFDA No: 20.205	CFDA Title: Highway Planning & Construction
Award Name: Federal Aid Highway Program	Awarding Fed. Agency: Federal Highway Admin
NDDOT Program Mgr: Wenger, Pamela J.	Telephone: 701-328-4787

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

For NDDOT use only.

FHWA Authorization date:

Project No. TAU-8-984(172)

LPA: FARGO

Location: FARGO BISON VILLAGE/10TH ST N SUP

Type of Improvement: SHARED USE PATH

Length: Approx. 0.54 miles

This agreement is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and the Local Public Agency (LPA) of Fargo, North Dakota, hereinafter referred to as the LPA, who agree that:

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

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

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

Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project cost. The total cost of the project is \$423,493, with the LPA's estimated share being \$80,760.

Additional Funding Clause
N/A

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



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

PART I

LPA Obligation:

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

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the LPA of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. Seq.).

Include the following paragraph verbatim in any subcontracts they sign relative to this project:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the solicitation, award, and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NDDOT deems appropriate.

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



PART II

Contracting and Construction:

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

PART III

Post Construction:

After the project is completed the LPA agrees to:

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



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

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

PART IV

General:

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

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

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



- 5. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.
- 6. All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at the respective places of business as set forth below or at a place designated hereafter in writing by the parties.

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

City Engineer
 City of Fargo
 225 4th St N
 Fargo, ND 58102

- 7. The LPA is advised that its signature on this contract or agreement certifies that any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.
- 8. This agreement constitutes the entire agreement between the parties. No waiver consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The LPA, by the signature below of its authorized representative, hereby acknowledges that the LPA has read this agreement, understands it, and agrees to be bound by its terms and conditions.



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

APPROVED:

LPA/STATES ATTORNEY (TYPE OR PRINT)

SIGNATURE

DATE

LPA of City of Fargo

*

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

SIGNATURE

* Mayor
TITLE

DATE

ATTEST:

Steve Sprague
AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

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

APPROVED as to substance:

Paul Benning *kl*
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

Paul Benning
SIGNATURE

07/15/23
DATE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE *SS*

DATE

*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)
L.D. Approved 4-12-93; 9-19



CERTIFICATION OF LOCAL MATCH

It is hereby certified that the LPA of City of Fargo will provide non-federal funds, whose source is identified below, as match for the amount the LPA is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided by LPA. Please designate the source(s) of funds in the LPA budget that will be used to match the federal funds obligated for this project through the North Dakota Department of Transportation.

Source:

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

ATTEST:

Steve Sprague
AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED:

LPA of City of Fargo

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

SIGNATURE

* Mayor
TITLE

DATE

*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)
L.D. Approved 4-12-93; 9-19



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

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

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



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

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

Pertinent Non-Discrimination Authorities:

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



Risk Management Appendix

Routine* Service Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: **State** – State of North Dakota, its agencies, officers and employees

Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees

Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 11-19



Certificate Of Completion

Envelope Id: 9197E2EC42C14C69AC65215772E59390 Status: Sent
 Subject: Contract #38220587: Please DocuSign: Cost Participation, Construction & Maintenance Agreement
 Contract Number: 38220587
 PCN: 23238
 Source Envelope:
 Document Pages: 11 Signatures: 1 Envelope Originator:
 Certificate Pages: 4 Initials: 2 Pam Wenger
 AutoNav: Enabled 608 E Boulevard Ave
 Envelopeld Stamping: Enabled Bismarck, ND 58505
 Time Zone: (UTC-06:00) Central Time (US & Canada) pwenger@nd.gov
IP Address: 165.234.92.5


Record Tracking

Status: Original Holder: Pam Wenger Location: DocuSign
 7/11/2023 4:22:17 PM pwenger@nd.gov
 Security Appliance Status: Connected Pool: StateLocal
 Storage Appliance Status: Connected Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD Location: DocuSign

Signer Events

Kent Leben
 khleben@nd.gov
 Title Here
 Carahsoft OBO North Dakota Department of Transportation CLOUD
 Security Level: Email, Account Authentication (None), Authentication

Signature


 Signature Adoption: Pre-selected Style
 Using IP Address: 165.234.252.245

Timestamp

Sent: 7/11/2023 4:30:25 PM
 Viewed: 7/12/2023 3:23:07 PM
 Signed: 7/13/2023 3:23:22 PM

Authentication Details

SMS Auth:
 Transaction: aeb2ca57-240f-437a-87d0-7650b49b3461
 Result: passed
 Vendor ID: TeleSign
 Type: SMSAuth
 Performed: 7/12/2023 3:22:58 PM
 Phone: +1 701-320-8811

SMS Auth:
 Transaction: 5e199ac0-42ed-43f0-a817-2316626434c0
 Result: passed
 Vendor ID: TeleSign
 Type: SMSAuth
 Performed: 7/13/2023 3:23:07 PM
 Phone: +1 701-320-8811

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

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

Paul Benning

Signature Adoption: Pre-selected Style
 Using IP Address: 165.234.252.245

Sent: 7/13/2023 3:23:30 PM
 Viewed: 7/15/2023 7:23:52 AM
 Signed: 7/15/2023 7:24:00 AM

Authentication Details

SMS Auth:
 Transaction: f9de7dc7-42e5-4889-9940-ce9e9474dbe6
 Result: passed
 Vendor ID: TeleSign
 Type: SMSAuth
 Performed: 7/15/2023 7:23:43 AM
 Phone: +1 701-214-2502

Signer Events

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

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

Signature



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

Timestamp

Sent: 7/15/2023 7:24:12 AM
Viewed: 7/17/2023 9:09:32 AM
Signed: 7/17/2023 9:09:42 AM

Authentication Details

SMS Auth:
Transaction: 233fe6d5-61e1-43fd-9bdc-1d27e1fab50f
Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 7/17/2023 9:09:20 AM
Phone: +1 701-426-9825

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

TOM KNAKMUHS
TKnakmuhs@FargoND.gov
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Pam Wenger
pwenger@nd.gov
Security Level: Email, Account Authentication
(None), Authentication

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

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

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Signer Events

Chad Orn
corn@nd.gov
Security Level: Email, Account Authentication (None), Authentication
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Signature

Timestamp

Stacey Hanson
smhanson@nd.gov
Security Level: Email, Account Authentication (None), Authentication
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Pam Wenger
pwenger@nd.gov
Carahsoft OBO North Dakota Department of Transportation CLOUD
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Status



Using IP Address: 165.234.252.245

Timestamp

Sent: 7/11/2023 4:22:35 PM
Viewed: 7/11/2023 4:23:17 PM
Completed: 7/11/2023 4:30:24 PM

Agent Delivery Events

TOM KNAKMUHS
TKnakmuhs@FargoND.gov
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Status

Timestamp

Sent: 7/17/2023 9:09:52 AM
Viewed: 7/17/2023 11:57:38 AM

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Legal Admin
dotlegaladmin@nd.gov
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Legal Admin
dotlegaladmin@nd.gov
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Summary Events

Envelope Sent
Envelope Updated
Envelope Updated
Envelope Updated

Status

Hashed/Encrypted
Security Checked
Security Checked
Security Checked

Timestamps

7/11/2023 4:22:35 PM
7/11/2023 4:30:24 PM
7/11/2023 4:30:24 PM
7/11/2023 4:30:24 PM

Payment Events

Status

Timestamps

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Encroachment Amendment

Location: 704 38th Street North

Date of Hearing: 7/31/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/7/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding an Amendment for the Encroachment Agreement with TD Companies at 704 38th Street North.

TD Companies recently entered into an Encroachment Agreement with the City. One stipulation in the Encroachment Agreement is that if any improvements are made to the property, the Encroachment Agreement terminates and the owner must remove all items on the right of way. TD Companies has asked for a building permit to modify the building and change the configuration of the loading dock. Staff and TD Companies have proposed to amend the current Encroachment Agreement and allow the encroachment to remain in place. TD Companies ownership also acknowledges that the City can remove the encroachment with a 90-day notice.

On a motion by Bruce Grubb, seconded by Tom Knakmuhs, the Committee voted to recommend approval of an Amendment to the Encroachment Agreement with TD Companies and approve their building permit at 704 38th Street North.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Amendment to the Encroachment Agreement with TD Companies and approve their building permit at 704 38th Street North.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

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

COMMITTEE

- Tim Mahoney, Mayor
- Nicole Crutchfield, Director of Planning
- Steve Dirksen, Fire Chief
- Michael Redlinger, City Administrator
- Ben Dow, Director of Operations
- Steve Sprague, City Auditor
- Tom Knakmuhs, City Engineer
- Susan Thompson, Interim Finance Director

<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
<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"/>	<u>Mark Williams</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Ryan Erickson</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Bruce Grubb</u>
<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:

Tom Knakmuhs, P.E.
City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Kevin Gorder, Division Engineer
Date: July 28, 2023
Re: Encroachment Agreement Amendment TD Companies – 704 38th Street North

TD Companies recently purchased the property at 704 38th Street North and entered into an encroachment agreement with the City on or about the date of closing. One stipulation in the encroachment agreement is that if any improvements are made to the property, the encroachment agreement terminates and the owner must remove all items on the right of way.

TD Companies has asked for a building permit to modify the building and change the configuration of the loading dock. A meeting was held with Engineering, Planning, TD Companies ownership, and TD Companies architects and engineers in an effort to develop a solution that might work for all parties.

The proposed solution was to amend the current encroachment agreement and allow the encroachment to remain in place. TD Companies ownership also acknowledges that the City can remove the encroachment with a 90-day notice.

Recommended Motion:

Recommend approval of the Amendment to the Encroachment Agreement with TD Companies and approve their building permit at 704 38th Street North.

Attachment

ADDENDUM TO
ENCROACHMENT AGREEMENT

This **ADDENDUM TO ENCROACHMENT AGREEMENT** is made and entered into by and between **TD Companies, LLC d/b/a TD COMPANIES, LLC – 7TH AVE – SERIES 2**, a North Dakota limited liability company (“TD Companies” or “Owner”) and the **CITY OF FARGO**, a North Dakota municipal corporation, (hereinafter referred to as “City”),

WHEREAS, in January 2023, TD Companies and City entered into an Encroachment Agreement, recorded on July 28, 2023 in Cass County as Document No. _____

WHEREAS, TD Companies now desires to reconstruct certain portions of the Property (as defined in the Encroachment Agreement and below) but also desires to continue the encroachment on a portion of City public right of way (“PROW”) to maintain a paved parking surface;

WHEREAS, TD Companies has requested the City issue a building permit allowing reconstruction of certain portions of the Property; and

WHEREAS, the purpose of this Addendum is to clarify and reenforce certain rights and responsibilities existing under the Encroachment Agreement;

NOW, THEREFORE, for good and valuable consideration hereby acknowledged, it is hereby agreed by and between the parties hereto as follows:

1. TD Companies owns all right title and interest in the property legally described as follows:

Part of Lots 12 and 13 of Arndts-Devener Subdivision, to the City of Fargo, situate in the County of Cass and the State of North Dakota

Described as following: commencing at southwest corner of Lot 12, then on an assumed bearing of north 00 degrees 03 minutes 45 seconds west along west line of Lot 12 of a distance of 316.51 feet, then south 88 degrees 40 minutes 51 seconds east 382.55 feet to point of beginning, then continuing south 88 degrees 40 minutes 51 seconds east 310.08 feet, then south 00 degrees 00 minutes 00 seconds west 136.29 feet, then north 90 degrees 00 minutes 00 seconds west 185 feet, then north 88 degrees 40 minutes 51 seconds west 125 feet, then north 00 degrees 00 minutes 44 seconds west 140.55 feet to point of beginning.

(“Property”).

2. TD Companies hereby acknowledges and agrees that the City’s issuance of a building permit allowing TD Companies to perform the intended reconstruction is not a waiver of the City’s right to require, after 90 days’ written notice, TD Companies to remove the paved parking surface from the PROW as directed by City, allowing the City to re-take and to use the PROW. TD Companies hereby acknowledges and agrees that the City is also not waiving and the parties are not altering paragraphs 9 or 11 of the Encroachment Agreement.

3. TD Companies shall bear all costs and expenses of the planned reconstruction as well as all costs for any repairs to the PROW necessitated by the reconstruction undertaken by TD Companies.

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

5. This Addendum will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.

6. Except as may be altered or modified herein, all other terms and conditions of the Encroachment Agreement shall remain unchanged and remain in full force and effect.

(Signatures on following pages)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

13

Type: Developer Agreement

Location: Veterans Industrial Park Subdivision

Date of Hearing: 7/31/2023

<u>Routing</u>	<u>Date</u>
City Commission	8/7/2023
PWPEC File	X
Project File	Nathan Boerboom

The Committee reviewed the accompanying correspondence from Division Engineer, Nathan Boerboom, regarding a Developer's Agreement for Veterans Industrial Park Subdivision.

Staff have worked with the Developer on an Agreement to support the initial infrastructure project, which will be for construction of 23rd Avenue North and 53rd Street North within the subdivision. The Agreement also covers a future project, which is for the eventual construction of 57th Street North. This future project is not immediately required to support the development of this subdivision, but instead will be constructed at a future date to be determined by the City.

The purpose of this Agreement is to have the Developer agree to waive their right to protest the resolution(s) of necessity for both the initial and future projects.

On a motion by Bruce Grubb, seconded by Ben Dow, the Committee voted to recommend approval of the Developer Agreement for Veterans Industrial Park Subdivision.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Developer Agreement for Veterans Industrial Park Subdivision.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u> </u>
Tim Mahoney, Mayor	<u> </u>	<u> </u>	<u> </u>	
Nicole Crutchfield, Director of Planning	<u> </u>	<u> </u>	<u> </u>	Mark Williams
Steve Dirksen, Fire Chief	<u> </u>	<u> </u>	<u> </u>	Ryan Erickson
Michael Redlinger, City Administrator	<u> </u>	<u> </u>	<u> </u>	Bruce Grubb
Ben Dow, Director of Operations	<u> </u>	<u> </u>	<u> </u>	
Steve Sprague, City Auditor	<u> </u>	<u> </u>	<u> </u>	
Tom Knakmuhs, City Engineer	<u> </u>	<u> </u>	<u> </u>	
Susan Thompson, Interim Finance Director	<u> </u>	<u> </u>	<u> </u>	

ATTEST:

C: Kristi Olson

Tom Knakmuhs
Tom Knakmuhs, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Nathan Boerboom, Division Engineer
Date: July 25, 2023
Re: Developer Agreement for Veterans Industrial Park Subdivision

Staff has been coordinating with the Developer on the infrastructure request for the Veterans Industrial Park Subdivision. As a result of this coordination, we have developed an Agreement to support the initial infrastructure project, which will be for construction of 23rd Avenue North and 53rd Street North within the subdivision. The Agreement also covers a future project, which is for the eventual construction 57th Street North. This future project is not immediately required to support the development of this subdivision, but instead will be constructed at a future date to be determined by the City.

The main purpose of this Agreement is to have the Developer agree to waive their right to protest the resolution(s) of necessity for both the initial and future projects. Staff is recommending approval of this Agreement so that there is certainty to being able to construct the future project, 57th Street North, when it is determined necessary without the risk of it being protested.

Attached with this memorandum is the full version of the Developer Agreement that provides further information on the items that the City and Developer agree upon to serve the Veterans Industrial Park Subdivision with City infrastructure.

Recommended Motion:

Approve the Developer Agreement for the Veterans Industrial Park Subdivision.

Developer Agreement

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

1. Developer holds all right, title and interest in the Development Property, known as Lots One, Two, Three, Four, Five, and Six in Block One, Lots One, Two, and Three of Block Two, and Lot One, Block Three of the Veterans Industrial Park Subdivision in the City of Fargo, Cass County, North Dakota. Developer intends to develop the Development Property.
2. Developer agrees to make a request for infrastructure to the City for the design, bidding, and construction administration of public infrastructure of 23rd Avenue North and 53rd Street North within the Development Property (the “Initial Project”). The funding of this initial request for infrastructure will follow the City’s Infrastructure Funding Policy in effect at the time of creation of the improvement district for the Initial Project.
3. City shall complete street construction and improvements of 57th Street North, from 19th Avenue North to the railroad right of way, at a future date to be determined by the City (the “Future Project”), which shall be determined at the sole discretion of the City. The funding of these future 57th Street North improvements will follow the City’s Infrastructure Policy in effect at the time of creation of the improvement district for the Future Project.
4. Developer hereby waives its right to protest the resolution(s) of necessity for the infrastructure and improvements for which such resolutions are required pursuant to North Dakota Century Code, Section 40-22-17, and specifically consents to the


construction of the Initial Project and Future Project, and to the assessment of the costs thereof to the Development Property. Developer further waives its right to protest the amount, benefit, or any other assessment attribute related to the installation and construction of the Initial Project and Future Project. The project costs which may be assessed against the Development Property include all costs of completing the construction of the Initial Project and Future Project.

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

Developer

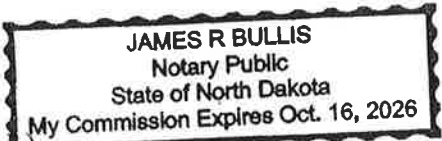
EagleRidge Development, LLC

Dated: 07/21/23


 By: Jonathan Youness
 Its: Vice-President

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

On this 21 day of July, 2023, before me, a notary public in and for said county and state, personally appeared Jonathan Youness, an authorized signatory of EagleRidge Development, LLC, the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.

(SEA) 



 Notary Public
 Cass County, ND
 My Commission expires:

Exhibit A- Development Property

Lots One, Two, Three, Four, Five, and Six in Block One, Lots One, Two, and Three of Block Two, and Lot One, Block Three of the Veterans Industrial Park Subdivision in the City of Fargo, Cass County, North Dakota

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

14

Type: Developer Agreement

Location: Radio Second Addition

Date of Hearing: 7/31/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/7/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Nathan Boerboom</u>

The Committee reviewed the accompanying correspondence from Division Engineer, Nathan Boerboom, regarding a Developer's Agreement for Radio Second Addition.

Staff have been coordinating with the Developer on an Agreement to support the development of this addition. A key item included within this Agreement is the future installation of right turn lanes into Radio Second Addition. These turn lanes were determined to be necessary to support the driveway locations proposed by the Developer while minimizing impacts to traffic on Veterans Boulevard.

The timing of the installation of these right turn lanes will be as deemed necessary by the City or whenever Veterans Boulevard is extended south across Drain 27, whichever occurs first. Also included is the Developer agreeing to fund 100% of the project costs for the right turn lanes through special assessments to the properties within the development as well as waiving their right to protest the resolution of necessity for this project.

On a motion by Bruce Grubb, seconded by Ryan Erickson, the Committee voted to recommend approval of the Developer Agreement for Radio Second Addition.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Developer Agreement for Radio Second Addition.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u><input checked="" type="checkbox"/></u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
Michael Redlinger, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Interim Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:


Tom Knakmuhs, P.E.
City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Nathan Boerboom, Division Engineer
Date: July 25, 2023
Re: Developer Agreement for Radio Second Addition

Staff has been coordinating with the Developer on the private and public infrastructure associated with Radio Second Addition. As a result of this coordination, we have developed an Agreement to support the development of this addition. A key item included within this Agreement is the future installation of right turn lanes into Radio Second Addition. These right turn lanes were determined to be necessary to support the driveway locations proposed by the Developer while minimizing impacts to traffic on Veterans Boulevard.

The timing of the installation of these right turn lanes will be as deemed necessary by the City or whenever Veterans Boulevard is extended south across Southeast Cass Water Resource District's Drain 27, whichever occurs first. Also, included within this Agreement is the Developer agreeing to fund 100% of the project costs for these right turn lanes through special assessments to the properties within the development, as well as waiving their right to protest the resolution of necessity for this project.

Attached with this memorandum is the full version of the Developer Agreement that provides further information on the items that the City and Developer agree upon to serve the Radio Second Addition with private and public infrastructure.

Recommended Motion:

Approve the Developer Agreement for the Radio Second Addition.

Developer Agreement

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

1. Developer holds all right, title and interest in the Development Property, known as Lots One, Two, Three, Four, and Five in Block One of the Radio Second Addition in the City of Fargo, Cass County, North Dakota. Developer intends to develop the Development Property.
2. Developer will fund construction, maintenance, and rehabilitation of a private road and utilities to service the Development Property from Veterans Boulevard. The Development Property will have two connections to Veterans Boulevard, which shall be located within the 40-foot access and utility easements as depicted on the Radio Second Addition plat.
3. Developer agrees that future traffic volumes on Veterans Boulevard will necessitate the installation of right turn lanes on Veterans Boulevard at both private drive connection points into the Development Property. The timing of construction of these right turn lanes will be as deemed necessary by the City or whenever Veterans Boulevard is extended south across Southeast Cass Water Resource District’s Drain 27, whichever occurs first. At the time it becomes necessary, the design and construction of the right turn lanes will be completed by the City.
4. Developer agrees the funding of these right turn lanes improvements and construction will be 100% special assessed to the properties within Development Property in

accordance with the City's Infrastructure Policy in effect at the time of creation of the improvement district for these improvements and construction.

5. Developer hereby waives its right to protest the resolution(s) of necessity for the right turn lane improvements for which such resolutions are required pursuant to North Dakota Century Code, Section 40-22-17, and specifically consents to the construction and to the assessment of the costs thereof to the Development Property. Developer further waives its right to protest the amount, benefit, or any other assessment attribute related to the installation and construction of the right turn lanes. The project costs assessed against the Development Property include all costs of completing the construction of the right turn lanes.
6. Developer agrees the connection of the north private road to Veterans Boulevard will initially allow all vehicle turning movements at this intersection. Though as traffic volumes on Veterans Boulevard increase, the turning movements of the north private road will be limited to only allow for right turn into the Development Property and right turn out of the Development Property. The decision on when the alteration of the turning movements at this intersection is necessary shall be at the sole discretion of the City.
7. This Agreement shall be binding upon the respective successors and assigns of the parties hereto, including a purchaser of any portion of the Development Property. Developer agrees to inform any purchasers of the Development Property of the existence and context of this Agreement. Developer also hereby agrees to notify the City no later than 10 days prior to an assignment or sale of the Development Property.
8. The parties hereby agree that this Agreement may be recorded against the Development Property.
9. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.
10. The failure or delay of a party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver by that party of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of the party to enforce each and every term of this Agreement.

11. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.
12. This Agreement, together with any related documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement.
13. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

Developer

Four Horseman, LLC

Dated: 7/24/23

Eric Merhiy

By: Eric Merhiy

Its: Managing Partner

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

On this 24 day of July, 2023, before me, a notary public in and for said county and state, personally appeared Eric Merhiy, an authorized signatory of Four Horseman, LLC, the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.

[Signature]

Notary Public
Cass County, ND
My Commission expires:

(SEAL)

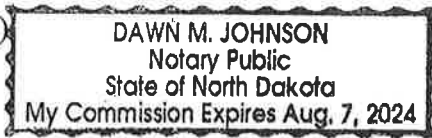


Exhibit A- Development Property

Lots One, Two, Three, Four, and Five in Block One of the Radio Second Addition in the City of Fargo, Cass County, North Dakota

15

July 21, 2023

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

**Re: Memorandum of Offer to Landowner
Temporary Easement - Project #FM-19-C**

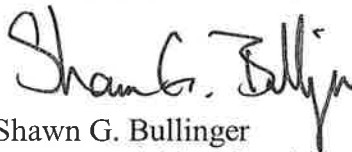
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a Temporary Easement in association with Project #FM-19-C. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a Temporary Easement from **Jonathon K & Sadie M Erickson** in association with Project #FM-19-C and that the Mayor is instructed to execute the Memorandum of Offer to Landowner and Temporary Easement on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Nancy J. Morris
Nathan Boerboom

Project FM-19-C	County Cass	Parcel(s) 01-4060-00610-000
Landowner Jonathon K & Sadie M Erickson		
Mailing Address 161 South Woodcrest Drive N Fargo, ND 58102		

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

See enclosed easement.

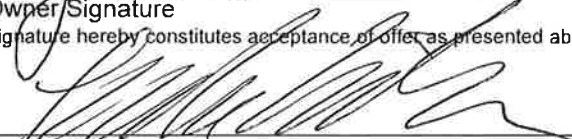
I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 600.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through 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	\$	_____ 600.00
Improvements on Right of Way*	\$	_____
Damages to Remainder	\$	_____
Total Offer	\$	_____ 600.00

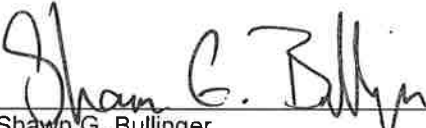
*Description of Damages to Remainder are as follows:



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



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



 Shawn G. Bullinger
 Land Acquisition Specialist, City of Fargo

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

Timothy J. Mahoney

 MAYOR

 SIGNATURE

 DATE

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **JONATHON K. ERICKSON AND SADIE M. ERICKSON**, whether one or more, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to him in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of levee and storm sewer construction and activities appurtenant thereto, said land being more fully described, to-wit:

That part of Lot 14, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the most westerly corner of said Lot 14; thence South 46°54'19" East, along the southwesterly line of said Lot 14, for a distance of 22.51 feet to the true point of beginning; thence North 51°56'48" East for a distance of 33.15 feet; thence North 85°03'46" East for a distance of 32.16 feet; thence South 65°52'30" East for a distance of 30.03 feet to a point of intersection with the southeasterly line of said Lot 14; thence South 42°03'45" West, along the southeasterly line of said Lot 14, for a distance of 66.44 feet to the most southerly corner of said Lot 14; thence North 46°54'19" West, along the southwesterly line of said Lot 14, for a distance of 56.21 feet to the true point of beginning.

Said tract contains 2,833 square feet, more or less.

Said parcel is pictorially represented in Exhibit "A" hereto and made a part hereof.

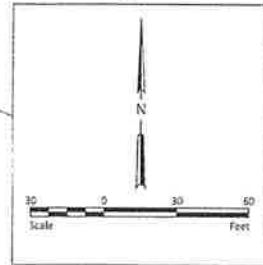
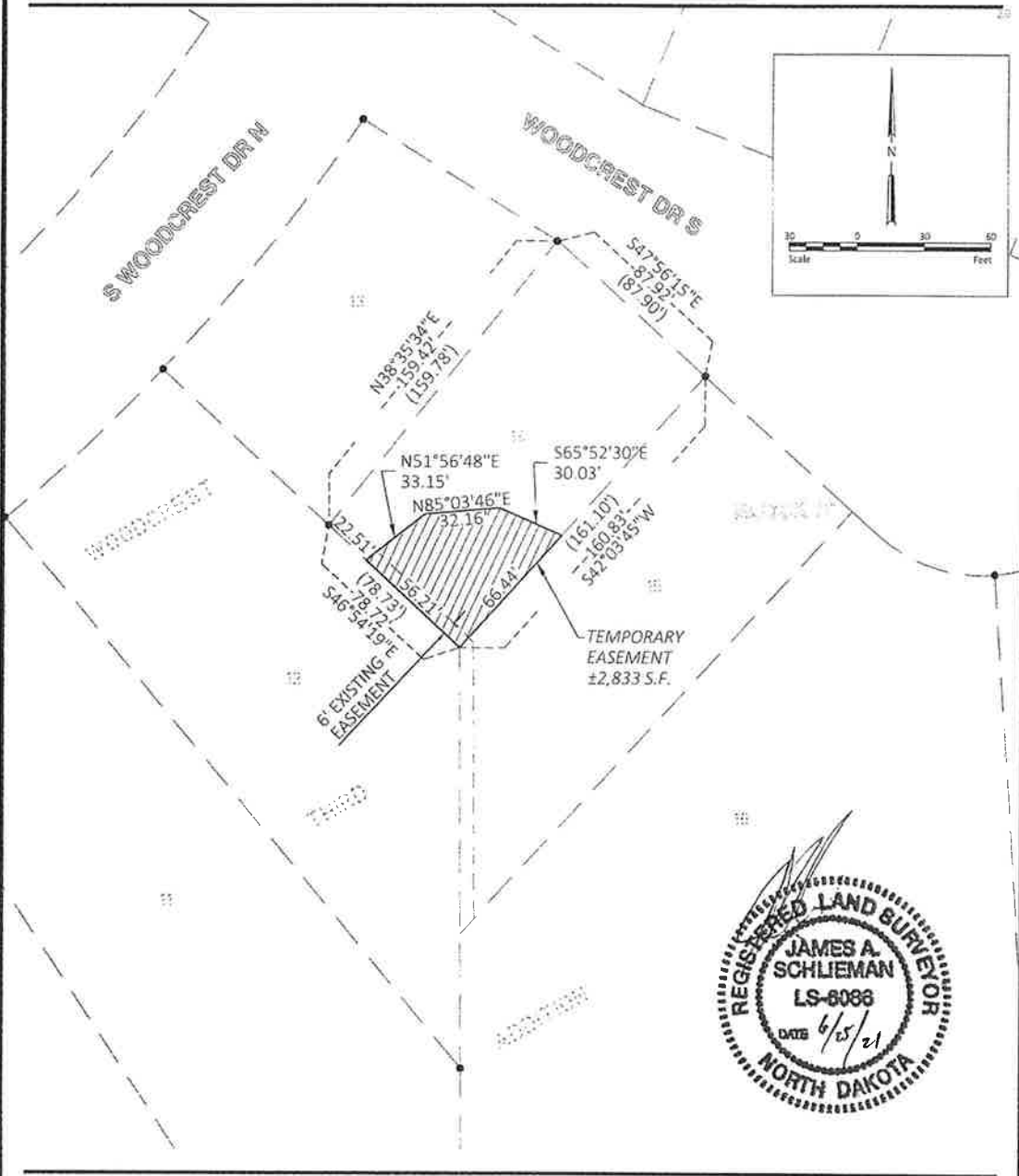
Grantor, his successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient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

Grantor, his successors and assigns, further agrees they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, 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 storage of dirt and all other construction activities was begun.

This easement shall terminate on October 31, 2023.

(Signatures on following pages).

PART OF LOT 14, BLOCK 16
 WOODCREST THIRD ADDITION
 CITY OF FARGO, CASS COUNTY
 STATE OF NORTH DAKOTA



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

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



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
 CITY OF FARGO, CASS CO., ND

SHEET
1 OF 2

PART OF LOT 14, BLOCK 16
WOODCREST THIRD ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

Description - Temporary Easement:

That part of Lot 14, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the most westerly corner of said Lot 14; thence South 46°54'19" East, along the southwesterly line of said Lot 14, for a distance of 22.51 feet to the true point of beginning; thence North 51°56'48" East for a distance of 33.15 feet; thence North 85°03'46" East for a distance of 32.16 feet; thence South 65°52'30" East for a distance of 30.03 feet to a point of intersection with the southeasterly line of said Lot 14; thence South 42°03'45" West, along the southeasterly line of said Lot 14, for a distance of 66.44 feet to the most southerly corner of said Lot 14; thence North 46°54'19" West, along the southwesterly line of said Lot 14, for a distance of 56.21 feet to the true point of beginning.

Said tract contains 2,833 square feet, more or less.



EASEMENT EXHIBIT

PROJECT NO.
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT
CITY OF FARGO, CASS CO., ND

SHEET
2 OF 2

H:\JAN\6000\6059\6059_0165\CAD\Easements\Lot 14 Erickson Easement Exhibit.dwg-Sheet 2-6/25/2021 7:58 AM-(tkarel)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. PN-22-M1

Type: Change Order #1

Location: Rocking Horse Farm 6th Addition

Date of Hearing: 7/31/2023

<u>Routing</u>	<u>Date</u>
City Commission	8/7/2023
PWPEC File	X
Project File	Jason Satterlund

The Committee reviewed the accompanying correspondence from Project Manager, Jason Satterlund, regarding Change Order #1 in the amount of \$55,411.82 for additional work.

Staff is recommending approval of Change Order #1 in the amount of \$55,411.82, bringing the total contract amount to \$1,497,539.34.

On a motion by Mark Williams, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #1 to Dakota Underground.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Change Order #1 in the amount of \$55,411.82, bringing the total contract amount to \$1,497,539.34 to Dakota Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessments

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

Present	Yes	No	Unanimous
			<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"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
<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
Michael Redlinger, City Administrator
Ben Dow, Director of Operations
Steve Sprague, City Auditor
Tom Knakmuhs, City Engineer
Susan Thompson, Interim Finance Director

ATTEST:

C: Kristi Olson


Tom Knakmuhs, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Jason Satterlund, Project Manager
Date: July 27, 2023
Re: Improvement District No. PN-22-M1– Change Order #1

Background:

Improvement District No. PN-22-M1 is for Concrete Paving & Incidentals on 59th Street South, 51st Avenue South and Rocking Horse Road South in the Rocking Horse Farm 6th Addition, providing infrastructure to the new West Fargo Elementary School.

Change Order #1 is to address quantity changes associated with excess clay generated as part of the underground project, soil stabilization for one section of roadway, remove and replace a panel of concrete adjacent to the project, street light modifications to existing lighting at the roundabout of 51st Avenue South and Veteran's Boulevard, as well as some additional signage around the new elementary school.

All cost associated with Change Order #1 will be special assessed directly to the benefiting properties.

Recommended Motion:

Approve Change Order #1 in the amount of \$55,411.82.

Attachment

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 (\$)
	44	Remove Street Light	EA	0	0	0	1	1	\$1,111.97	\$1,111.97
	45	Remove Base	EA	0	0	0	1	1	\$1,938.77	\$1,938.77
	46	F&I Pull Box	EA	0	0	0	1	1	\$1,330.56	\$1,330.56
Change Order 1 Sub Total										\$9,891.10

Summary.

Source Of Funding	Special Assessment
Net Amount Change Order # 1 (\$)	\$55,411.82
Previous Change Orders (\$)	\$0.00
Original Contract Amount (\$)	\$1,442,127.52
Total Contract Amount (\$)	\$1,497,539.34

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

APPROVED

For Contractor

Title

Jared Heller, PE

Dakota Underground Company

Project Manager

APPROVED DATE

Department Head

Mayor

Attest



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

17

Improvement District No. UN-23-A1

Type: Change Order #1

Location: North City Limits, 45th – 25th Street

Date of Hearing: 7/31/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/7/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Satterlund</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Satterlund, regarding Change Order #1 in the amount of \$167,295.00 for additional work.

Staff is recommending approval of Change Order #1 in the amount of \$167,295.00, bringing the total contract amount to \$3,799,083.50.

On a motion by Mark Williams, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #1 to Ryan Contracting.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Change Order #1 in the amount of \$167,295.00, bringing the total contract amount to \$3,799,083.50 to Ryan Contracting.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Water Utility, NDSWC & Special Assessments

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

COMMITTEE

- Tim Mahoney, Mayor
- Nicole Crutchfield, Director of Planning
- Steve Dirksen, Fire Chief
- Michael Redlinger, City Administrator
- Ben Dow, Director of Operations
- Steve Sprague, City Auditor
- Tom Knakmuhs, City Engineer
- Susan Thompson, Interim Finance Director

<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
<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: Jason Satterlund, Project Manager
Date: July 27, 2023
Re: Improvement District No. UN-23-A1– Change Order #1

Background:

Improvement District No. UN-23-A1 is a water main project that will expand the water distribution system in the industrial portion of north Fargo by creating an additional water main crossing of I-29 resulting in increased water flows, capacity, and redundancy. The project runs along 52nd Avenue North between 25th Street and 41st Street, on 41st Street North between 52nd and 51st Avenue North, on 51st Avenue North between 41st Street and 43rd Street North, on 40th Avenue North from 43rd Street North to 200' east of 45th Street and then south to 32nd Avenue North.

Change Order #1 is for water revisions at 37th Street allowing for a water shut down at area businesses, Developer request for a water main stub for future 46th Avenue North, to correct a bid quantity for F&I Insulation 4" Thick, and for payment of BNSF inspection and flagging while boring under the tracks.

At the onset of the project it was anticipated that City of Fargo would pay BNSF directly for their inspectors to be present during boring. Due to scheduling timelines with BNSF, it will work best if the Contractor pays these fees themselves and passes them along without markup to City of Fargo for reimbursement. Estimated cost for BNSF inspectors is \$28,680.00. BNSF will review inspector records after the project and reconcile the cost difference.

All cost associated with Change Order #1 will be funded by a combination of special assessments, Water Utility Funds, and Department of Water Resources Cost-Share grant.

Recommended Motion:

Approve Change Order #1 in the amount of \$167,295.00

Attachment



CHANGE ORDER REPORT
NEW UTILITY CONSTRUCTION
IMPROVEMENT DISTRICT NO. UN-23-A1
NORTHERN EDGE OF CITY OF FARGO LIMITS BETWEEN 45TH STREET NORTH AND
25TH STREET NORTH

Change Order No 1 Change Order Date 7/13/2023
 Contractor Ryan Contracting

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

Water Revisions at 37th Street and adjustment of understated bid quantity

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Change Order 1	11	Mobilization	LS	0	0	0	1	1	\$28,680.00	\$28,680.00
	12	Cut in Valve 12" Dia	EA	0	0	0	1	1	\$25,000.00	\$25,000.00
	13	Relocate Water Main 12" Dia	EA	0	0	0	1	1	\$5,000.00	\$5,000.00
				Change Order 1 Sub Total					\$58,680.00	
Water Main (East)	51	F&I Fittings C153 Ductile Iron	LB	4698	4698	4698	392	5090	\$10.00	\$3,920.00
	53	F&I Hydrant - Restrained Joint	EA	4	4	4	2	6	\$7,500.00	\$15,000.00
	54	F&I Insulation 4" Thick	SY	130	130	130	1020	1150	\$70.00	\$71,400.00
	58	F&I Pipe C900 DR 18 - 6" Dia PVC	LF	40	40	40	12	52	\$95.00	\$1,140.00
	59	F&I Pipe C900 DR 18 - 12" Dia PVC	LF	2650	2650	2650	43	2693	\$85.00	\$3,655.00
	62	F&I Gate Valve 6" Dia	EA	6	6	6	2	8	\$3,500.00	\$7,000.00
63	F&I Gate Valve 12" Dia	EA	3	3	3	1	4	\$6,500.00	\$6,500.00	

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 (\$)
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Water Main (East) Sub Total \$108,615.00

Summary.

Source Of Funding	Special Assessments, Water Utility Funds, Department of Water Resources Cost-Share grant
Net Amount Change Order # 1 (\$)	\$167,295.00
Previous Change Orders (\$)	\$0.00
Original Contract Amount (\$)	\$3,631,788.50
Total Contract Amount (\$)	\$3,799,083.50

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

APPROVED

For Contractor

Title

Beth Tatge

Ryan Contracting Company

CFO/Sec

APPROVED DATE

Department Head

Mayor

Attest



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-22-C1

Type: Change Order #3

Location: 28th, 30th & 32nd Ave. N.,
42nd St. & 43rd St.

Date of Hearing: 7/31/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/7/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Leonard</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, regarding Change Order #3 in the amount of \$15,000.00 for additional work.

Staff is recommending approval of Change Order #3 in the amount of \$15,000.00, bringing the total contract amount to \$18,747,958.59.

On a motion by Mark Williams, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #3 to Dakota Underground.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Change Order #3 in the amount of \$15,000.00, bringing the total contract amount to \$18,747,958.59 to Dakota Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: WW & Special Assessments

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

COMMITTEE

- Tim Mahoney, Mayor
- Nicole Crutchfield, Director of Planning
- Steve Dirksen, Fire Chief
- Michael Redlinger, City Administrator
- Ben Dow, Director of Operations
- Steve Sprague, City Auditor
- Tom Knakmuhs, City Engineer
- Susan Thompson, Interim Finance Director

<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
<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: Jason Leonard, Project Engineer
Date: July 28, 2023
Re: Improvement District No. BN-22-C1 – Change Order #3

Background:

Improvement District No. BN-22-C1 is for Sanitary Sewer, Water Main, Storm Sewer, Paving & Incidentals on 28th Avenue North, 30th Avenue North, 32nd Avenue North, 42nd Street North and 43rd Street North in the Laverne's 2nd Addition.

On the north side of 32nd Avenue North the existing section line ditch is to remain in place until further land is developed to the north. The condition of the existing ditch between 43rd Street North and Cass County Drain 40 is in poor condition with voluntary overgrown trees and silt in the ditch bottom. In order to improve drainage and maintain a good working relationship with NDSU the Contractor was asked if they would be willing to restore the ditch. Dakota Underground agreed to complete this work for a cost of \$15,000.

All cost associated with Change Order #3 will be special assessed directly to the benefiting properties.

Recommended Motion:

Approve Change Order #3 in the amount of \$15,000.

Attachment



CHANGE ORDER REPORT
NEW PAVING AND UTILITY CONSTRUCTION
IMPROVEMENT DISTRICT NO. BN-22-C1

28TH AVE N BETWEEN 41ST ST N & 45TH ST N, 30TH AVE N BETWEEN 41ST ST N &
 43RD ST N, 32ND AVE N BETWEEN 41ST ST N & 42NS ST N, 42ND ST N BETWEEN
 28TH AVE N & 32TH AVE N, 43RD ST N BETWEEN 28TH AVE N & 32ND AVE N

Change Order No 3 **Change Order Date** 7/28/2023
Contractor Dakota Underground Co 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 # 3

On the north side of 32nd Avenue North the existing section line ditch is to remain in place until further land is developed to the north. The condition of the existing ditch between 43rd Street N and Cass County Drain 40 is in poor condition with voluntary overgrown trees and silt in the ditch bottom. In order to improve drainage and maintain a good working relationship with NDSU the Contractor was asked if they would be willing to restore the ditch. Dakota Underground agreed to complete this work for a cost of \$15,000.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Change Order 3	53	Ditch Grading	LF	0	0	0	1875	1875	\$8.00	\$15,000.00
Change Order 3 Sub Total									\$15,000.00	

Summary.

Source Of Funding

Net Amount Change Order # 3 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

Special Assessment

\$15,000.00

\$154,414.00

\$18,578,544.59

\$18,747,958.59

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

APPROVED

For Contractor

Title

Jared Heller, PE

Dakota Underground Company

Project Manager

APPROVED DATE

Department Head

Mayor

Attest



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

19

Improvement District No. AN-21-A1

Type: Negative Final Balancing Change Order #1

Location: Between 10th & 11th Street North,
From NP Ave to 1st Ave N

Date of Hearing: 7/31/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/7/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Brian Skanson</u>

The Committee reviewed the accompanying correspondence from Project Manager, Brian Skanson, regarding Negative Final Balancing Change Order #1 in the amount of \$-7,527.50, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #1 in the amount of \$-7,527.50, bringing the total contract amount to \$110,472.50.

On a motion by Mark Williams, seconded by Steve Sprague, the Committee voted to recommend approval of Negative Final Balancing Change Order #1 to Master Construction.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Negative Final Balancing Change Order #1 in the amount of \$-7,527.50, bringing the total contract amount to \$110,472.50 to Master Construction.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessments

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u><input checked="" type="checkbox"/></u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
Michael Redlinger, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Interim Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

Tom Knakmuhs, P.E.
City Engineer

Improvement District No AN-21-A1 Change Order No 1
 Project Name Alley Paving For Master Construction
 Date Entered 7/26/2023



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

EXPLANATION OF CHANGE: Final Balancing Change Order

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Paving	1	Remove Pavement All Thicknesses All Types	SY	1118.00	0.00	1118.00	-36.00	1082.00	8.00	-288.00
	2	Subgrade Preparation	SY	1088.00	0.00	1088.00	-6.00	1082.00	4.00	-24.00
	3	F&I Pavement 7" Thick Reinf Conc	SY	1088.00	0.00	1088.00	-6.00	1082.00	85.00	-510.00
	4	Casting to Grade - w/Conc	EA	1.00	0.00	1.00	0.00	1.00	750.00	0.00
	5	Mulching Type 1 - Hydro	SY	50.00	0.00	50.00	-35.00	15.00	30.00	-1,050.00
	6	Seeding Type B	SY	50.00	0.00	50.00	-35.00	15.00	30.00	-1,050.00
	7	Temp Construction Entrance	EA	2.00	0.00	2.00	-2.00	0.00	1217.00	-2,434.00
	8	Inlet Protection - Existing Inlet	EA	4.00	0.00	4.00	-4.00	0.00	175.00	-700.00
	9	Traffic Control - Type 1	LS	1.00	0.00	1.00	0.00	1.00	1000.00	0.00
	10	F&I Rock Mulch	TON	10.00	0.00	10.00	-8.00	2.00	200.00	-1,600.00
	11	F&I Sidewalk 4" Thick Reinf Conc	SY	4.00	0.00	4.00	1.60	5.60	75.00	120.00
	12	F&I Driveway 7" Thick Reinf Conc	SY	24.00	0.00	24.00	0.10	24.10	85.00	8.50
Paving Sub Total (\$)										-7,527.50

Summary

Source Of Funding

Net Amount Change Order # 1 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

-7,527.50
 0.00
 118,000.00
 110,472.50



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

CONTRACT TIME

Current Substantial Completion Date 10/15/2021

Current Final Completion Date Additional Days Substantial Completion 0.00

Additional Days Final Completion 0.00

New Substantial Completion Date 10/15/2021

New Final Completion Date

Description

APPROVED

For Contractor

Title

[Signature]
Jake Antony
Controller

APPROVED DATE

Department Head

Mayor

Attest

[Signature]
T. K. Lee

Improvement District No. AN-21-A1
Project Name Alley Paving
Type Alley Paving New
Description Reconstruction of alley south of 1st Ave N and between 10th St N and 11th St N
Pay Estimate Number 3-Final
From Date 10/20/2021
To Date 06/27/2023

The Honorable Board of City Commissioners

Dear Commissioners,

Be advised that Master Construction Co Inc has performed the work to date shown on this statement

Contract	Paving	Unit	Quantity	Unit Price (\$)	Previous		Current		To Date		Percentage Complete(%)
					Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	
1	Remove Pavement All Thicknesses All Types	SY	1,118.00	8.00	1082.00	8,656.00	0.00	0.00	1,082.00	8,656.00	96.78
2	Subgrade Preparation	SY	1,088.00	4.00	1082.00	4,328.00	0.00	0.00	1,082.00	4,328.00	99.45
3	F&I Pavement 7" Thick Reinf Conc	SY	1,088.00	85.00	1082.00	91,970.00	0.00	0.00	1,082.00	91,970.00	99.45
4	Casting to Grade - w/Conc	EA	1.00	750.00	1.00	750.00	0.00	0.00	1.00	750.00	100.00
5	Mulching Type 1 - Hydro	SY	50.00	30.00	0.00	0.00	15.00	450.00	15.00	450.00	30.00
6	Seeding Type B	SY	50.00	30.00	0.00	0.00	15.00	450.00	15.00	450.00	30.00
7	Temp Construction Entrance	EA	2.00	1,217.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8	Inlet Protection - Existing Inlet	EA	4.00	175.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
9	Traffic Control - Type 1	LS	1.00	1,000.00	0.50	500.00	0.50	500.00	1.00	1000.00	100.00
10	F&I Rock Mulch	TON	10.00	200.00	0.00	0.00	2.00	400.00	2.00	400.00	20.00
11	F&I Sidewalk 4" Thick Reinf Conc	SY	4.00	75.00	5.60	420.00	0.00	0.00	5.60	420.00	140.00*
12	F&I Driveway 7" Thick Reinf Conc	SY	24.00	85.00	24.10	2,048.50	0.00	0.00	24.10	2,048.50	100.42
					Paving Sub Total	106,672.50		1,800.00		110,472.50	

Summary	
1. Original Contract Amount	\$ 118,000.00
2. Net Change by Change Order	\$ 0.00
3. Contract Amount To Date	\$ 118,000.00
4. Total Work Completed to Date	\$ 110,472.50
5. Retainage @ 0.00 % to Date	\$ 5,433.63
6. Previous Retainage	\$ 5,433.63
7. Retainage This Period	\$ 0.00
8. Liquidated Damages	
0.00 Days to Date	\$ 0.00
0.00 Days to Previous	\$ 0.00
0.00 Days This Period	\$ 0.00
9. Material on Hand (Payment)	\$ 0.00
10. Material on Hand (Recovery)	\$ 0.00
11. Adjustments	\$ 0.00
12. Total Due to Date	\$ 110,472.50
13. Previous Payments	\$ 103,238.87
14. Payment Due This Estimate	\$ 7,233.63
15. Amount allowed Pay Estimate # 3-Final	\$ 7,233.63

[Signature] for Master Construction Co, Inc.
7/26/03

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. TN-22-A1

Type: Negative Final Balancing Change Order #2

Location: 32nd St & 33rd Ave S & 18th Ave S at Sanford

Date of Hearing: 7/31/2023

<u>Routing</u>	<u>Date</u>
City Commission	8/7/2023
PWPEC File	X
Project File	Jacob Rick

The Committee reviewed the accompanying correspondence from Project Manager, Jacob Rick, regarding Negative Final Balancing Change Order #2 in the amount of \$-1,847.80, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #2 in the amount of \$-1,847.80, bringing the total contract amount to \$360,053.95.

On a motion by Mark Williams, seconded by Steve Sprague, the Committee voted to recommend approval of Negative Final Balancing Change Order #2 to Strata Corporation.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Negative Final Balancing Change Order #2 in the amount of \$-1,847.80, bringing the total contract amount to \$360,053.95 to Strata Corporation.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessments


	<u>Yes</u>	<u>No</u>
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

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u><input checked="" type="checkbox"/></u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
Michael Redlinger, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Interim Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


Tom Knakmuhs, P.E.
City Engineer



CHANGE ORDER REPORT
TRAFFIC SIGNAL IMPROVEMENTS
IMPROVEMENT DISTRICT NO. TN-22-A1

Final Balancing
Change Order

32 ST / 33 AVE S AT ESSENTIA AND 18 AVE S AT SANFORD

Change Order No 2 Change Order Date 7/28/2023
 Contractor Strata Corporation

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

EXPLANATION OF CHANGE Change Order # 2

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 (\$)
Pavement Marking	12	Obliterate Pavement Markings	SF	300		300	204	504	\$5.05	\$1,030.20
	13	F&I Contrast Tape Messages	SF	64		64	-16	48	\$43.00	-\$688.00
	14	F&I Grooved Plastic Film 16" Wide	LF	56		56	-8	48	\$30.00	-\$240.00
	15	F&I Grooved Plastic Film 24" Wide	LF	140		140	-26	114	\$40.00	-\$1,040.00
	16	F&I Grooved Contrast Film 7" Wide	LF	450		450	158	608	\$16.00	\$2,528.00
	17	F&I Grooved Contrast Film 11" Wide	LF	250		250	-100	150	\$24.00	-\$2,400.00
	18	Paint Epoxy Line 16" Wide	LF	20		20	16	36	\$18.00	\$288.00
	20	Paint Epoxy Message	SF	110		110	-51	59	\$26.00	-\$1,326.00
Pavement Marking Sub Total									-\$1,847.80	

Summary.

Source Of Funding	100% special assessments
Net Amount Change Order # 2 (\$)	-\$1,847.80
Previous Change Orders (\$)	\$83,083.00
Original Contract Amount (\$)	\$278,818.75
Total Contract Amount (\$)	\$360,053.95

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

APPROVED

For Contractor

Title

Strata Corporation

Eric Simak

Project Manger

07/28/2023

APPROVED DATE

Department Head

Mayor

Attest

T. Cole

(21)

July 28, 2023

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

Re: Temporary Construction Easement
Improvement District #BR-24-A1

Dear Commissioners:

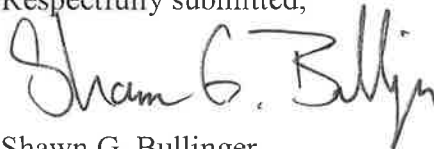
Accompanying for City Commission review and approval is a Temporary Construction Easement with **Kurt Altenburg** in association with Improvement District #BR-24-A1.

RECOMMENDED MOTION:

Approve Temporary Construction Easement with **Kurt Altenburg**.

Please return a copy of the signed original.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Kasey McNary

EASEMENT
(Temporary Construction Easement)

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

A tract of land in Lots 1 and 2, Block 16 of Harwood's 2nd Addition to Fargo on file as document A-13B at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota, more particularly described as follows:

The easterly 10.00 feet of the easterly 100.00 feet of said Lots 1 and 2.

Said tract contains 1000 square feet, more or less.

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

Grantor, its successors and assigns, further agree that they will not disturb, injure, molest or in any manner interfere with said parcel to be used for removal and reconstruction of the

sidewalk and all other construction activities during the construction phase of said project, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel during the construction phase. Grantee, at its own expense, shall leave the premises in as good condition as it was prior to the time construction activities began.

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

[Signature pages to follow]

22

August 2, 2023

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

Re: Temporary Construction Easement
Improvement District #BR-24-A1

Dear Commissioners:

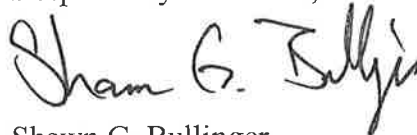
Accompanying for City Commission review and approval is a Temporary Construction Easement with **Jeffrey Ware and Jay Jansen** in association with Improvement District #BR-24-A1.

RECOMMENDED MOTION:

Approve Temporary Construction Easement with **Jeffrey Ware and Jay Jansen**.

Please return a copy of the signed original.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Kasey McNary

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **JEFFREY WARE AND JAY JANSEN**, hereinafter referred to as “Grantor”, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as “Grantee”, a temporary construction easement under, over, upon and in the land hereinafter described for the purpose of removing a city sidewalk from private property, together with the customary appurtenances, said tract being described as follows:

A tract of land in Lots 4 and 5, Block 13 of Harwood's 2nd Addition to Fargo on file as document A-13B at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota, more particularly described as follows:

The easterly 3.00 feet of said Lot 4 and the easterly 3.00 feet of the southerly 3.00 feet of said Lot 5.

Said tract contains 159 square feet, more or less.

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

Grantor, its successors and assigns, further agree that they will not disturb, injure, molest or in any manner interfere with said parcel to be used for removal and reconstruction of the

sidewalk and all other construction activities during the construction phase of said project, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel during the construction phase. Grantee, at its own expense, shall leave the premises in as good condition as it was prior to the time construction activities began.

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

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this 31 day of July, 2023.

GRANTOR:

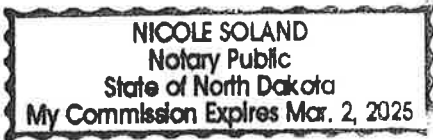
Jeffrey Ware
JEFFREY WARE

Jay Jansen
JAY JANSEN

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

On this 31 day of July, 2023, before me, a notary public in and for said county and state, personally appeared Jeffrey Ware and Jay Jansen and that they executed the within and foregoing instrument, and acknowledged to me that they executed the same.

(SEAL)



Nicole Soland
Notary Public
My Commission Expires:

23

August 2, 2023

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

Re: Temporary Construction Easement
Improvement District #BR-24-A1

Dear Commissioners:

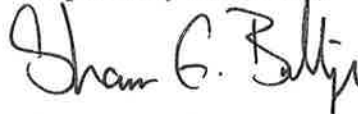
Accompanying for City Commission review and approval is a Temporary Construction Easement with **Bruce Thompson** in association with Improvement District #BR-24-A1.

RECOMMENDED MOTION:

Approve Temporary Construction Easement with **Bruce Thompson**.

Please return a copy of the signed original.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Kasey McNary

EASEMENT

(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **BRUCE THOMPSON**, hereinafter referred to as "Grantor", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement under, over, upon and in the land hereinafter described for the purpose of removing a city sidewalk from private property, together with the customary appurtenances, said tract being described as follows:

A tract of land in Lot 3, Block 16 of Harwood's 2nd Addition to Fargo on file as document A-13B at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota, more particularly described as follows:

The easterly 11.00 feet of the southerly 40.00 feet of said Lot 3.

Said tract contains 440 square feet, more or less.

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

Grantor, its successors and assigns, further agree that they will not disturb, injure, molest or in any manner interfere with said parcel to be used for removal and reconstruction of the

sidewalk and all other construction activities during the construction phase of said project, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel during the construction phase. Grantee, at its own expense, shall leave the premises in as good condition as it was prior to the time construction activities began.

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

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this 31 day of July, 2023.


GRANTOR:



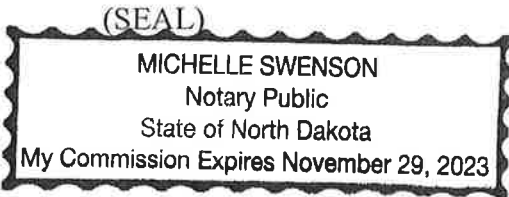
BRUCE THOMPSON

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

On this 31 day of July, 2023, before me, a notary public in and for said county and state, personally appeared Bruce Thompson and that he executed the within and foregoing instrument, and acknowledged to me that he executed the same.



Notary Public
My Commission Expires: Nov 29, 2023



24

July 26, 2023

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

**Re: Memorandum of Offer to Landowner
Temporary Easement – Improvement District #BR-23-G2**

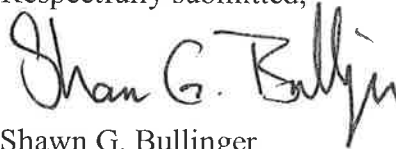
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a temporary easement in association with Improvement District #BR-23-G2. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a temporary easement from **Southgate Properties, LLP** in association with Improvement District #BR-23-G2 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner & Easement document on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Jeremy Gorden
Nancy J. Morris

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project BR-23-G2	County Cass	Parcel(s) 95 & 125
Landowner Southgate Properties LLP		
Mailing Address 3613 River Dr S Fargo, ND 58104		

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

See attached exhibit(s) to the easements accompanying this Memorandum of Offer.

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 5,780.00 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	\$	5,780.00
Improvements on Right of Way*	\$	_____
Damages to Remainder	\$	_____
Total Offer	\$	5,780.00

*Description of Damages to Remainder are as follows:

Glenn T. Williams
Owner Signature
Signature hereby constitutes acceptance of offer as presented above.

Shawn G. Bullinger
Shawn G. Bullinger
Land Acquisition Specialist, City of Fargo

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



Timothy J. Mahoney
MAYOR

SIGNATURE

DATE

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **SOUTHGATE PROPERTIES, LLP** a North Dakota limited liability partnership, whether one or more, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to him in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of street and utility construction and activities appurtenant thereto, said land being more fully described, to-wit:

A temporary easement, over, under and across that part of Lot 5, Block 1, **SOUTHGATE PLAZA ADDITION** to the City of Fargo, situate in the County of Cass and the State of North Dakota described as follows:

The North 30.00 feet of East 26.00 feet of said Lot 5, bounded on the East by the West line of Lot 4, Block 1, of said **SOUTHGATE PLAZA ADDITION**.

Said parcel contains 780 square feet, more or less, and is subject to all existing easements of record.

AND

A temporary easement, over, under and across that part of Lot 5, Block 1, **SOUTHGATE PLAZA ADDITION** to the City of Fargo, situate in the County of Cass and the State of North Dakota described as follows:

The North 30.00 feet of said Lot 5, bounded on the West by the East line of Lot 3 of said Block 1 and bounded on the East by the West line of Lot 2 of said Block 1.

Said parcel contains 1,200 square feet, more or less, and is subject to all existing easements of record.

Said parcel is pictorially represented in Exhibit "A" hereto and made a part hereof.

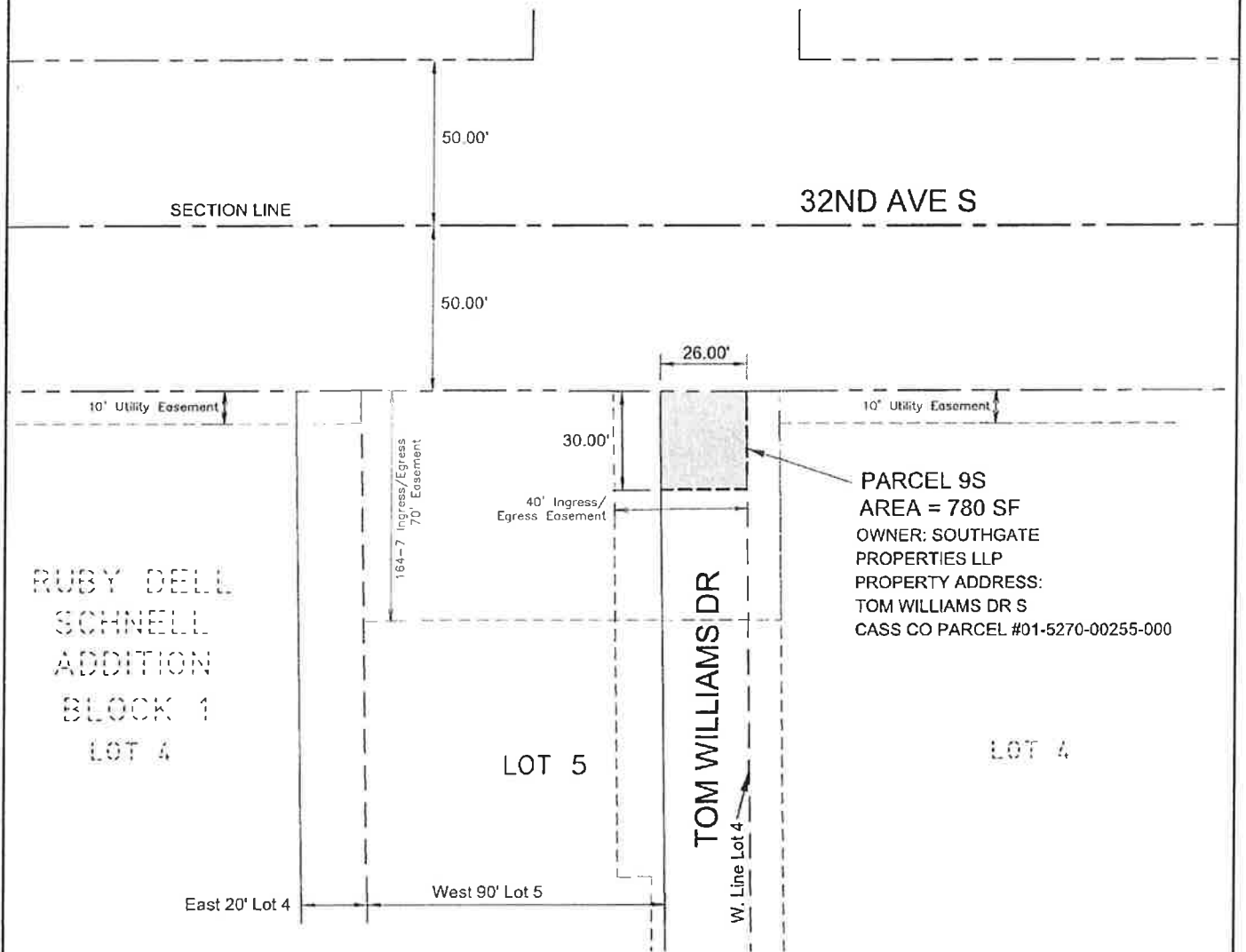
Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient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

Grantor, its successors and assigns, further agrees they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, 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 storage of dirt and all other construction activities was begun.

This easement shall terminate on June 30, 2026, or end of project, whichever occurs later.

(Signatures on following pages).

EASEMENT EXHIBIT "A"



PARCEL 9S
 AREA = 780 SF
 OWNER: SOUTHGATE PROPERTIES LLP
 PROPERTY ADDRESS:
 TOM WILLIAMS DR S
 CASS CO PARCEL #01-5270-00255-000

RUBY DELL
 SCHNELL
 ADDITION
 BLOCK 1
 LOT 4

LOT 5


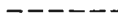
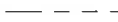



LOT 4

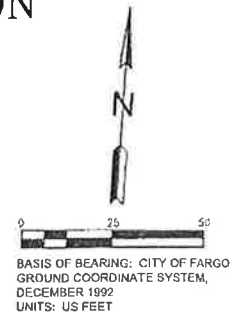
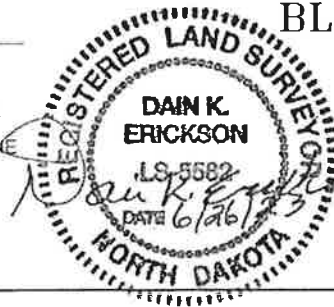
TOM WILLIAMS DR

W. Line Lot 4

SOUTHGATE PLAZA ADDITION BLOCK 1

LEGEND

-  PROPOSED PARCEL 9S
-  PROPOSED EASEMENT LINE
-  EXISTING RIGHT OF WAY LINE
-  EXISTING LOT LINE
-  EXISTING PARCEL LINE
-  EXISTING EASEMENT LINE



TEMPORARY EASEMENT - PARCEL 9S
 32ND AVE S RECONSTRUCTION
 LOT 5, BLOCK 1, SOUTHGATE PLAZA ADD.
 SECTION 25, T139N, R49W
 FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
 Date: 03/15/2023
 Drawn By: Mike J
 Checked By: Dain E
 Approved By: Dain E

EASEMENT EXHIBIT "A"

Parcel 9S
(Temporary Easement)

A temporary easement, over, under and across that part of Lot 5, Block 1, SOUTHGATE PLAZA ADDITION to the City of Fargo, situate in the County of Cass and the State of North Dakota described as follows:

The North 30.00 feet of East 26.00 feet of said Lot 5, bounded on the East by the West line of Lot 4, Block 1, of said SOUTHGATE PLAZA ADDITION.

Said parcel contains 780 square feet, more or less, and is subject to all existing easements of record.

CERTIFICATION

I, Dain K. Erickson, hereby certify that I am a Licensed Land Surveyor in the State of North Dakota, that this survey was made by me or under my direction and supervision and that the survey is true and complete as shown.



Signed Dain K. Erickson
Dain K. Erickson
North Dakota Professional Land Surveyor
License Number LS-5582

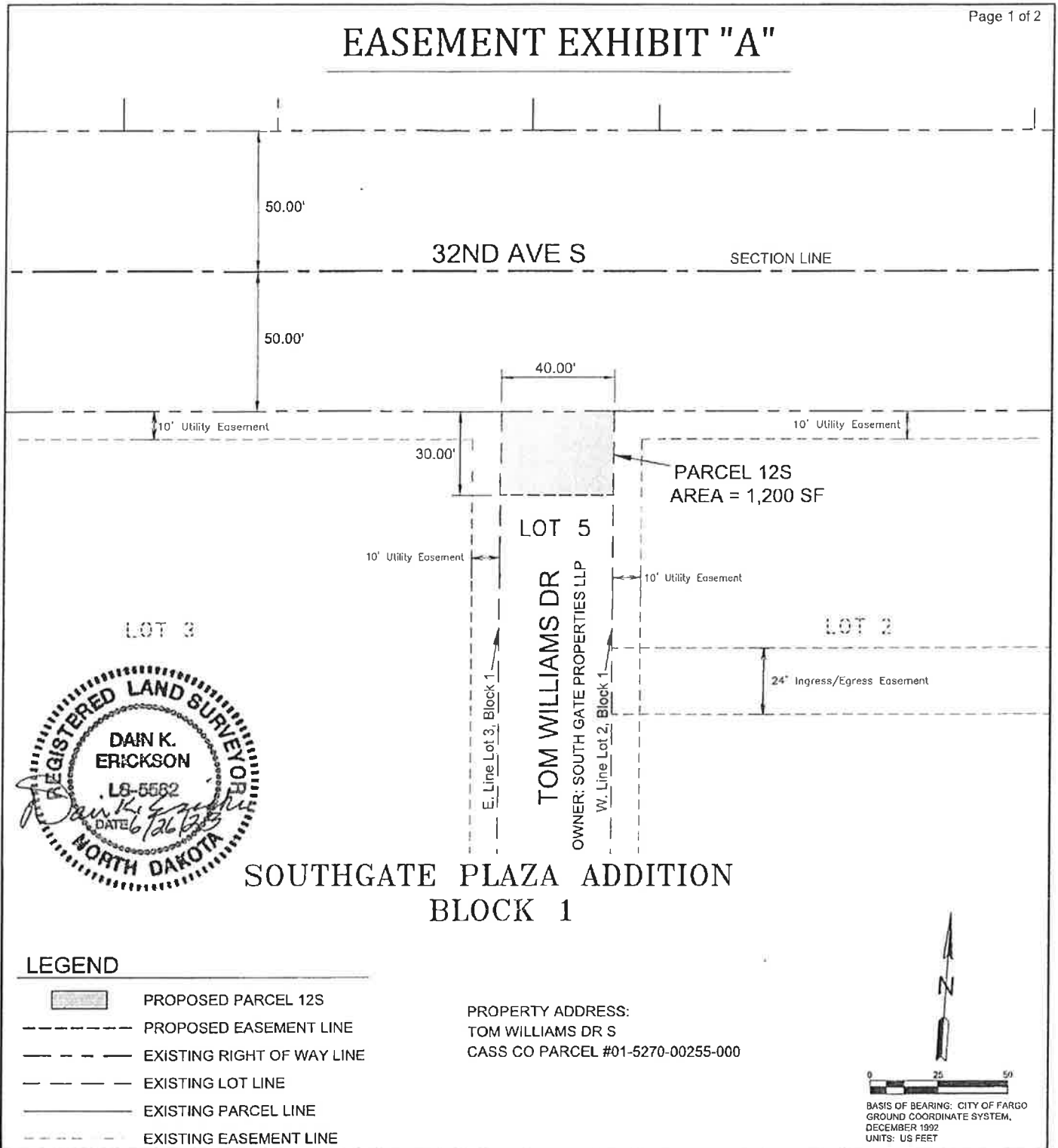
Date 6/26/2023



TEMPORARY EASEMENT - PARCEL 9S
32ND AVE S RECONSTRUCTION
LOT 5, BLOCK 1, SOUTHGATE PLAZA ADD.
SECTION 25, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
Date: 03/15/2023
Drawn By: Mike J
Checked By: Dain E
Approved By: Dain E

EASEMENT EXHIBIT "A"

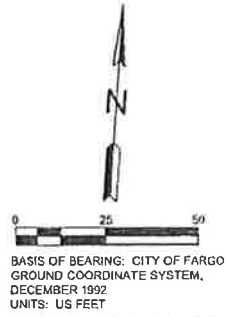


SOUTHGATE PLAZA ADDITION BLOCK 1

LEGEND

- PROPOSED PARCEL 12S
- PROPOSED EASEMENT LINE
- EXISTING RIGHT OF WAY LINE
- EXISTING LOT LINE
- EXISTING PARCEL LINE
- EXISTING EASEMENT LINE

PROPERTY ADDRESS:
 TOM WILLIAMS DR S
 CASS CO PARCEL #01-5270-00255-000



TEMPORARY EASEMENT - PARCEL 12S
 32ND AVE S RECONSTRUCTION
 LOT 5, BLOCK 1, SOUTHGATE PLAZA ADD.
 SECTION 25, T139N, R49W
 FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
 Date: 03/15/2023
 Drawn By: Mike J
 Checked By: Dain E
 Approved By: Dain E

EASEMENT EXHIBIT "A"

Parcel 12S
(Temporary Easement)

A temporary easement, over, under and across that part of Lot 5, Block 1, SOUTHGATE PLAZA ADDITION to the City of Fargo, situate in the County of Cass and the State of North Dakota described as follows:

The North 30.00 feet of said Lot 5, bounded on the West by the East line of Lot 3 of said Block 1 and bounded on the East by the West line of Lot 2 of said Block 1.

Said parcel contains 1,200 square feet, more or less, and is subject to all existing easements of record.

CERTIFICATION

I, Dain K. Erickson, hereby certify that I am a Licensed Land Surveyor in the State of North Dakota, that this survey was made by me or under my direction and supervision and that the survey is true and complete as shown.

Signed Dain K. Erickson
Dain K. Erickson
North Dakota Professional Land Surveyor
License Number LS-5582

Date 6/26/2023



TEMPORARY EASEMENT - PARCEL 12S
32ND AVE S RECONSTRUCTION
LOT 5, BLOCK 1, SOUTHGATE PLAZA ADD.
SECTION 25, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
Date: 03/15/2023
Drawn By: Mike J
Checked By: Dain E
Approved By: Dain E

25

August 3, 2023

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

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

**Re: Memorandum of Offer to Landowner
Temporary Easement – Improvement District #BR-23-G2**

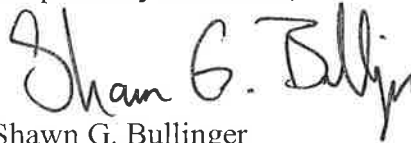
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a temporary easement in association with Improvement District #BR-23-G2. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a temporary easement from **Dakota Boys & Girls Ranch Foundation** in association with Improvement District #BR-23-G2 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner & Easement document on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Jeremy Gorden
Nancy J. Morris

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project BR-23-G2	County Cass	Parcel(s) 2N
Landowner Dakota Boys & Girls Ranch Foundation		
Mailing Address Box 5007 Minot, ND 58702		

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

See attached exhibit(s) to the easements accompanying this Memorandum of Offer.

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 657.00 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>657.00</u>
Improvements on Right of Way*	\$	_____
Damages to Remainder	\$	_____
Total Offer	\$	<u>657.00</u>

*Description of Damages to Remainder are as follows:

Sheila Miller

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

Shawn G. Bullinger

Shawn G. Bullinger
Land Acquisition Specialist, City of Fargo

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



Timothy J. Mahoney

MAYOR

SIGNATURE

DATE

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that DAKOTA BOYS AND GIRLS RANCH FOUNDATION, a North Dakota non-profit corporation, whether one or more, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to him in hand paid the receipt whereof is hereby acknowledged, HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of street and utility construction and activities appurtenant thereto, said land being more fully described, to-wit:

A temporary easement, over, under and across that part of Lot 22, Block 5, MARYDALE ADDITION to the City of Fargo, situate in the County of Cass and the State of North Dakota described as follows:

The South 10.00 feet of the West 22.50 feet of the East 45.00 feet of said Lot 22.

Said parcel contains 225 square feet, more or less, and is subject to all existing easements of record.

Said parcel is pictorially represented in Exhibit "A" hereto and made a part hereof.

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

Grantor, its successors and assigns, further agrees they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction

activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, 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 storage of dirt and all other construction activities was begun.*

This easement shall terminate on June 30, 2026, or end of project, whichever occurs later.

(Signatures on following pages).

EASEMENT EXHIBIT "A"

MARYDALE ADDITION BLOCK 5

LOT 23

LOT 22

LOT 21

E. Line Lot 22

OWNER: DAKOTA BOYS RANCH FOUNDATION
PROPERTY ADDRESS:
1601 32ND AVE S
CASS CO PARCEL #01-1885-01385-000

East 45.00' of
Lot 22

54-27 Ingress/Egress
25' Easement
(Doc#851851)

PARCEL 2N
AREA = 225 SF

10' Utility Easement

10.00'

22.50' 22.50'







50.00'

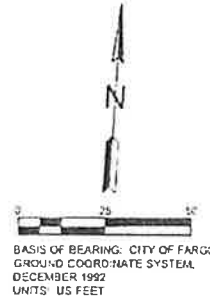
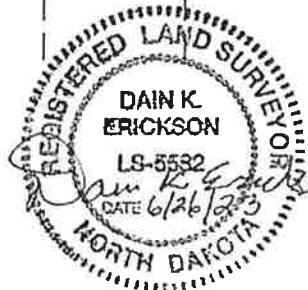
32ND AVE S

SECTION LINE

50.00'

LEGEND

-  PROPOSED PARCEL 2N
-  PROPOSED EASEMENT LINE
-  EXISTING RIGHT OF WAY LINE
-  EXISTING LOT LINE
-  EXISTING PARCEL LINE
-  EXISTING EASEMENT LINE



TEMPORARY EASEMENT - PARCEL 2N
32ND AVE S RECONSTRUCTION
LOT 22, BLOCK 5, MARYDALE ADD.
SECTION 24, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
Date: 03/15/2023
Drawn By: Miko J
Checked By: Dain E
Approved By: Dain E

EASEMENT EXHIBIT "A"

Parcel 2N
(Temporary Easement)

A temporary easement, over, under and across that part of Lot 22, Block 5, MARYDALE ADDITION to the City of Fargo, situate in the County of Cass and the State of North Dakota described as follows:

The South 10.00 feet of the West 22.50 feet of the East 45.00 feet of said Lot 22.

Said parcel contains 225 square feet, more or less, and is subject to all existing easements of record.



CERTIFICATION

I, Dain K. Erickson, hereby certify that I am a Licensed Land Surveyor in the State of North Dakota, that this survey was made by me or under my direction and supervision and that the survey is true and complete as shown.

Signed Dain K. Erickson
Dain K. Erickson
North Dakota Professional Land Surveyor
License Number LS-5582

Date 6/26/2023



TEMPORARY EASEMENT - PARCEL 2N
32ND AVE S RECONSTRUCTION
LOT 22, BLOCK 5, MARYDALE ADD.
SECTION 24, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
Date: 03/15/2023
Drawn By: Mike J
Checked By: Dain E
Approved By: Dain E

27

Memorandum

To: Board of City Commissioners
From: Bekki Majerus, Director of Facilities Management
Date: August 7, 2023
Re: (RFP23090) Contract with Amy's Windows for replacing sunshades at the Main Library

Dear Commissioners:

The Main Library is in need of new sunshades. The current system is no longer supported and no replacement parts are available. A Request for Proposal was published with bids due on June 8, 2023. Two proposals were submitted and reviewed:

Amy's Windows	\$122,550.00
Gast Construction	\$245,550.00

Amy's Windows was selected based on evaluation and low bid.

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

Facilities and the Library are requesting the City Commission's approval of the contract with Amy's Windows for this project. The agreement between the City and Amy's Windows is attached.

Recommended Action:

Move to approve contract between the City and Amy's Windows to replace the sunshades at the Main Library in the amount of \$122,550.00

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Twenty Fifth day of July in the year Two Thousand and Twenty Three
(In words, indicate day, month and year.)

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

City of Fargo
225 4th St N
Fargo, ND 58102

and the Contractor:
(Name, legal status, address and other information)

Amy's Windows
6008 Shane Drive
Minneapolis, MN 55439

for the following Project:
(Name, location and detailed description)

23085 Fargo Public Library Sunshades Replacement

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

JLG Architects
214 N Broadway
Fargo, ND 58102

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS**
- 2 THE WORK OF THIS CONTRACT**
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 4 CONTRACT SUM**
- 5 PAYMENTS**
- 6 DISPUTE RESOLUTION**
- 7 TERMINATION OR SUSPENSION**
- 8 MISCELLANEOUS PROVISIONS**
- 9 ENUMERATION OF CONTRACT DOCUMENTS**

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)
August 9, 2023

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

Init.

[] Not later than () calendar days from the date of commencement of the Work.

[X] By the following date: November 15, 2023

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Hundred Twenty Two Thousand Five Hundred Fifty Dollars and Zero Cents (\$ 122,550.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
N/A	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
N/A		

§ 4.3 Allowances, if any, included in the Contract Sum: *(Identify each allowance.)*

Item	Price
Modify substrate for secure installtion	\$10,000.00

§ 4.4 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

N/A

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

N/A

Init.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the First day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the first non-holiday weekday day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Sixty (60) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

10%

Init.

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

N/A

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

N/A

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

Submit retainage application separately

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

Final payment will be made upon receipt of Architect’s final Certification for Payment, lien waiver from Contractor, and lien waivers from any subcontractors.

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

0 %

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

Init.

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction: Cass County District Court, State of North Dakota
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:
(Name, address, email address, and other information)

Jeremy Heim
City of Fargo
225 4th St N
Fargo, ND 58102
Telephone: 701-461-8498
Cell: 701-715-0784
Email: jheim@fargond.gov

§ 8.3 The Contractor’s representative:
(Name, address, email address, and other information)

Amy Simon
Amy’s Windows
6008 Shane Drive
Minneapolis, MN 55439
Telephone: 651-352-9607

Init.

Email: amy@amyswindows.com

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

(Paragraphs deleted)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction

(Paragraphs deleted)

- .4 Drawings

Number	Title	Date
Per Contract Document Issued		April 28, 2023

- .6 Specifications

Section	Title	Date	Pages
Per Contract Document Issued		April 28, 2023	159

- .7 Addenda, if any:

Number	Date	Pages
Addendum #1	June 1, 2023	9

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

Init.

- .9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Timothy Mahoney, Mayor
(Printed name and title)

Amy Simon

CONTRACTOR (Signature)

Amy Simon, Owner
(Printed name and title)

OWNER (Signature)

Steve Sprague, City Auditor
(Printed name and title)

Additions and Deletions Report for AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:06:55 ET on 07/31/2023.

PAGE 1

AGREEMENT made as of the Twenty Fifth day of July in the year Two Thousand and Twenty Three

...

City of Fargo
225 4th St N
Fargo, ND 58102

...

Amy's Windows
6008 Shane Drive
Minneapolis, MN 55439

...

23085 Fargo Public Library Sunshades Replacement

...

JLG Architects
214 N Broadway
Fargo, ND 58102

PAGE 2

[] Established as follows:

...

August 9, 2023

PAGE 3

[] By the following date: November 15, 2023

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Hundred Twenty Two Thousand Five Hundred Fifty Dollars and Zero Cents (\$ 122,550.00), subject to additions and deductions as provided in the Contract Documents.

...

N/A

...

N/A

...

Modify substrate for secure installtion \$10,000.00

...

N/A

...

N/A

...

N/A
PAGE 4

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the First day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the first non-holiday weekday day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Sixty (60) days after the Architect receives the Application for Payment.

...

10%
PAGE 5

N/A

...

N/A

...

Submit retainage application separately

...

Final payment will be made upon receipt of Architect's final Certification for Payment, lien waiver from Contractor, and lien waivers from any subcontractors.

...

0 %
PAGE 6

[X] Litigation in a court of competent ~~jurisdiction~~ jurisdiction: Cass County District Court, State of North Dakota

...

Jeremy Heim
City of Fargo
225 4th St N
Fargo, ND 58102
Telephone: 701-461-8498
Cell: 701-715-0784
Email: jheim@fargond.gov

...

Amy Simon
Amy's Windows
6008 Shane Drive
Minneapolis, MN 55439
Telephone: 651-352-9607
Email: amy@amyswindows.com

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~~§ 8.5.2~~ The Contractor shall provide bonds as set forth in AIA Document A101™ 2017 Exhibit A, and elsewhere in the Contract Documents.

~~§ 8.6~~ Notice in electronic format, pursuant to Article 1 of AIA Document A201 2017, may be given in accordance with AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203 2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

...

~~.4~~ AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203 2013 incorporated into this Agreement.)

~~.5~~ _____
.4 Drawings

...

Per Contract Document Issued

April 28, 2023

...

Per Contract Document Issued

April 28, 2023 159

...

Addendum #1

June 1, 2023

9

PAGE 8

AIA Document A101® – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Twenty Fifth day of July in the year Two Thousand and Twenty Three

(In words, indicate day, month and year.)

for the following **PROJECT**:

(Name and location or address)

23085 Fargo Public Library Sunshades Replacement

THE OWNER:

(Name, legal status and address)

City of Fargo
225 4th St N
Fargo, ND 58102

THE CONTRACTOR:

(Name, legal status and address)

Amy's Windows
6008 Shane Drive
Minneapolis, MN 55439

TABLE OF ARTICLES

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONTRACTOR'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss	Sub-Limit
----------------	-----------

§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
----------	-----------

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- § A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance.** to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- § A.2.4.2 Ordinance or Law Insurance.** for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- § A.2.4.3 Expediting Cost Insurance.** for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- § A.2.4.4 Extra Expense Insurance.** to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- § A.2.4.5 Civil Authority Insurance.** for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- § A.2.4.6 Ingress/Egress Insurance.** for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- § A.2.4.7 Soft Costs Insurance.** to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

[] § A.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[] § A.2.5.2 **Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits
-----------------	---------------

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) each occurrence, One Million Dollars and Zero Cents (\$ 1,000,000.00) general aggregate, and Two Million Dollars and Zero Cents (\$ 2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and

Init.

.5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) each accident, One Million Dollars and Zero Cents (\$ 1,000,000.00) each employee, and One Million Dollars and Zero Cents (\$ 1,000,000.00) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Two Million Dollars and Zero Cents (\$ 2,000,000.00) per claim and Four Million Dollars and Zero Cents (\$ 4,000,000.00) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than N/A per claim and N/A in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than N/A per claim and N/A in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than N/A per claim and N/A in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than N/A per claim and N/A in the aggregate.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

§ A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

§ A.3.3.2.2 **Railroad Protective Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

§ A.3.3.2.3 **Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

§ A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

§ A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

§ A.3.3.2.6 **Other Insurance**
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
----------	--------

Init.

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	N/A
Performance Bond	N/A

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Init.

Additions and Deletions Report for AIA® Document A101® – 2017 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:58:24 ET on 07/31/2023.

PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Twenty Fifth day of July in the year Two Thousand and Twenty Three

...

23085 Fargo Public Library Sunshades Replacement

...

City of Fargo
225 4th St N
Fargo, ND 58102

...

Amy's Windows
6008 Shane Drive
Minneapolis, MN 55439

...

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by ~~Section A.2.3~~ Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

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§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) each occurrence, One Million Dollars and Zero Cents (\$ 1,000,000.00) general aggregate, and Two Million Dollars and Zero Cents (\$ 2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

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§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

...

§ A.3.2.6 Employers' Liability with policy limits not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) each accident, One Million Dollars and Zero Cents (\$ 1,000,000.00) each employee, and One Million Dollars and Zero Cents (\$ 1,000,000.00) policy limit.

...

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ~~(\$) per claim and (\$) in Two Million Dollars and Zero Cents (\$ 2,000,000.00) per claim and Four Million Dollars and Zero Cents (\$ 4,000,000.00)~~ in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ~~(\$)~~ N/A per claim and ~~(\$)~~ N/A in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ~~(\$)~~ N/A per claim and ~~(\$)~~ N/A in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ~~(\$)~~ N/A per claim and ~~(\$)~~ N/A in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ~~(\$)~~ N/A per claim and ~~(\$)~~ N/A in the aggregate.

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[X] § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

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Payment Bond	<u>N/A</u>
Performance Bond	<u>N/A</u>



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FINANCE OFFICE
PO Box 2083
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1333 | Fax: 701.476.4188
www.FargoND.gov

TO: BOARD OF CITY COMMISSIONERS
FROM: TANNER SMEDSHAMMER, PURCHASING MANAGER
RE: VARIOUS CITYWIDE COPIER PURCHASE (PBC23131)
DATE: AUGUST 1, 2023

A product evaluation process was started in the spring of 2023 for the purchase / lease of new Copiers to be utilized within City Commission, Engineering, Assessors, Planning, Human Resources, and FargoDome. It was determined that utilizing a purchasing consortium was the best solution for this purchase. Using State Contract 131 for Copiers, Printers & Related Device purchasing has been very successful for the City of Fargo as it offers several different contracted groups. Within this contact, the State has awarded Canon, HP, Konica, Kyocera, and Xerox. Traditionally a dealer utilizes a *Fair Market Value Lease* for these items. When the lease concludes, the dealer switches out the unit for a new one with a new lease. This year we have worked diligently with our Equipment Leasing vendors to come up with a better solution to this process to try and capitalize on these potential City assets. Utilizing a Municipal lease with a dollar buyout is the best solution for this transaction. With this award, the City of Fargo will be able to capitalize on reduced lease interest rates along with retaining these units after the lease has been completed. These units will become an asset to the City of Fargo allowing us to sell or trade in each machine at a later date. The City will see a significant cost savings of up to 60% over the total contract vs. leasing from the dealer networks.

A review committee, consisting of department contacts, Jill Pagel and Tanner Smedshammer, determined which proposals met the specification required. A proposal synopsis from Advanced Business Solution representing Canon is attached for your clarification and consideration. It is our recommendation to purchase from Advanced Business Solutions of Fargo using the State of North Dakota buying contract. Once these units are scheduled to ship, a 4-year lease will be procured for the remaining cost. Funding for this project will be split between respective departments and has been included within the 2023 budget.

RECOMMENED MOTION: Approve the recommendation to purchase ten (10) Copiers thru Advanced Business Solutions utilizing the State of North Dakota buying contract for the total amount of \$114,149.80. A 4-year lease will be procured for the remaining cost at the time the units are scheduled to ship.

City Department	New Make and Model	Purchase Price	Service Agreement Billed Monthly
City Commission	Canon Image Runner C5850i	\$9,660.19	\$152.76
Engineering (2)	Canon Image Press C265 (2)	\$33,838.02	\$277.43
Engineering	Canon Image Runner DX6780i	\$13,539.68	\$56.00
Assessors Office	Canon Image Runner C5850i	\$9,887.81	\$55.06
Planning	Canon Image Runner C5850i	\$12,058.61	\$202.35
Human Resources	Canon Image Runner C5850i	\$12,058.61	\$139.02
FargoDome	Canon Image Runner DX C3930i	\$5,794.46	\$74.85
FargoDome	Canon Image Runner DX C3930i	\$5,794.46	\$74.85
FargoDome	Canon Image Runner DX5850i	\$11,517.96	\$74.85
Total	ND State Contract 131	\$114,149.80	\$1,107.17



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FINANCE OFFICE
PO Box 2083
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1333 | Fax: 701.476.4188
www.FargoND.gov

TO: BOARD OF CITY COMMISSIONERS

FROM: TANNER SMEDSHAMMER, PURCHASING MANAGER

RE: CONTRACT AMENDMENT FOR BERRYDUNN ERP MANAGEMENT RFP21029

DATE: AUGUST 2, 2023

The attached contract amendment with BerryDunn is in reference to the ERP Project Management and the expansion of the Scope of Services. This project was approved on the July 26, 2021, Consent agenda, item 14. This project will begin in the fall of 2023.

Suggested Motion:

Move to approve the contract amendment for BerryDunn.

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

BETWEEN THE CITY OF FARGO

AND BERRY, DUNN, MCNEIL & PARKER, LLC

Amendment No. 2 to Professional Services Agreement

This Amendment is entered into under Section 6 of a previously executed Professional Services Agreement between Berry Dunn McNeil & Parker, LLC ("CONSULTANT") and the City of Fargo, North Dakota (the "CITY") dated November 22, 2021, as previously amended by Amendment No.1 dated August 1, 2022 (collectively referred to as the "Agreement").

The parties agree to expand the scope of services that CONSULTANT will provide to the CITY under the Agreement to include business process diagramming and implementation assistance, as described in CONSULTANT'S Statement of Work dated August 3, 2023, attached hereto as Exhibit A and incorporated herein by reference. The CITY agrees to pay CONSULTANT the fees and expenses set forth in CONSULTANT'S Statement of Work (Exhibit A) at pages 5-6.

The parties also agree to extend the term of the Agreement to June 30, 2026, at which time the Agreement may be further extended and/or amended upon the mutual consent of both parties.

All other terms and conditions of the Agreement between CONSULTANT and the CITY remain in full force and effect.

This parties may execute and deliver this Amendment electronically where permitted by law and in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute the same instrument.

By signing below, each party executes this Professional Services Agreement Amendment as of the date written below and agrees to all the terms and conditions contained herein.

CONTRACTOR:
Berry, Dunn, McNeil & Parker, LLC dba
BerryDunn

OWNER:
City of Fargo, North Dakota

Signature: _____

Signature: _____

Name/Title: Jonathan Grace / Principal

Name/Title: Tim Mahoney / Mayor

Date: _____

Date: _____

ATTEST:

By: _____

Name/Title: Steven Sprague / City Auditor



August 3, 2023

Ron Gronneberg
Chief Information Officer
225 4th Street North
Fargo, ND 58012

Dear Ron:

On behalf of Berry, Dunn, McNeil & Parker, LLC (BerryDunn), I am pleased to submit this statement of work and cost letter as it relates to supporting the City of Fargo's (the City's) business process diagramming and implementation assistance needs. Below and on the following pages, we detail our work plan and costs for an engagement such as this. The updates to this work plan are reflective of the City's recent preferred vendor identification.

Work Plan

BerryDunn strives to be flexible when it comes to development and execution of an effective work plan. We understand that no two projects are exactly alike and believe that **one of the primary reasons we have been successful with similar projects is our willingness to be flexible in adapting to our clients' unique needs.**

The overarching benefits the City can expect of our approach include:

- A methodology based on our extensive experience conducting similar projects
- A focus on supporting the City's implementation at the desired level of involvement with significant resource commitments from our team, as appropriate
- Quality assurance processes that incorporate the City's review and approval of all deliverables and key milestones
- Built-in project management and change management best practices—focused on keeping the project on time, on budget, and progressing at a healthy pace
- Thorough business process improvement activities
- A focus on taking full advantage of the newest technology and harnessing efficiencies by reviewing business practices or implementing technology to enhance existing business processes performed by individual departments and those performed across the City

Below and on the following pages, we detail our work plan intended to achieve the goals and objectives of the City's initiative.

Business Process Diagramming

1. Confirm list of as-is processes to be diagrammed. We will meet with the City's Project Management Team (PMT) to identify and confirm the processes that should be diagrammed in Microsoft Visio. We will subsequently draft a schedule for virtual mapping sessions with City staff and draft instructional memos and documentation. These instructional memos and documentation will be provided to participants in advance and convey the expectations for their participation and any

Business Process Diagramming

advance preparation requested. It will also include information on the description, modeling, symbology, and tools used for the diagramming meetings.

2. Conduct as-is process diagramming. We will facilitate as-is process diagramming virtual work sessions. We have planned to diagram up to 40 business processes up to 120 hours of diagramming work sessions. We will develop As-Is Process Diagrams in draft form.

3. Conduct follow-up and update draft process diagrams. We will update the As-Is Process Diagrams and conduct any necessary follow-up activities with City stakeholders.

4. Review diagrams with the City and finalize. We will facilitate a virtual work session with the City project team to review the As-is Process Diagrams and gather feedback. Following this session, our team will apply necessary updates to the diagrams before submitting final versions to the City for approval.

▲ *Deliverable 1 – As-Is Process Diagrams*

Implementation Assistance

1. Develop Project Charter. Based on our initial project planning discussions, we will draft a Project Charter that encompasses the full scope of the City's implementation. This governance document will include a change management plan, stakeholder register, communication plan, risk and issues register, and status report templates. We will provide the Project Charter in draft version to the City and facilitate a remote session with the City's PMT to discuss the documents and collect feedback. We will then update the documents and submit them to the City in final form.

▲ *Deliverable 1 – Project Charter*

2. Review vendor implementation plans. We will provide an in-depth review of the vendor's implementation plans, including the Management Plan and Project Plan. We will discuss our recommended changes and considerations with the City's project team before communicating requested changes to the vendor. The goal is to collaboratively discuss preferred changes based upon the City's, vendor's, and BerryDunn's collective experience and perspective for the most advantageous end products.

▲ *Deliverable 2 – Project Plan Review*

3. Develop Project Management Documents. Following the review of the vendor's plans, we will develop any necessary supplemental materials we believe to be critical to the City's implementation. These may include further definition of stakeholders, risk management, project documentation, and other items. The particular content areas will be determined by what is included in the vendor's plans, with the goal of removing any redundancy that might cause confusion to project stakeholders. This documentation will be reviewed and confirmed with the City's project team before being put into use.

▲ *Deliverable 3 – Project Management Documents*

Implementation Assistance

4. Conduct implementation activities. One of the keys to project success is enabling the City's teams to take on appropriate roles and responsibilities and to make informed decisions for both implementation and long-term operational success and ownership of the software. Our project management approach is designed with this in mind. We will provide specialized expertise throughout the project.

Throughout the implementation, we will bring our prior implementation and local government experience to provide a forward-looking perspective, reduce risk, and promote the achievement of the goals and objectives for the project. We anticipate being involved in the following key project management or oversight activities of the implementation, as shown in Table 1.

Table 1: Implementation Project Management Activities

No	Key Implementation Activity	Project Management	
		Lead	Assist
1	Reviewing the Project Plan and Schedule in conjunction with other PMT members	✓	
2	Managing the project scope, deliverables, and timeline with assistance from other PMT members	✓	
3	Helping to ensure that the project team stays focused, tasks are completed on schedule, and that the project stays on track	✓	
4	Coordinating project tasks with assistance from other PMT members	✓	
5	Functioning as the main point of contact for the vendor's project manager, participating in daily project activities (when applicable), and tracking project tasks	✓	
6	Facilitating an implementation kick-off meeting	✓	
7	Holding monthly meetings with the City's Executive Committee to update project status and budget status, and to research a verdict on any escalated process decisions that need to be made	✓	
8	Reviewing the project budget, including change orders, and the vendors' contract compliance	✓	
9	Reviewing vendor invoices against project milestones prior to payment	✓	
10	Facilitating collaboration between the vendor and City technical resource teams to promote a high-performing and highly available deployment.	✓	
11	Facilitating City staff's development of workflow processes for each department		✓
12	Facilitating the data conversion process with the vendor and City staff		✓
13	Facilitating the development of software interfaces/integrations with the vendor and City staff		✓

No	Key Implementation Activity	Project Management	
		Lead	Assist
	<ul style="list-style-type: none"> ✓ Working with the vendor and City staff and helping to ensure vendor accountability by: <ul style="list-style-type: none"> ○ Identifying any opportunities to leverage technical enhancements to improve the products and services delivered to the City ○ Facilitating the gathering and sharing of any technical information requested by the vendor 		
14		✓	
	<ul style="list-style-type: none"> ✓ Providing risk management, including the following: <ul style="list-style-type: none"> ○ Identifying project risks ○ Developing mitigation strategies ○ Communicating project risks to the City and vendor staff ○ Assigning key activities to mitigate or resolve project risks 		
15		✓	
	Providing weekly or biweekly tracking of the following: <ul style="list-style-type: none"> ✓ Reporting of project risks and issues ✓ Recently completed tasks and upcoming project activities 		
16		✓	
	▲ <i>Deliverable 4 – Implementation Activities</i> Providing change management oversight, including the development and maintenance of a Change Management Plan that may include the following: <ul style="list-style-type: none"> ✓ Target State Definition ✓ Change Structure and Governance Approach ✓ Change Impact Assessment ✓ Stakeholder (or User) Analysis ✓ Communication Plan ✓ Behavior Change Plan 		
17		✓	
	▲ <i>Deliverable 5 – Change Management Oversight</i> Managing the UAT process, including: <ul style="list-style-type: none"> ✓ Reviewing the vendor’s test plan and any applicable test scripts ✓ Providing on-site assessment of testing activities ✓ Providing recommendations for modifications to the testing plan to increase the likelihood of success ✓ Directing City staff in the development of tailored test scripts ✓ Managing logistics related to scheduling UAT activities ✓ Providing analysis of test results ✓ Overseeing regression testing and required configuration changes 		
18		✓	
	▲ <i>Deliverable 6 – UAT Oversight</i>		

No	Key Implementation Activity	Project Management	
		Lead	Assist
19	Facilitating oversight of vendor training activities, including:		
	✓ Reviewing the vendor’s training plan and training materials		
	✓ Overseeing vendor training activities		
	✓ Providing recommendations for modifications to the training delivery	✓	
	✓ Providing feedback on the vendor’s training documentation		
	▲ <i>Deliverable 7 – Training Oversight</i>		
20	Providing go-live support	✓	
	▲ <i>Deliverable 8 – Cutover Planning Support</i>		

Implementation Assistance

5. Conduct a project closeout work session. This work session will involve discussing project lessons learned, measuring achievement of project goals and objectives, discussing incomplete implementation tasks, and conducting transition planning for moving to long-term operation of the ERP solution and associated policies and processes. We will document all the items discussed in a Project Closeout Memo.

6. Develop a Project Closeout Memo. Based on the information gathered from our closeout work session, BerryDunn will develop a Project Closeout Memo, which will document lessons learned, compare project outcomes to project goals and objectives, list any remaining action items to conclude the implementation, and identify tasks, roles, and responsibilities for transitioning to operational use of the ERP solution and associated policies and processes.

▲ *Deliverable 9 – Project Closeout Memo*

Cost by Implementation Assistance Service Level Option

Below, we present the estimated fees associated with our work plan as it relates to providing business process diagramming and implementation project management services. For purposes of the costs below, we are assuming 30 months and 200 hours per month for implementation assistance. We are proposing a blended hourly rate of \$240 valid through June 30, 2026. We are happy to any potential adjustments to the implementation project management services based on the needs of the City.

<i>Business Process Diagramming</i>		
Assistance Level	Total Hours	Total Cost
Business Process Diagramming	120	\$28,800
Grand Total		\$28,800

Implementation Project Management				
Assistance Level	Duration (months)	Hours (per month)	Total Hours	Total Cost
Implementation Project Management (Full-Time)	30	200	6,000	\$1,440,000
	Duration (months)	Trips (per month)	Total Cost (per trip)*	Total Travel Cost
Estimated Travel Expenses*	30	2	\$1,336	\$80,160
			Grand Total	\$1,520,160

*Travel expense estimates per trip are calculated based on the details provided below. Actual expenses are invoiced as incurred.

Expense Category	Cost	Units per Trip	Total
Airfare	\$500	1 ticket	\$500
Lodging	\$100	3 nights	\$300
Ground Transportation	\$100	3 days	\$300
Per Diem (Federal GSA Rate)	\$59	4 days	\$236
Estimated Per-Trip Travel Expense Total			\$1,336

In Closing

Please let us know if we can clarify any items or answer any questions as you move forward with your evaluation process. We hope for the opportunity continue our relationship with the City and to discuss your goals and objectives for this project in more detail in the coming weeks.

Sincerely,



Jonathan Grace Principal
 Local Government Practice Group
 207-541-2260 | jgrace@berrydunn.com



30

M E M O R A N D U M

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING *DF*
DIRECTOR OF PUBLIC HEALTH

DATE: JULY 27, 2023

**RE: PURCHASE OF SERVICE AGREEMENT WITH FAMILIES
UNITED FOR SELF-EMPOWERMENT (FUSE) INDEPENDENT
CONTRACTOR VICTORIA JOHNSON.
FUNDS: \$10,000
EXPIRES: 09/18/2023
SSP: 23149**

The attached purchase of service agreement with FUSE/Victoria Johnson is for a Back-to-School Connect engagement event for children and families in the Ed Clapp Elementary neighborhood.

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

Suggested Motion:

Move to approve the purchase of service agreement with FUSE/Victoria Johnson.

DF/lls
Attachment

THIS AGREEMENT, effective the 8th day of August 2023, by and between FM Wellness Coalition/Fargo Cass Public Health ("FCPH"); and Families United for Self-empowerment (FUSE), Independent Contractor.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

- A. Term of Agreement:** The parties entered into a written agreement for the period of August 8, 2023, through September 18, 2023.
- B. Services to be provided by independent contractor:** Planning, park rental, staffing, marketing, computers, printers, internet, tables, chairs, hand washing sinks, porta potties, garbage cans, supplies, transportation services, sports physicals, implementation, data collection, evaluation and reporting of the Back-To-School Connect engagement event for children and families in the Ed Clapp Elementary neighborhood. The objectives include:
 - To provide free sports physicals for kids who need them to participate in school sports and activities, ensuring they are fit and physically eligible.
 - To provide school supply items needed to prepare for school year.
 - To provide free haircuts for kids to prepare for the first day of school and help boost confidence.
 - To provide access to the internet and computers for kids and families who need to register for school online and apply for free and reduced-priced meals. This will help to ensure seamless school registration and address the digital divide.
 - To provide games and fun activities for kids to promote social skills and emotional resilience.
 - To start collecting data on the neighborhood residences based on the Social Determinates of Health.
 - To connect kids and families to school staff to develop a positive relationship that will help kids with future needs.
- C. Reimbursement:** The independent contractor shall be reimbursed \$7,000.00 for pre-event costs in advance of the event and \$3,000.00 for expenses post-event for a total of \$10,000.00 and submit invoices for pre and post expenses. If for some reason, the event does not occur as detailed, the funds given to FUSE pre-event will be returned to Fargo Cass Public Health.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish, or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of an independent contractor and contractee shall not be deemed to be an employee of the FM Wellness Coalition/Fargo Cass Public Health for any other purpose.
- B.** This service agreement shall be governed by the laws of the State of North Dakota. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.
- D. Severability:** If any part, term or provision of this Agreement is held to be illegal, in conflict with any law or otherwise invalid, the remaining portion or portions shall be considered severable and not be affected by such determination, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provisions held to be illegal or invalid.

PURCHASE OF SERVICE AGREEMENT WITH
FAMILIES UNITED FOR SELF-EMPOWERMENT (FUSE)

HEALTH PROTECTION & PROMOTION

TERM: 08/08/2023 TO 09/18/2023 - Page 2 of 2

- E. Partial Performance:** In the event that, FUSE, is contracted to perform stated services at the time and place specified, and the other party to the contract (Fargo Cass Public Health), declines or permits only partial performance, FUSE shall receive full compensation as provided in this contract.

In Witness thereof, this purchase of service agreement has been executed between the Independent Contractor and FM Wellness Coalition/ Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH

CONTRACTOR

By *Desi Fleming*
Desi Fleming, Director of Public Health

By _____
Victoria Johnson, FUSE Independent Contractor

Date 07/27/2023

Date _____

By _____
Timothy J. Mahoney, Mayor, City of Fargo

Date _____

FAMILIES UNITED FOR SELF-EMPOWERMENT

3120 25th ST S
SUITE Z362
FARGO, ND 58103



FUSE Independent Contractor: Victoria Johnson

PRE-EVENT COST INVOICE

EVENT: Ed Clapp Back to School Connect on August 28th

School Supplies for 200 students: Backpacks, paper, pencils, scissors, markers, notebooks, binders, crayons, calculators (middle school/high school)		\$2000
Pre-Event Marketing Material: Printing and set up fees, paper including cardstock		\$500
Games-To-Go: Three inflatable bounce houses (includes set-up and take down)		\$1000
Equipment Rental: 30 tables, 90 chairs, 5 garbage cans, 3 haircutting water sinks, 3 hand washing sinks and 2 porta potties.		\$1000
Vendor and Service Provider Supplies: 2 transportation vans (includes drivers), 1 hair salon to reserve 3-4 staff and supplies (shampoo, conditioner, scissors, hair bands, capes, and braiding supplies), printing of 50 medical forms for sports physicals.		\$1000
Computer Rental: 5 computers, 1 printer, setup and take down staff and internet connection		\$500
Fargo Parks Rental Fee:		\$1000
PRE-EVENT TOTAL		\$7000

Fargo Cass Public Health agrees to pay \$7000 in advance of the August 28, 2023 event for expenses incurred by FUSE Independent Contractor Victoria Johnson, in the event of failure to provide the contracted upon services, FUSE will reimburse Fargo Cass Public Health the pre-event funds.

A secondary invoice will be submitted post-event for the remaining \$3000 for the completion of the contract.

Victoria Johnson, FUSE Independent Contractor


Date



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M E M O R A N D U M

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: JULY 28, 2023

RE: NOTICE OF SUBAWARD FROM THE ND DEPARTMENT OF ENVIRONMENTAL QUALITY FOR WATER POLLUTION – EPA BLOCK.
GRANT NUMBER: G23.002 ALN: 66.605
FUNDS: \$2,500
EXPIRES: 06/30/2025

The attached Notice of Subaward from the ND Department of Environmental Quality is for conducting water pollution program activities, including reporting spills and illegal dumping.

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

Suggested Motion:

Move to approve the subaward from the ND Department of Environmental Quality.

DF/lis
Attachment

**NOTICE OF SUBAWARD**

NORTH DAKOTA DEPARTMENT OF ENVIRONMENTAL QUALITY (NDDEQ) - UEI: ZP9KYB67ZB46
(05-2023)

Subaward Number G23.002	Assistance Listing Name Performance Partnership Grants	Assistance Listing Number 66.605	
FAIN Number 99861720	Subaward Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Subaward Start Date 7/1/2023	Subaward End Date 6/30/2025
Federal Award Date 10/28/2019	Federal Awarding Agency Environmental Protection Agency		

The Parties to this subaward are the NDDEQ (Grantor) and the Subrecipient. This subaward is not effective and expenditures related to this subaward should not be incurred until both Parties have signed this subaward. If attachments are referenced, they must be returned with the signed subaward. If attachments were not provided, contact the Program Director identified below.

Title of Project/Program Water Pollution – EPA Block	NDDEQ Project Code 5531 EQ3992 31
Subrecipient Name Fargo Cass Public Health	Program Director Karl Rockeman
Address 1240 25 th Street South	Address 4201 Normandy Street
City/State/ZIP Code Fargo, ND 58103-2367	City/State/ZIP Code Bismarck, ND 58503-1324
Contact Name Desi Fleming, Director of Public Health	Contact Name Marty Haroldson
Telephone Number 701.241.1360	Telephone Number 701.328.5234
Email Address dfleming@fargond.gov	Email Address mharolds@nd.gov

	NDDEQ Cost Share	Subrecipient Cost Share	Total Costs
Amount Awarded	\$2,500	\$834	\$3,334
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$2,500	\$834	\$3,334
Indirect Rate (Check One)	<input type="checkbox"/> Subrecipient waived indirect costs	<input checked="" type="checkbox"/> De minimus rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %

Scope of Service

Subrecipient will conduct Water Pollution Program activities and will act as a local point of contact for county commissioners, city staff, and planning and zoning staff as it relates to water pollution control requirements. Subrecipient will report spills and illegal dumping to the Department as it is made aware of such activities. In addition, Subrecipient will work with the Department on municipal wastewater systems, septic tank pumpers, and stormwater discharges and will conduct surveys and investigations as requested by the Department.

Reporting Requirements

Quarterly "Request for Reimbursement" reports are due within 15 days of the end of each quarter. All payments will be processed upon Department receipt and approval of progress reports (i.e., daily activity logs) and expenditure reports unless otherwise specified in Special Conditions. At the end of each state fiscal year, a final "Request for Reimbursement" for the period ending June 30th must be submitted by July 15th of each year during the subaward period.

Special Conditions

Payments will be processed at seventy-five (75) percent of the total expenditures reported. Twenty-five (25) percent match funding is required by the Subrecipient. This subaward is contingent upon the continuation of current federal funding. Subrecipient is allotted \$1,250 each year (7/1 - 6/30) during the subaward period.

This subaward is subject to the following terms and conditions and applicable State and Federal Regulations.

1. **SUBRECIPIENT'S UNDERSTANDING OF TERM OF FUNDING**

Subrecipient understands that this subaward is a one-time subaward and acknowledges that it has received no assurances that this subaward may be extended beyond its expiration date.

TERMINATION

a. Termination by Mutual Agreement

This subaward may be terminated by mutual consent of both Parties executed in writing.

b. Early Termination in the Public Interest

Grantor is entering into this subaward for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly and Courts. If this subaward ceases to further the public policy of the State of North Dakota, Grantor, in its sole discretion, by written notice to Subrecipient, may terminate this subaward in whole or in part.

c. Termination for Lack of Funding or Authority

Grantor by written notice to Subrecipient may terminate the whole or any part of this subaward under any of the following conditions:

1. If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for purchase of the services in the indicated quantities or term.
2. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this subaward or are no longer eligible for the funding proposed for payments authorized by this subaward.
3. If any license, permit, or certificate required by law or rule, or by the terms of this subaward, is for any reason denied, revoked, suspended, or not renewed.

Termination of this subaward under this subsection is without prejudice to any obligations or liabilities of either Party already accrued prior to termination.

d. Termination for Cause

Grantor may terminate this subaward effective upon delivery of written notice to Subrecipient, or any later date stated in the notice:

1. If Subrecipient fails to provide services required by this subaward within the time specified or any extension agreed to in writing by Grantor; or
2. If Subrecipient fails to perform any of the other provisions of this subaward, or so fails to pursue the work as to endanger performance of this subaward in accordance with its terms.

The rights and remedies of Grantor provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this subaward.

3. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), acts of God, or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If Subrecipient is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, then Grantor may seek all available remedies, up to and including termination of this subaward pursuant to its Termination Section, and Grantor shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.

4. INDEPENDENT ENTITY

Subrecipient is an independent entity under this subaward and is not a Grantor employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. Subrecipient retains sole and absolute discretion in the manner and means of carrying out Subrecipient's activities and responsibilities under this subaward, except to the extent specified in this subaward.

5. ASSIGNMENTS AND SUBCONTRACTS

Subrecipient may enter into subcontracts provided that any subcontract acknowledges the binding nature of this subaward and incorporates this subaward, including any attachments. Subrecipient is solely responsible for the performance of any subcontractor with whom Subrecipient contracts. Subrecipient does not have authority to contract for or incur obligations on behalf of Grantor.

6. SPOLIATION-PRESERVATION OF EVIDENCE

Subrecipient shall promptly notify Grantor of all potential claims that arise or result from this subaward. Subrecipient shall also take all reasonable steps to preserve all physical evidence and information under its control that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Grantor the opportunity to review and inspect such evidence, including the scene of the accident.

7. INTEGRATION, MODIFICATION, AND SEVERABILITY

This subaward constitutes the entire agreement between the Subrecipient and Grantor. There are no understandings, agreements, or representations, oral or written, not specified within this subaward. No alteration, amendment, or modification of this subaward is effective unless it is reduced to writing and signed by the Parties.

If any term of this subaward is declared to be illegal or unenforceable by a court having competent jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this subaward did not contain that term.

8. RETENTION OF RECORDS

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three (3) years from the date of submission of the final expenditure report. Subrecipient must provide Grantor, the federal government, and their duly authorized representatives access to the books, documents, papers, and records of Subrecipient that are pertinent to the services provided under this subaward.

9. CONTINGENT LIABILITY

During the term of this subaward, and for three years after this subaward expires or is terminated, Subrecipient agrees to reimburse Grantor for any claims submitted by Grantor for federal financial participation in the cost of this subaward to the extent those claims are disallowed by any federal agency for failure on the part of Subrecipient to comply with this subaward or any federal or state statutory or regulatory provisions which govern the source of funding. Grantor agrees to give Subrecipient prompt written notice of any disallowed claims subject to reimbursement by Subrecipient. Any amount disallowed as described is a debt owing to Grantor. Action may be brought by Grantor as allowed by law.

10. LIMITATIONS ON APPROPRIATIONS AND SPENDING AUTHORITY

Continuation of this subaward beyond June 30 of any odd numbered year is contingent on continued legislative appropriation of funds for the purposes of this subaward. If those appropriations are not forthcoming, Grantor will notify Subrecipient as soon as possible and the subaward will terminate on June 30 of that year. Grantor will neither be penalized nor incur any liability because of termination of the subaward.

11. EVALUATION

Grantor shall, throughout the effective dates on the subaward, conduct an ongoing evaluation of Subrecipient's performance in carrying out the Scope of Service in the subaward. Compliance with subaward requirements and assurances will also be monitored. Such evaluation may include periodic site visits by Grantor representatives to review progress made by Subrecipient in accomplishing stated goals and objectives.

SUBRECIPIENT ASSURANCES

12. ASSURANCES

Subrecipient understands in connection with furnishing supplies or performing work under this subaward, persons who contract with or receive funds to provide services to Grantor are obligated and agree to comply with all local, state, and federal laws, regulations and executive orders related to the performance of this subaward including the following:

- a. Fair Labor Standards Act, Equal Pay Act of 1963
- b. Titles VI and VII of the Civil Rights Act of 1964
- c. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency
- d. Age Discrimination Employment Act of 1967
- e. Age Discrimination Act of 1975
- f. Drug-free Workplace Act of 1988
- g. Americans with Disabilities Act of 1990
- h. Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving
- i. Section 504 of the Rehabilitation Act of 1973
- j. Executive Order 13043, Increasing Seat Belt Use in the United States
- k. Hatch Act (5 U.S.C. 1501-1508 and 7324-7328)
- l. Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104(g))
- m. Build America, Buy America of the Infrastructure Investment and Jobs Act (P.L. 117-58, §§70911-70917)
- n. Equal Employment Opportunity Executive Order 11246
- o. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216)

13. APPLICABLE COSTS

Unless otherwise authorized by federal law, the charges to be made by Subrecipient do not include costs financed by federal monies other than those generated by this subaward.

14. DEBARMENT/SUSPENSION

By signing this subaward, Subrecipient certifies that neither Subrecipient, Subcontractor, nor their principals, are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with State or Federal Government by any Department or Agency of the State or Federal Government.

15. RESTRICTIONS FOR LOBBYING

Subrecipient assures that:

- a. No federal funds from this agreement will be paid by for on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract; the making of any federal subaward, the making of any federal loan, the entering of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any Federal contract, subaward, loan, or cooperative agreement. If any subaward funds other than federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, subaward, loan or cooperative agreement, Subrecipient agrees to complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- b. Subrecipient shall require that the language of the Subrecipient Assurances in this subaward be included in the award documents for all subawards at all tiers (including subcontracts, Subawards, and contracts under subawards, loans, and cooperative agreements) and that all subrecipients shall comply with these assurances.
- c. Public Law No.104-208, Section 503 expressly prohibits the use of appropriated funds for indirect or "grass roots" lobbying efforts that are designed to support or defeat legislation pending before state legislatures. No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress or any state legislative body itself.

Governmental entities are prohibited by law from lobbying. Activities designed to influence action in regard to a particular piece of pending state or federal legislation are considered lobbying. That includes lobbying for or against pending legislation, as well as indirect or "grass roots" lobbying efforts that are directed at inducing the public to contact their elected representatives to urge support of, or opposition to, pending legislation.

The North Dakota attorney general has determined that governmental entities may provide the public with neutral factual information but may not, without express legislative authority, expend public funds for the purpose of influencing the result of an election issue, including initiated measures.

Page 213 No part of any funding may be used to pay the salary or expenses of any subaward or contract recipient, or agent acting for such recipient, related to any activity designed to influence election issues or pending legislation.

16. SMOKE FREE

Any Subrecipient that conducts business in North Dakota will abide by N.D.C.C. § 23-12-09 through N.D.C.C. § 23-12-11. Further, if Subrecipient is not in North Dakota, Subrecipient will provide a smoke-free workplace and promote the nonuse of tobacco products in areas including office space, conference or meeting rooms, corridors, stairways, lobbies, rest rooms, cafeterias and other public space.

17. ENERGY AND ENVIRONMENTAL CONSERVATION

Subrecipient must give preference, to the extent practicable and economically feasible, to products and services that conserve natural resources and protect the environment and are energy efficient. (40 CFR 30.44(a)).

18. RESOURCE CONSERVATION AND RECOVERY ACT

Section 6002 of the Resource Conservation and Recovery Act requires preference be given in procurement programs to the purchase of specific products containing recycled materials pursuant to the Environmental Protection Agency guidelines (40 CFR Parts 247).

19. EQUIPMENT

Subject to the obligations and conditions set forth in 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart D, §200.313, title to equipment acquired under a subaward will vest upon acquisition in the Subrecipient.

20. FEDERAL AUDIT REQUIREMENTS

Subrecipient agrees to keep financial records necessary to fully disclose the complete financial status of the subaward. Subrecipient must submit documentation supporting request for reimbursement for review by Grantor or its agents, upon request. Subrecipient agrees to meet all audit requirements as specified in 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Additionally, Subrecipient agrees to spend all federal assistance received from Grantor in accordance with applicable laws and regulations such as but not limited to 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is made a part of this subaward by reference.

21. NOTICE

All notice or other communication required under this subaward must be given by registered or certified mail and are complete on the date postmarked when addressed to the Parties at the following addresses. Notice provided under this provision does not meet the notice requirements for monetary claims against the Grantor found at North Dakota Century Code § 32-12.2-04.

SUBRECIPIENT	GRANTOR
<i>Fargo Cass Public Health – Desi Fleming</i>	L. David Glatt, P.E.
<i>Director of Public Health</i>	Director
<i>1240 25th St S</i>	4201 Normandy Street
<i>Fargo, ND 58103</i>	Bismarck, ND 58503-1324

22. CERTIFICATION

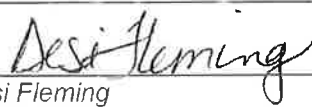
By signing this subaward, Subrecipient certifies the following:

- a. The organization/agency has agreed upon the conditions of the subaward applicable to funding received through all subawards issued by the Grantor and will ensure all program managers are aware of and will comply with the requirements.
- b. If the organization/agency expends \$750,000 or more in total Federal dollars from all sources during the fiscal year, the audit requirements specified in 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards will be met and a copy of the Single Audit upon its completion will be submitted to the State.
- c. The person(s) responsible for authorizing, expending or accounting for subaward funding will be provided access to the circulars and subaward requirements as specified in Section 24.

Unique Entity ID (SAM) K2QJQZVH5PM6	Federal Taxpayer Identification Number (FEIN) SSN 456002069
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23. **EFFECTIVENESS OF CONTRACT**

This subaward is not effective until fully executed by both Parties.


SUBRECIPIENT	STATE OF NORTH DAKOTA
<i>Fargo Cass Public Health</i>	Acting through its Department of Environmental Quality
BY: 	BY:
<i>Desi Fleming</i>	L. David Glatt, P.E.
<i>Director of Public Health</i>	Director
DATE: 07/28/2023	DATE:
<i>City of Fargo</i>	
BY:	
<i>Timothy J. Mahoney</i>	
<i>Mayor, City of Fargo</i>	
DATE:	



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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: AUGUST 2, 2023

**RE: FINANCIAL AWARD FROM ND HOUSING FINANCE AGENCY
FOR NORTH DAKOTA HOMELESS GRANT (NDHG)
GRANT NUMBER: NDHG ND-23-0004
FUNDS: \$50,000
EXPIRES: 06/30/2024**

The attached Financial Award from the North Dakota Housing Finance Agency/Planning and Development Division is for \$25,000 for Emergency Shelter Operations and \$25,000 for Street Outreach.

BUDGET ADJUSTMENTS

EXPENSE

General Supplies 101-6013-451-61-40 \$8,000

REVENUE

NDHG Grant 101-0000-334-10-51 \$8,000

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

Suggested Motion:

Move to approve the financial award received from the ND Housing Finance Agency for the North Dakota Homeless Grant.

DF/ls
Attachment



RECIPIENT AND GRANTOR INFORMATION

Program Type State-North Dakota Homeless Grant		Project Name Gladys Ray - 2023 NDHG	
Instrument Type <input checked="" type="checkbox"/> Grant <input type="checkbox"/> Loan <input type="checkbox"/> Cooperative Agreement		Instrument Number ND-23-0004	
Recipient Name Fargo Cass Public Health Gladys Ray Shelter			
Address 1240 25th Street South		City Fargo	State ND
ZIP Code 58103			
Grantor/Lender North Dakota Housing Finance Agency, PO Box 1535, Bismarck, ND 58502-1535			
Recipient Federal Identification Number NA	Budget/Project Period 07/01/2023-06/30/2024	Date 07/25/2023	
Recipient Type <input type="checkbox"/> State Government <input checked="" type="checkbox"/> Local Government <input type="checkbox"/> Indian Tribal Government <input type="checkbox"/> Individual <input type="checkbox"/> For Profit Organization <input type="checkbox"/> Other Non-Profit Organization <input type="checkbox"/> Other (specify) _____			
Funding Source <input type="checkbox"/> Federal \$ _____ <input checked="" type="checkbox"/> State \$ 50,000 <input type="checkbox"/> Other \$ _____			
Eligible Use of Funds Emergency Shelter Operations, Street Outreach.			
Type of Award <input checked="" type="checkbox"/> New <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment No.	Federal Grant Number (if applicable) NA	CFDA Number (if applicable) NA	
Administering Agency North Dakota Housing Finance Agency	Project Administrator Shanna Lindquist Siegrist	Telephone Number (701) 328-8080	
Procurement Method (if applicable) <input type="checkbox"/> Formal Bid <input type="checkbox"/> Noncompetitive Negotiation/Application <input type="checkbox"/> Competitive Negotiation/Application <input type="checkbox"/> Small Purchase			

FUNDING AUTHORIZATION

NDHFA Funds Awarded this Action	\$ 50,000
NDHFA Carryover Funds Authorized	\$ _____
NDHFA Previous Award(s) this Project Period	\$ _____
NDHFA Previous De-authorizations this Project Period	\$ _____
Current NDHFA Funds Authorized	\$ 50,000
Recipient Share of Budget	\$ _____
Total Approved Budget	\$ 50,000
Remarks Approved Budget: Emergency Shelter Operations \$25,500, Street Outreach \$24,500.	

This award agreement is entered into by the RECIPIENT and GRANTOR specified above. The RECIPIENT agrees to implement the tasks delineated in this award and will comply with all incorporated and referenced terms and conditions. The award consists of this signatory sheet, the attached terms and conditions letter, and previously provided application.

EVIDENCE OF RECIPIENT ACCEPTANCE

 Timothy J. Mahoney, Mayor, City of Fargo Date: _____

Print Name Desi Fleming, Director of Public Health	Signature <i>Desi Fleming</i>	Date 08/02/2023
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EVIDENCE OF GRANTOR ACCEPTANCE

Print Name David A. Flohr	Signature _____	Date _____
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FINANCIAL AWARD TERMS AND CONDITIONS
PLANNING AND HOUSING DEVELOPMENT DIVISION
ATTACHMENT TO SFN 60139(07/23)

Terms and Conditions

Section 1. General Assistance Terms and Conditions

A. State Appropriation Authority

Fund authorized under this Financial Award are subject to state appropriation authority.

B. Scope of Work

All work and activities authorized under this Financial Award will be performed in accordance with the terms and conditions outlined in the Emergency Solutions Grant and North Dakota Homeless Grant Administrative Manual and the approved activities.

C. Reimbursement

Payment of NDHG funds will be completed as a reimbursement. To ensure NDHG funds are being utilized and subrecipients are meeting the required expenditure deadline, subrecipients must request reimbursement at least once each quarter, following the NDHG Drawdown Schedule. Requests must be submitted for \$1,000 or more, in a format approved by NDHFA, and must include a detailed breakdown of expenses incurred and NDHG funds requested. Recipients who have less than \$1,000 remaining in their award may request less. Copies of all expenses and documentation of payment must be submitted for verification purposes. Lack of documentation or explanation may result in a delay in payment.

D. Limitations on Expenditures

The total cost of performing tasks under the Financial Award must not exceed the total funds authorized and will be limited to and in accordance with those identified in the budget.

E. Timely Obligation of Funds

The Recipient must obligate all grant funds within the award timeline of this Financial Award. At least one Request for Funds must be submitted to NDHFA not less than once during each quarter of the program year. Failure to obligate or request reimbursement as specified may result in the termination of this award.

F. Amendments and Modifications

When necessary, the recipient may request changes in the scope of services to be provided in this financial award to include any changes in the budget. The request must be made in writing and supported with appropriate documentation. Such changes must not be undertaken until incorporated by written amendments to this financial award.

G. Reporting

The Recipient must submit a mid-term and final progress report to NDHFA. The mid-term report is due January 31, 2024. The program end date is the date of final reimbursement of financial award or June 30, 2024, whichever is sooner. A final progress report is due 30 days after the program end date. Expenditure of funds must be reported by activity funded - Renovation; Rehabilitation or Conversion; Operational; and/or Essential Services. The report must reflect both federal and other funds, both cash and noncash.

H. Record Retention and Access

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of Recipient relevant to this Financial Award are subject to examination by the NDHFA Staff, North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. NDHFA and duly authorized officials of the State shall have full access and the right to examine any pertinent documents, papers, records, and books of the Recipient and of persons or organizations the Recipient may contract with which involve transactions related to this Financial Award. The Recipient shall retain all documents, papers, records, and books that are pertinent to this Financial Award for a period of five (5) years following the submission of the final progress report or until all audit findings have been resolved, whichever is later unless otherwise stated in this agreement.

I. Subcontracting

The Recipient shall not assign, transfer, or subcontract professional service responsibilities (excluding approved construction and rehabilitation services) covered under this Award without prior written approval of the NDHFA.

J. Prohibition Against Payment of Bonus or Commission

The assistance provided under this Financial Award shall not be used in the payment of any bonus or commission for the purpose of the preparation of and/or activities associated with obtaining approval of the work proposal.

K. Termination

The Recipient and NDHFA may terminate this Financial Award agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof and the cause for the termination. Unless otherwise noted in Section 2. of this award, the other party must receive such notice at least thirty (30) days before the effective date of termination. Cause for termination may include nonperformance of specified work activities and noncompliance with the terms and conditions of this Award. NDHFA shall be liable only for work performed or services provided under this Award prior to the effective date of termination.

L. Default

If the Recipient fails to comply with the terms of this Financial Award or fails to use the Financial Award for only those purposes set forth herein, NDHFA may, unless otherwise noted in Section 2;

- a. After notice to the Recipient, suspend the award and withhold further payment or prohibit the Recipient from incurring additional obligations of grant funds, pending corrective action by the Recipient.

- b. Terminate the Award in whole, or in part, at any time before the final award payment is made. NDHFA shall promptly notify the Recipient in writing of the determination to terminate, the reason for such termination, and the effective date of the termination.

M. Non-Discrimination

The Recipient agrees that it will be subject to and will comply with Title VI of the Civil Rights Act of 1964, Executive Order 11246 as amended by the Executive Orders 11375 and 12086, the Age Discrimination Act of 1975, and Title VIII of the Civil Rights Act of 1968. Under these acts, no person shall on the grounds of race, color, religion, sex, national origin, or age be excluded from participation in, be denied the benefits or be otherwise subject to discrimination under this program.

Section 504 Rehabilitation Act of 1973 and ADA generally requires any individual with a disability, who is otherwise qualified, shall not be excluded from participation in, or denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving by reason of that disability.

The 1975 Age Discrimination Act, as amended provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age, under any program or activity receiving funds.

N. Accessibility

The Recipient's program both staff and facility are required to be readily accessible to and usable by persons with disabilities in accordance with Section 504 of the Rehabilitation Act and implementing regulations at 24 CFR Part 8; the Fair Housing Act and implementing regulations at 24 CFR Part 100; and Title II of the Americans with Disabilities Act and 28 CFR Part 35; where applicable.

O. Code of Conduct

Recipients shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the Award and administration of contracts supported by federal funds. No employee, officer or agent of the Recipient shall participate in selection, or in the award or administration of a contract supported by state funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when an organization which employs, or is about to employ any of the below, or has a financial or other interest in the firm selected for award.

- a. The employee, officer or agent.
- b. Any member of his immediate family.
- c. His or her partner.

The Recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements.

To the extent permitted by state or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Recipient's officers, employees, or agents, or by contractors or their agents.

P. Internal Controls

The recipient must establish and maintain effective internal controls that provide reasonable assurance that the Recipient is complying with the program policies outlined in the ESG/NDHG Administrative

Manual. The Recipient must take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings. The recipient must take reasonable measures to safeguard protected personally identifiable information and other information that is designated as sensitive consistent with Federal, state, local and tribal laws regarding privacy and obligations of confidentiality.

Section 2. Programmatic Terms and Conditions- NDHG

A. Compliance with CoC and ESG Written Standards and Procedures

The Recipient is required to adhere to the currently approved CoC and ESG Written Standards.

B. Program Operation Program Manual

The recipient is required to establish operational policies which include policies and procedures that are specific to NDHG program operations for each approved component the Recipient was approved for in the financial award budget. Policies must include policy and procedures for evaluating eligibility, coordination among providers including providers of homeless programs, mainstream resources, and housing. Other applicable policies include Housing First, Low-Barrier, Fair Housing, Anti-Discrimination, Termination of Assistance, and Confidentiality.

C. Participation in HMIS or Comparable Database

Recipients of NDHG must ensure that data on all persons served, and activities assisted under NDHG are entered into HMIS. If the Recipient is a victim service provider, the CoC approved comparable database must be used to collect client level data.

D. Coordinated Entry

Recipients must use CARES, the coordinated entry process established by the ND CoC, to evaluate individuals and families applying for NDHG services.

E. Eligible Activities and Components

The Recipient will adhere to the policies and procedures outlined in the ESG/NDHG Administrative Manual. Reimbursement for eligible activities and components is limited to the funding amount and components listed in the financial award budget.

F. Participant Eligibility

The recipient will conduct an initial evaluation of participant's eligibility for assistance and the amount and types of assistance the participant is eligible to receive. Recipients will maintain participant files that certify the participant meets the definition of homeless or at-risk of homeless and the amount and type of assistance provided.

G. Termination of Assistance

The Recipient must have established policies and procedures for termination of assistance. This includes a formal process establishing a clear process to provide written notice to the program participant the

reasons for termination, allowing the participant the opportunity to appeal the decision, and provide prompt notification of the final decision of termination.

H. Verification of Ownership (Rehabilitation Funds Only)

The Recipient must submit to NDHFA, within 60 days, verification of ownership of the property by the Recipient or a lease agreement giving the Recipient control of the property at least until the end of the project. (For rehab projects only).

I. Hotel/Motel/Commercial Leasing

Recipients providing emergency shelter in hotels or motels or other commercial facilities must certify that leases have been negotiated which provide that the living space will be rented at substantially less than the daily room rate otherwise charged by the facility, and that the Recipient has considered using other facilities as emergency shelter and has determined that the use of the hotel or motel provides the most cost effective means of providing emergency shelter for the homeless in its jurisdiction.

J. Faith Based Organization

The Recipient must comply with provisions contained in 24 CFR 576.23 and Executive Order 13559 regarding faith-based organizations as outlined in Attachment A of this award.

K. Youth Eligibility

Youth aged 24 and under seeking assistance shall not be required to provide third party documentation to establish their eligibility under 42 U.S.C. 11302(a) or (b) to receive services. Unaccompanied youth aged 24 and under or families headed by youth aged 24 or under who are living in unsafe situations may be served by youth-serving providers.

Section 3. Certifications

A. Authority of Representative Signor

The authorized representative of the approved recipient who signs the certifications, assurances and executes the financial award affirms that the authorized representative has adequate authority under state and local law, and internal policies of the Recipient to execute the financial award and agreements and authority to provide for certifications and assurances and agreements on behalf of the Recipient.

B. Standard Assurances

The recipient assures that it will comply with all applicable local, state, and federal statutes, regulations executive orders, circulars, and other federal and state administrative requirements in carrying out the grant.

C. Debarment and Suspension

The recipient warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated Federally or by the State pending and agrees that it will immediately notify NDHFA of any such actions. If such actions arise during the term of the financial award, the Recipient agrees that NDHFA

may delay, withhold, or deny continued payment of grant reimbursement requests until such actions are resolved.

The Recipient certifies that it or its principals have not been convicted of nor had a civil judgement rendered against them for commission of fraud or criminal offence in connection with obtaining, attempting to obtain, or performing a public transaction, or have not been terminated for cause or default. The Recipient certifies that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from doing business or receiving funds from any federal agency or by any department, agency, or political subdivision of the State of North Dakota. The term "principal" for the purpose of this certification means an officer, director, owner, partner, key employee or other person with primary management or supervisor responsibility, or a person who has a critical influence on or substantive control over the operations of the Recipient.

The Recipient certifies that it will not employ, contract, or engage in services with any contractors or subcontractors that are currently debarred, suspended, or ineligible to do business with or in the State of North Dakota, including active registration with the ND Secretary of State.


D. Drug Free Workplace

The Recipient's internal policies include a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifies the actions in policy that may be taken against employees for violation of that prohibition.



M E M O R A N D U M

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: AUGUST 2, 2023

**RE: MEMORANDUM OF UNDERSTANDING BETWEEN FARGO
CASS PUBLIC HEALTH AND NORTH DAKOTA DEPARTMENT
OF HEALTH AND HUMAN SERVICES.
EXPIRES: 07/30/2025**

The attached memorandum of understanding is between North Dakota Department of Health and Human Services and Fargo Cass Public Health. Formalizing the relationship between FCPH and the NDDHHS for understanding of roles, responsibilities, and authority in public health disease surveillance, investigation, enforcement, and after-action activities.

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

Suggested Motion:

Move to approve the memorandum of understanding between ND Department of Health and Human Services and Fargo Cass Public Health..

DF/lis
Attachment

**Memorandum of Understanding
Between
Fargo Cass Public Health
And
North Dakota Department of Health and Human Services**

This Memorandum of Understanding (MOU) has been made and entered into between Fargo Cass Public Health, hereinafter referred to as Local Public Health Unit or LPHU, and the North Dakota Department of Health and Human Services, hereinafter referred to as Department.

A. PURPOSE

The purpose of this MOU is to formalize the relationship between the Department and the LPHU to understand the roles and responsibilities and authority in public health disease surveillance, investigation, enforcement, and after-action activities, and to promote coordination and sound public health practices without duplication of services.

B. ROLES AND RESPONSIBILITIES

1. The Department's surveillance, investigation, and enforcement authority include:
 - a. Maintain a uniform statewide population-based surveillance database and case management system for the collection of data pertaining to designated reportable diseases and syndromic conditions in accordance with:
 - i. North Dakota Century Code (NDCC) Chapter 23-07-01. State Department of Health - Collection of public health information.
 - ii. NDCC Chapter 23-07-02. Who to report reportable diseases.
 - b. Maintain and test a 24/7 contact system for disease and condition reporting for surveillance and situation awareness.
 - c. Responsible for communicating with and providing training for specific statewide surveillance sites.
 - d. The Department's Laboratory Service Section will provide laboratory support for testing human, animal, or environmental samples for the detection of pathogens of public health significance. The Laboratory Service Section will provide molecular testing to support any needed molecular surveillance.
 - e. Responsible for oversight in conducting statewide diseases outbreak, foodborne outbreaks, and cluster investigations and for providing analysis and reporting in accordance with:
 - i. NDCC Chapter 23-01-05. Health Officer.
 - ii. NDCC Chapter 23-09. Food, Lodging and Assisted Living Facilities.
 - f. As provided by NDCC Chapters 23-09-16, 23-01-35, 23-10-02.1 and 23-39-02, the Department's Division of Food and Lodging has entered into separate agreements (MOUs) with an LPHU having jurisdiction to provide the inspection, licensing, enforcement and educational programs relating to food, lodging, mobile home and RV parks, body art and tanning establishments.
 - g. In case of significant disease outbreak(s) and/or environmental hazard(s) impacting human health related investigations, the Department may request assistance from LPHU, depending on the disease and LPHU's capacity to collect data, specimens, conduct contact investigations, work with local media and provide vaccinations or treatment. The Department will work with the LPHU to determine needed services, education, necessary communication to the public and local partners and initiate active disease surveillance, as needed.
 - i. If the situation is elevated beyond capacity, the Department will follow emergency notification and response protocol and procedures.
 1. Case Manager System
 2. Plan for Incident Command and Emergency Operations

2. The Department's Disease Control Field Epidemiologist assigned to each LPHU will cover multicounty areas and may overlap with the jurisdictions of multiple health units. The Field Epidemiologist will:
 - a. Coordinate disease surveillance activity at the regional level, assuring health care providers, laboratories and other required reporters are familiar with reporting requirements and processes.
 - i. Communicate surveillance activities with LPHU and provide reports of surveillance data received for the jurisdiction.
 - b. Serve as a liaison between LPHU, healthcare providers and the Division of Disease Control & Forensic Pathology.
 - i. State field epidemiologists, using disease surveillance data will provide needed situational awareness regarding disease outbreaks in the LPHU jurisdiction to designated LPHU staff through infectious disease updates, case statistics and other disease investigation information.
 - c. Investigate cases of reportable diseases and possible outbreaks to:
 - i. Determine the source of infection.
 - ii. Determine possible spread of infection.
 - iii. Make recommendations to reduce the risk of further illness.
 - iv. Provide proper documentation of disease reports.
 - v. Inform LPHU of the status of treatment and compliance and recommendations for enforcement.
 - d. Provide educational and technical support to providers and communities in their assigned region.
 - i. Inform LPHU of trainings provided to surveillance sites regarding reporting requirements and reporting timeframes and provide an attendance report.
3. The LPHU will:
 - a. Under the authority of NDCC Chapter 23-35, operate within their designated jurisdiction and function.
 - b. Follow the Department's protocols as communicated for disease outbreaks and environmental hazards impacting human health.
 - c. Assist the Department in public health investigations when requested. Both parties will work together on staffing needs to reduce the outbreak impact and transmission in the community. Additionally, in the event of significant disease outbreaks, the Department is responsible for overall outbreak management, case management and investigation. LPHU may assume responsibility of clinical management of cases and contacts. (See 3.d.)
 - d. Work with local partners to assist the Department in coordinating and implementing environmental health and disease control activities.
 - e. Assist the Department in notifying the public of statewide or jurisdictional disease and environmental health issues related to violations, enforcement and compliance, and trends and patterns.
 - f. Comply with reporting of diseases according to NDCC Chapter 23-07-02.

C. COMPENSATION FOR DISEASE AND ENVIRONMENTAL TREATMENT AND RESPONSE

The Department may enter into agreements with LPHU to provide services, which may include diagnosis, treatment, evaluation, monitoring, investigation or case management of specific infectious or communicable diseases, such as tuberculosis (TB) and human immunodeficiency virus (HIV).

Compensation for disease outbreaks, where LPHU is assisting with the state's disease investigation and response, in which no agreement exists, will be evaluated on a case-by-case basis.

D. TERMS AND CONDITIONS

This MOU shall be effective from the date of the final signature and shall remain in effect until terminated by either party with 30 days' written notice to the other party or through June 30, 2025, whichever occurs first. Any additions or modifications to the terms of this MOU or the roles and responsibilities of either party must be agreed to by both parties. Such changes shall be incorporated in written amendments to this MOU.

E. TERMINATION

Either party may terminate this MOU upon a 30 days' written notice to the other party.

The undersigned have read this MOU and will abide as outlined within this MOU.

Signed: _____ Date: _____
Timothy J. Mahoney, Mayor, City of Fargo

Signed: Desi Fleming _____ Date: 08/02/2023
Desi Fleming, Public Health Director
Fargo Cass Public Health


Signed: Marie Moe _____ Date: 07/17/2023
Marie Moe, MS, Director, Systems and Performance
North Dakota Health and Human Services

Signed: _____ Date: _____
Dirk Wilke, J.D., M.B.A., Executive Director,
Public Health Division, North Dakota Health and Human Services



MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: JULY 21, 2023

**RE: NOTICE OF GRANT AWARD FROM THE ND DEPARTMENT OF
HEALTH AND HUMAN SERVICES FOR MONKEYPOX
VACCINATION AND EDUCATION.
GRANT NUMBER: G23.236 ALN: 93.354
FUNDS: \$15,000
EXPIRES: 01/31/2025**

The attached Notice of Grant Award from the ND Department of Health and Human Services is for increasing North Dakota's Mpox vaccination rates and increasing education among providers and at-risk populations.

BUDGET ADJUSTMENT

REVENUE

MPOX Vaccine/Education 101-0000-331-12-69 \$15,000

EXPENSE

Already budgeted in payroll

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

Suggested Motion:

Move to approve the award from the ND Department of Health and Human Services G23.236.

DF/lls
Attachment

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

Grant Number G23.236	CFDA Name Public Health Crisis Response Awards	CFDA Number 93.354
FAIN Number NU90TP922247	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 7/1/2023
Federal Award Date 1/31/2023	Grant End Date 1/31/2025	
Federal Awarding Agency Centers for Disease Control and Prevention		

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 Monkeypox Vaccination and Education	North Dakota Department of Health and Human Services (NDDHHS) Project Code 2201 HLH3859-43
Grantee Name Fargo Cass Public Health	Project Director Brenton Nesemeier; bnesemeier@nd.gov
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 Desi Fleming	Contact Name Danielle Pinnick
Telephone Number 701-241-1360	Telephone Number 701-239-7169
Email Address Dfleming@fargond.gov	Email Address dpinnick@nd.gov

	NDDHHS Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$15,000	\$0	\$15,000
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$15,000	\$0	\$15,000
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimis rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %

Scope of Service
 Grantee shall provide services as outlined in Attachment A.

Reporting Requirements
 Grantee must submit expenditures monthly via the Program Reporting System (PRS).
 Grantee must submit monthly activity reports via Qualtrics.
 Expenditure report for the period ending June 30, 2024 must be received by July 15, 2024.
 Expenditure report for the period ending January 31, 2025 must be received by February 28, 2025.
 Reimbursements will be processed upon Department approval of expenditures.

Special Conditions
 None.

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: Requirements Received; Questionnaire received] and (2) applicable State and Federal regulations.

Evidence of Grantee's Acceptance		Evidence of NDDHHS Acceptance	
Date	Signature	Date	Signature
07/21/2023	<i>Desi Fleming</i>		
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Brenton Nesemeier, MS, Field Services Unit Director	
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.

G23.236
Fargo Cass Public Health
Attachment A

Objectives:

- Increase North Dakota's mpox vaccination rates.
- Increase mpox education among providers and at-risk populations.
- Decrease missed vaccination opportunities among at-risk population, leading to decreased incidence of illness and related complications.
- Increase mpox vaccine series completion rates

Required Activities:

- Grantee will select a Mpox Coordinator.
- Grantee will conduct 1-2 offsite, conveniently-located community vaccination clinics.
- Implement evidence-based activities to increase mpox vaccination rates and series completion.

Suggested Optional Activities:

- Implement best practices to increase mpox rates
- Examples of activities may include, but are not limited to:
 - Implement accessible community mpox vaccination clinics.
 - Develop a social media campaign to increase awareness of the importance of mpox vaccine to at-risk populations
 - Implement reminder/recall for all mpox patients who have not received both doses.
 - Provide Ryan White linkage to those who are not in HIV care or who are newly diagnosed.
 - Conduct STI/HIV testing for at-risk populations.
 - Provide PrEP (pre-expose prophylaxis) referral for those who are eligible
 - Verify that all staff (physicians, nurses, and medical assistants) are screening, recommending and communicating mpox vaccine in a consistent manner and making strong recommendations.
 - Provide mpox vaccine education to all staff.
 - Develop web-based continuing education opportunities for both traditional and nontraditional immunization providers.
 - Establish a community-wide coalition to increase mpox vaccination rates.
 - Develop an mpox awareness educational campaign.
 - Provide education to providers on signs/symptoms and ensure testing, if warranted.
 - Establish a training program for staff on contact tracing/case investigation to ensure that all individuals exposed to mpox are notified promptly.
 - Increase hours in which mpox vaccine is offered, including non-traditional clinic hours.
 - Provide other vaccines for which the individual is due (HepA, HPV, HepB, MMR etc.).
 - Other mpox testing and treatment activities, as approved by the Department.

35

To: Board of City Commissioners

From: Bekki Majerus, Director of Facilities Management
Jill Minette, Director of Human Resources

Date: August 2, 2023

Re: Maintenance Technician and Supervisor Market Adjustments

On July 24, 2023, the Finance Committee approved an out-of-grade market adjustment for the Maintenance Technician I, II and III positions in all departments as well as the Maintenance Supervisor position. We are requesting approval of the market adjustment to be effective August 7.

We have been collaborating to conduct a market study of similar positions locally and within the state. The results of the study show our current pay levels are lagging both the public and private local market. The market data is attached.

The facilities maintenance industry is seeing record high numbers of retirements. At the City, the Facilities team saw two retirements in Q4 of 2022. We are seeing very few qualified candidates applying for the current open technician positions. There is also concern that current employees may leave for higher paying positions in an increasingly competitive market.

While Facilities Management initiated this process, both HR and Facilities have communicated with other departments with maintenance positions. These departments include Solid Waste, Public Works, Water Treatment and Transit. The leaders for each of these teams have agreed that the adjustments are justified. Solid Waste recently filled a position for which the Director had to start the employee at step 8 just to get them to accept the job.

The table below shows the annual cost of the market adjustment. Currently, four of the Maintenance Technician I positions and five of the Maintenance Technician II positions are vacant so the salary savings will help offset the cost of the adjustments until these positions are filled.

Position	Current Grade	Proposed Grade	Annual Cost
Maintenance Tech I - Facilities	5	7	\$17,410
Maintenance Tech I – Solid Waste	5	7	\$4,243
Maintenance Tech II - Facilities	8	9	\$23,899
Maintenance Tech II – Central Garage	8	9	\$3,515
Maintenance Tech II – Water	8	9	\$7,405
Maintenance Tech III - Facilities	11	12	\$14,477
Maintenance Tech III – Public Works	11	12	\$3,994
Maintenance Tech III – Water	11	12	\$4,992
Maintenance Tech III – Transit	11	12	\$4,763
Maintenance Supervisor – Facilities	14	15	\$3,952
		General Fund Total	\$67,247
		Enterprise Funds Total	\$21,403
		Combined Total	\$88,650

The market adjustment will allow us to be more competitive and will support recruiting and retention efforts within these departments.

Thank you for your consideration.

RECOMMENDED MOTION:

Approve the market adjustment for Maintenance Technician I, II and III positions in all departments and the Maintenance Supervisor position in Facilities Management effective August 7, 2023.

2023 Maintenance Tech Market Analysis

Maintenance Tech II

Aged by 2 years (4%/Yr)	Min	Mid	Max	Average
2023 City of Fargo (Grade 5 & 8)	16.66		27.31	22.89
Western ND Nonmetro Area	19.23	31.30	51.24	32.05
North Dakota (Entire State)	15.81	25.54	46.70	29.54
Eastern ND Nonmetro Area	15.57	25.55	40.99	28.78
Bismarck (all)	15.54	25.10	42.04	28.56
Fargo (all)	15.45	24.80	39.95	27.44
Grand Forks (all industries)	15.60	24.72	40.34	27.48
City of Grand Forks	17.70	22.13	26.56	22.13
City of Bismarck	24.55		36.82	27.34
State of ND Employees	16.37		29.46	21.83
City of West Fargo	18.60		26.03	22.31
City of West Fargo Tech II	22.49		33.73	28.11
BCBS ND - Building Engineer I	15.63		24.22	
BCBS ND - Building Engineer II	21.14		33.82	
City of Sioux Falls	19.42		26.05	26.05
City of Moorhead	23.43		33.47	28.11
Fargo Public Schools	28.69		30.51	
Cardinal IG	24.00		30.00	
Bobcat	21.20		26.82	
JLL	24.32		30.81	
Average (excludes COF)	19.72	25.59	34.19	26.90
\$ Difference	-3.06	-25.59	-6.88	-4.01
% Difference	-18.4%	#DIV/0!	-25.2%	-17.5%

Close match to Tech II

***** Green section is not aged b/c we received current data

Combined Tech I and II
Close match to Tech II

**Maintenance Tech II
(Proposed)**

	Min	Mid	Max	Average
2023 City of Fargo (Grade 9)	22.70		29.50	27.57
Average (excludes COF)	19.72	25.59	34.19	26.90
\$ Difference	2.98		-4.69	0.67
% Difference	13.1%		-15.9%	2.4%

**Maintenance Tech I
(Proposed)**

	Min	Mid	Max	Average
2023 City of Fargo (Grade 8)	21.01		27.31	
Average (excludes COF)	0.00	0.00	0.00	0.00
\$ Difference	21.01		27.31	0.00
% Difference	100.0%		100.0%	#DIV/0!

**Maintenance Tech I
(Proposed)**

	Min	Mid	Max	Average
Recommended Grade 7 by Bekki				
2023 City of Fargo (Grade 8)	19.45		25.27	20.03
Average (excludes COF)	21.01	0.00	27.31	0.00
\$ Difference	-1.56		-2.04	20.03
% Difference	-8.0%		-8.1%	100.0%

2023 Maintenance Tech Market Analysis

Maintenance Tech III

Aged by 2 years (4%/yr)

	Min	Mid	Max	Average
2023 City of Fargo (Grade 11)	26.41	34.38	24.15	
Western ND Nonmetro Area	31.58	51.02	52.87	47.19
North Dakota (Entire State)	26.77	40.92	51.28	42.79
Eastern ND Nonmetro Area	25.00	40.39	51.24	40.62
Bismarck (all)	25.10	39.98	44.90	36.66
Fargo (all)	25.49	39.72	41.89	39.21
Grand Forks (all industries)	25.00	39.99	47.77	39.32
City of Grand Forks	21.57	32.36	26.96	
City of Bismarck	27.09	40.64	35.25	
State of ND Employees	19.47	35.03	25.95	
City of West Fargo	26.23	39.35	32.79	
City of Sioux Falls	25.10	34.65	33.30	
Average (excludes COF)	25.31	42.00	42.91	36.37
\$ Difference	1.10	-42.00	-8.53	-12.22
% Difference	4.2%	#DIV/0!	-24.8%	-50.6%

More of a supervisory position than a lead position, may not be comparable data.

*** Not aged b/c we received current data
Combined with Lead Equipment Technician-type positions

Maintenance Tech III (Proposed)

	Min	Mid	Max	Average
2023 City of Fargo (Grade 12)	28.58	37.15	32.38	
Average (excludes COF)	25.31	42.00	42.91	36.37
\$ Difference	3.27		-5.76	-3.99
% Difference	11.4%		-15.5%	-12.3%

**Maintenance Supervisor w/
Aged data**

	Min	Mid	Max	Average
2023 City of Fargo (Grade 14)	33.31		43.33	37.33
Western ND Nonmetro Area	39.79	51.02	52.87	47.19
North Dakota (Entire State)	26.76	40.92	62.67	42.79
Eastern ND Nonmetro Area	31.68	40.39	51.24	40.62
Bismarck (all)	31.68	40.39	51.31	42.15
Fargo (all)	31.68	39.72	41.89	39.21
Grand Forks (all industries)	31.44	39.99	47.77	39.32
City of Grand Forks	32.02	40.03	48.04	40.03
City of Bismarck	36.44		54.66	38.09
State of ND Employees	23.09		41.57	30.79
City of Sioux Falls	32.35		45.59	40.67
City of Moorhead	34.85		49.78	42.31
Average (excludes COF)	33.60		49.76	40.29
\$ Difference	-0.29		-6.43	-2.96
% Difference	-0.9%		-14.8%	-7.9%

**Maintenance Supervisor
(Proposed)**

	Min	Mid	Max	Average
2023 City of Fargo (Grade 15)	35.99		46.80	39.23
Average (excludes COF)	33.60	0.00	49.76	40.29
\$ Difference	2.39		-2.96	-1.06
% Difference	6.6%		-6.3%	-2.7%



City of Fargo Staff Report			
Title:	Commerce on 12 th Eighth Addition	Date: Updated:	2/1/2023 8/3/2023
Location:	5674 & 5600 14th Avenue North; 5669 & 5627 13th Avenue North	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Lots 3, 4, 5, 6, Block 2, Commerce on 12th Addition		
Owner(s)/Applicant:	NAP Dakotas, LLC / Houston Engineering---Brian Pattengale	Engineer:	Houston Engineering, Inc.
Entitlements Requested:	Minor Subdivision (Plat of Commerce on 12th Eighth Addition , a replat of Lots 3, 4, 5, 6, Block 2, Commerce on 12th Addition to the City of Fargo, Cass County, North Dakota)		
Status:	City Commission Consent Agenda: August 7th, 2023		

Existing	Proposed
Land Use: Industrial shop and Undeveloped	Land Use: Industrial shops
Zoning: LI, Limited Industrial	Zoning: No change
Uses Allowed: LI – Limited Industrial. Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self storage, vehicle repair, limited vehicle service, industrial service, manufacturing and production, warehouse and freight movement, wholesale sales, aviation, surface transportation, basic utilities, certain telecommunications facilities	Uses Allowed: No change
Maximum Building Coverage: 85%	Maximum Building Coverage: No change

Proposal:
The applicant proposes to combine four existing platted lots into a single lot. The applicant intends to expand the existing industrial facilities.

Area Plans:
The subject property is located within the 2007 Growth Plan, North Fargo Tier 1 West Land Use Plan. This plan designates the subject proeprty as "Industrial." The current zoning is LI, Limited Industrial, which matches this land use category. No zone change or growth plan amendment is proposed with this project.



Proposed Land Uses	
	Residential Area - lower to medium density
	Residential Area - medium to high density
	Residential Area - rural
	Commercial Area
	Industrial Area
	Agricultural Research

Context:

Schools: The subject property is located within the West Fargo School District, specifically within the L. E. Berger Elementary, Cheney Middle and West Fargo High schools.

Parks: There are no public parks within one mile of the subject property.

Pedestrian / Bicycle: There are no on or off road bike facilities within or along the adjacent streets

Neighborhood: The subject property is not included in a named neighborhood.

MATBUS Route: The subject property is not along a MATBUS route.

Staff Analysis:

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.

MINOR SUBDIVISION

The plat combines four lots in a single lot for industrial development. The current zoning is LI, Limited Industrial. No zone change is proposed.

NEGATIVE ACCESS EASEMENT (NAE)

The plat depicts a negative access easement along the full length of the 57th Avenue North property frontage and portions of the 13th Avenue and 14th Avenue North property frontages. This NAE carries

over from the Commerce on 12th Addition plat (2014) The NAE prohibits direct access from the adjacent street to the subject property. The NAE is usually applied along arterials and near intersections with arterials as a traffic and access management tool.

Minor Subdivision

The LDC stipulates that the following criteria are 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 current zoning is LI, Limited Industrial. No zone change is proposed. This zoning is consistent with the 2007 Growth Plan land use designation of "Industrial" for this property. 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, Planning staff has received and responded to one inquiry. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments.

(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. **(Criteria Satisfied)**

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed plat of the **Commerce on 12th Eighth Addition**, as outlined in the staff report, as the proposal complies with the, 2007 Growth Plan, Standards of Article 20-06, Section 20-0907.B. and C of the LDC, and all other applicable requirements of the LDC."

Planning Commission Recommendation: February 7th, 2023

At the February 7th, 2023 Planning Commission hearing, that Commission, by a vote of 7-0 with two Commissioners absent and two Commission seats vacant, moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed plat of the **Commerce on 12th Eighth Addition**, as outlined in the staff report, as the proposal complies with the, 2007 Growth Plan, Standards of Article 20-06, Section 20-0907.B. and C of the LDC, and all other applicable requirements of the LDC.

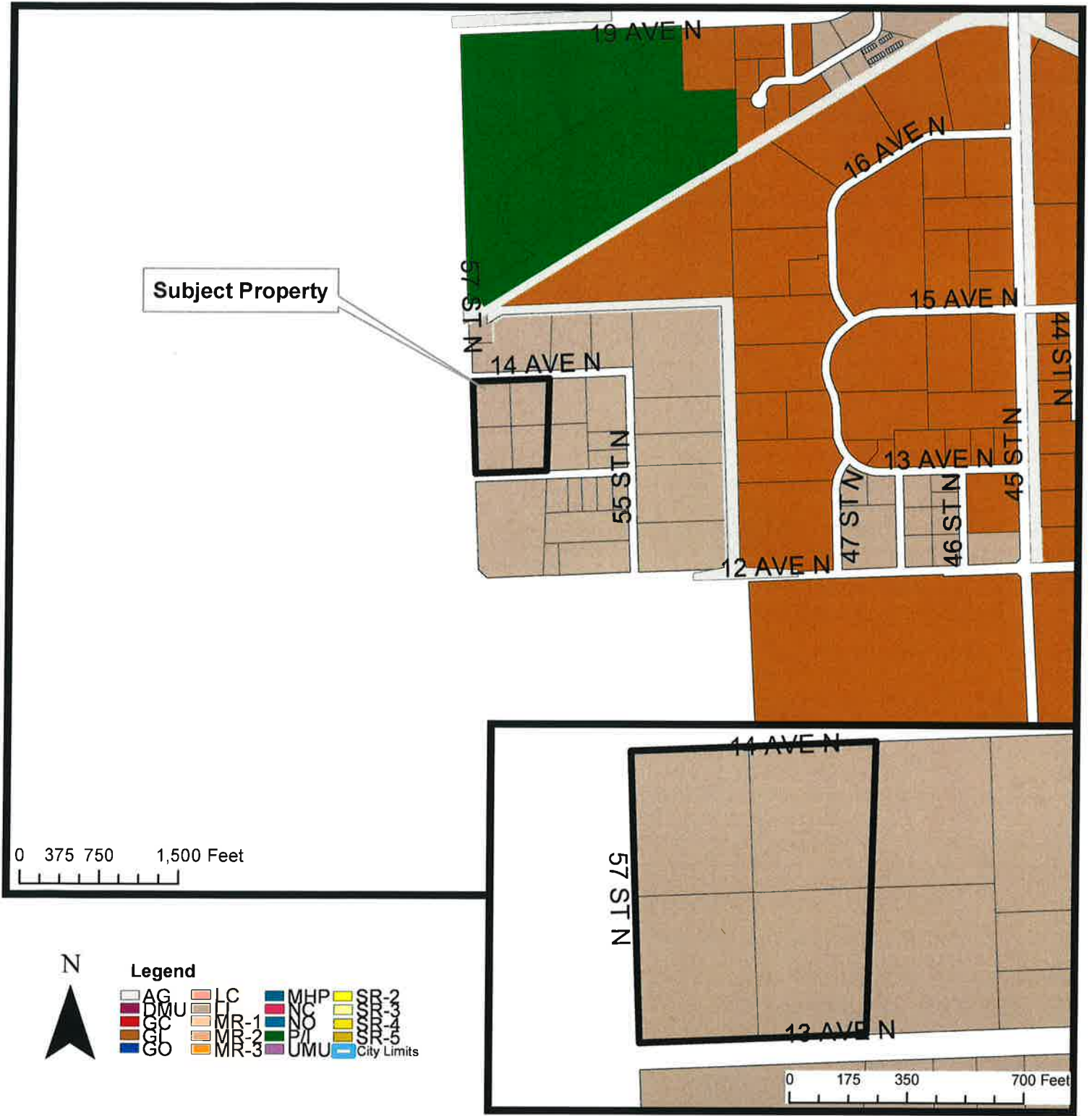
Attachments:

1. Zoning map
2. Location map
3. Preliminary plat

Minor Subdivision

Commerce on 12th Eighth Addition

5674 & 5600 14 Avenue North
5669 & 5627 13 Avenue North

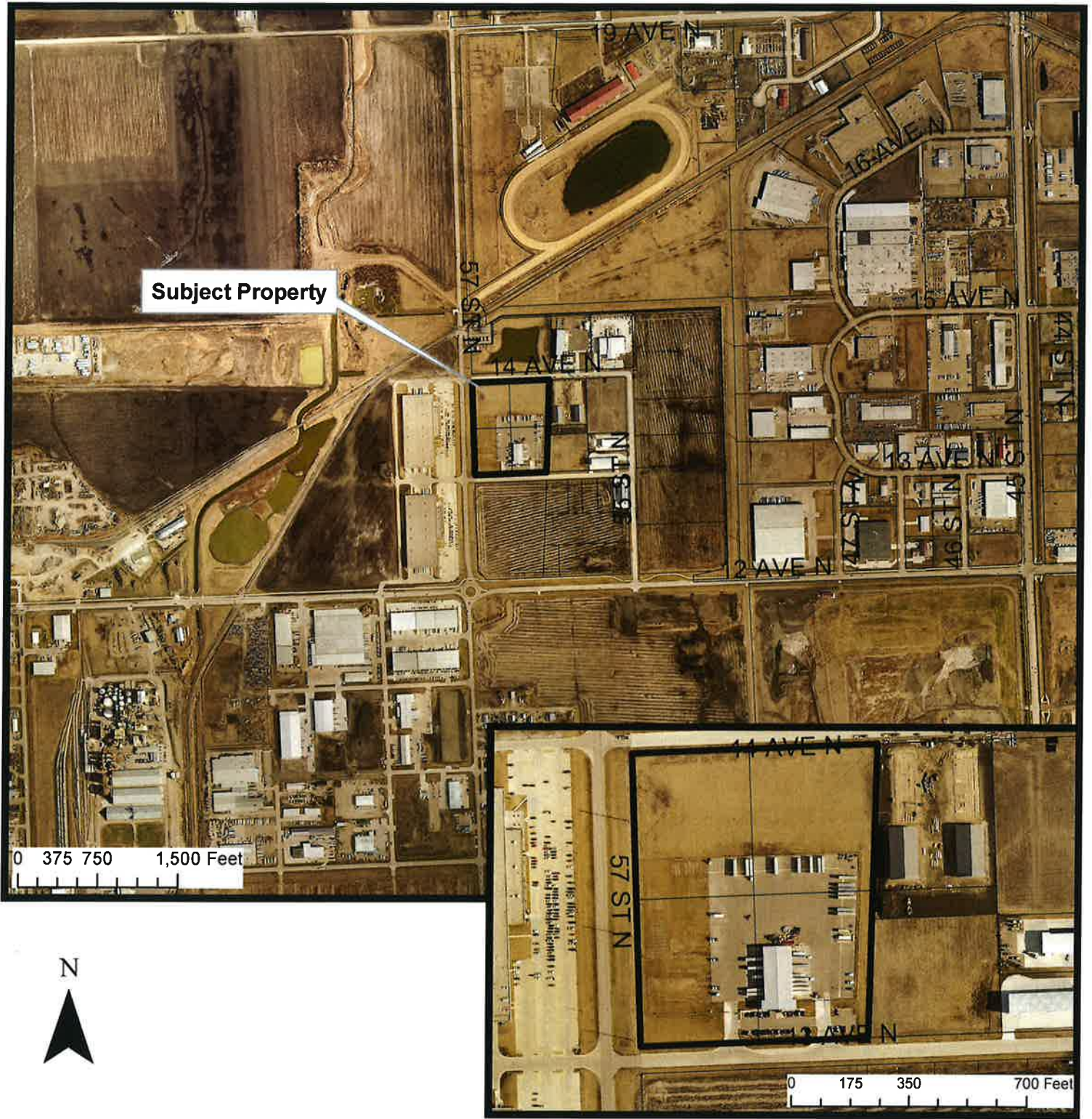


Fargo Planning Commission
February 7, 2023

Minor Subdivision

5674 & 5600 14 Avenue North
5669 & 5627 13 Avenue North

Commerce on 12th Eighth Addition



COMMERCE ON 12TH EIGHTH ADDITION A MINOR SUBDIVISION BEING A REPLAT OF LOTS 3, 4, 5 & 6, BLOCK 2, COMMERCE ON 12TH ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

OWNER'S CERTIFICATE:
NOW ALL PERSONS BY THESE PRESENTS: That MAP Dakota, LLC, a North Dakota limited liability company, is the owner and proprietor of the following described tract of land:
Lots 3, 4, 5 & 6, Block 2, Commerce on 12th Addition to the City of Fargo, Cass County, North Dakota

And that said party has caused the same to be surveyed and replatted as COMMERCE ON 12TH EIGHTH ADDITION to the City of Fargo, Cass County, North Dakota.

OWNER:
MAP Dakota, LLC
By: North American Properties, Inc., A North Dakota corporation
for: moragisr

[Signature]
E.C. Bohlen, President

State of North Dakota)
County of Dakota) ss

On this 31st day of January, 2023, before me personally appeared James A. Schlemmer, a North Dakota corporation which serves as Manager for MAP Dakota, LLC, a North Dakota limited liability company, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as her free act and in the presence of me and that he acknowledged to me that they executed the same on behalf of the City of Fargo.

Notary Public: *[Signature]*

State of North Dakota)
County of Cass) ss

On this 31st day of January, 2023, before me personally appeared Brenda E. Dornig, PE, City Engineer, who with me executed the within instrument and acknowledged to me that she executed the same as her free act and deed.

Notary Public: _____

State of North Dakota)
County of Cass) ss

On this 31st day of January, 2023, before me personally appeared Romy Schneider, Chair, Fargo Planning Commission, who with me executed the within instrument and acknowledged to me that they executed the same on behalf of the Fargo Planning Commission.

Notary Public: _____

State of North Dakota)
County of Cass) ss

On this 31st day of January, 2023, before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo and Steven Sprague, 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: _____

State of North Dakota)
County of Cass) ss

On this 31st day of January, 2023, before me personally appeared James A. Schlemmer, Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: *[Signature]*

State of North Dakota)
County of Cass) ss

On this 31st day of January, 2023, before me personally appeared James A. Schlemmer, Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: *[Signature]*

State of North Dakota)
County of Cass) ss

On this 31st day of January, 2023, before me personally appeared James A. Schlemmer, Professional Land Surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: *[Signature]*

State of North Dakota)
County of Cass) ss

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Notary Public: *[Signature]*

State of North Dakota)
County of Cass) ss

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Notary Public: *[Signature]*

State of North Dakota)
County of Cass) ss

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Notary Public: *[Signature]*

State of North Dakota)
County of Cass) ss

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Notary Public: *[Signature]*

State of North Dakota)
County of Cass) ss

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Notary Public: *[Signature]*

FARGO CITY COMMISSION APPROVAL:
Approved by the Board of City Commissioners and entered filed this _____ day of _____, 20____.

Timothy J. Mahoney, Mayor

Steven Sprague, City Auditor

State of North Dakota)
County of Cass) ss

On this _____ day of _____, 20____, before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo and Steven Sprague, 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: _____

State of North Dakota)
County of Cass) ss

On this _____ day of _____, 20____, before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo and Steven Sprague, 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: _____

State of North Dakota)
County of Cass) ss

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Notary Public: _____

State of North Dakota)
County of Cass) ss

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Notary Public: _____

State of North Dakota)
County of Cass) ss

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Notary Public: _____

State of North Dakota)
County of Cass) ss

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Notary Public: _____

State of North Dakota)
County of Cass) ss

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Notary Public: _____

State of North Dakota)
County of Cass) ss

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Notary Public: _____

State of North Dakota)
County of Cass) ss

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Notary Public: _____

State of North Dakota)
County of Cass) ss

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Notary Public: _____

State of North Dakota)
County of Cass) ss

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Notary Public: _____

State of North Dakota)
County of Cass) ss

On this _____ day of _____, 20____, before me personally appeared Timothy J. Mahoney, Mayor, City of Fargo and Steven Sprague, 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: _____



(37)

City of Fargo Staff Report			
Title:	Green Acres Second Addition	Date:	4/27/2023
		Update:	8/3/2023
Location:	2225, 2233, and 2237 13 th Avenue South	Staff Contact:	Luke Morman, Planner
Legal Description:	Part of Lots 1 and 3, all of Lot 2, Block 1, Green Acres Addition		
Owner(s)/Applicant:	The Acme Investment Co / Cole Neset (Neset Land Surveys Inc)	Engineer:	Neset Land Surveys
Entitlements Requested:	Minor Subdivision (Replat of part of Lots 1 and 3, all of Lot 2, Block 1, Green Acres Addition)		
Status:	City Commission Consent Agenda: August 7, 2023		

Existing	Proposed
Land Use: Commercial	Land Use: Unchanged
Zoning: LC, Limited Commercial	Zoning: Unchanged
Uses Allowed: Allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open areas, religious institutions, safety services, basic utilities, offices, off premise advertising signs, commercial parking, retail sales and service, self-service storage, vehicle repair, limited vehicle service, and certain telecommunication facilities.	Uses Allowed: Unchanged
Maximum Lot Coverage Allowed: 55%	Maximum Lot Coverage Allowed: Unchanged

Proposal:

The applicant is seeking approval of a minor subdivision located at 2225, 2233, and 2237 13th Avenue South. The request is to plat the existing deed-combined lot into a one lot minor subdivision entitled Green Acres Second Addition.

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: LC, Limited Commercial with retail, office, and a multi-dwelling structure;
- East: LC, Limited Commercial with limited vehicle service;
- South: Across 13 Ave S is LC, Limited Commercial with office and retail sales and service;
- West: Across 23 St S is LC, Limited Commercial with office.

Area Plans:

According to the Future Land Use Map of the Jefferson/Carl Ben Neighborhood implementation brief within the Core Neighborhoods Plan, the subject property is designated as "Mixed Use Neighborhood." The current LC, Limited Commercial zoning is consistent with this land use designation.



- | | |
|---|---|
|  Single-Family Residential |  Industrial/Warehousing |
|  Multi-Family Residential |  Park, Open Space and Trails |
|  Institutional |  Commercial |
|  Schools with recreational amenities |  Mixed Use Neighborhood Commercial |

Schools and Parks:

Schools: The subject property is located within the Fargo School District and is served by Jefferson Elementary, Carl Ben Eielson Middle, and Fargo South High schools.

Neighborhood: The subject property is located within the Carl Ben neighborhood.

Parks: McCormick Park is approximately one quarter of a mile to the north of the subject property. Amenities include a basketball court, picnic tables, playgrounds for ages 2-12, recreational trails, and warming houses.

Pedestrian / Bicycle: There are shared-use paths along 25th Avenue South (from 13th Avenue going south), and shared use paths within McCormick Park.

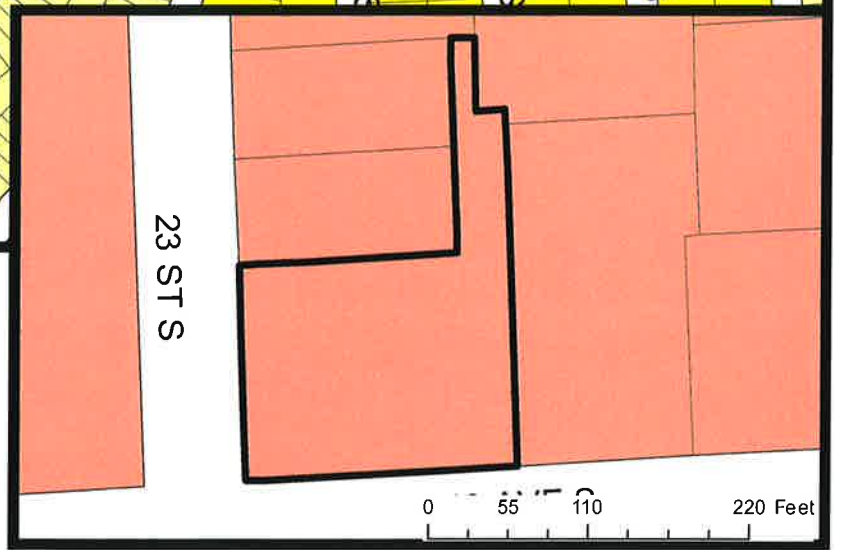
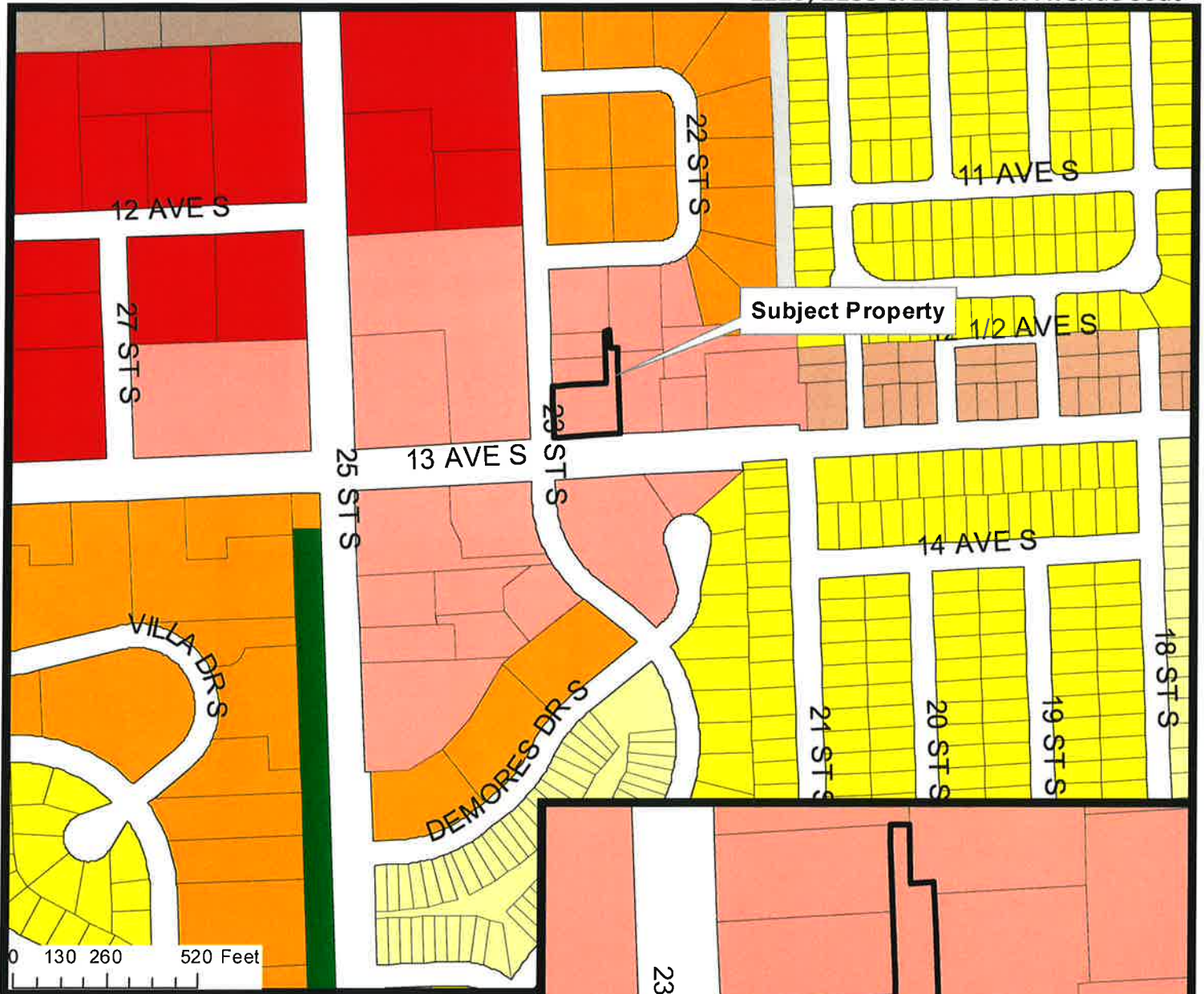
Bus Route: The subject property is within a quarter mile of route 15 and 18. Route 15 runs along 13th Ave S with several stops on both sides of the street. Route 18 runs along 25th St S and 9th Ave S with several stops on both sides of those streets.

<p>Staff Analysis:</p> <p>Minor Subdivision</p> <p>The LDC stipulates that the following criteria are met before a minor plat can be approved:</p> <ol style="list-style-type: none"> <p>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.</p> <p>The property was previously three different lots but was combined through the City's Assessor department in September 2022. This subdivision is intended to replat the existing lot with necessary easements and a simplified legal description. The property within this plat is currently zoned LC, Limited Commercial, and no change is proposed. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received no inquiry about the application. Staff has reviewed this request and finds that this application complies with standards of Article 20-06 and all applicable requirements of the Land Development Code. (Criteria Satisfied)</p> <p>2. Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.</p> <p>While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principals. (Criteria Satisfied)</p>
<p>Staff Recommendation:</p> <p>Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed subdivision plat, Green Acres Second Addition as outlined within the staff report, as the proposal complies with the Core Neighborhoods Plan, standards of Section 20-0907.B & C, standards of Article 20-06, and all other applicable requirements of the Land Development Code."</p>
<p>Planning Commission Recommendation: August 7, 2023</p> <p>At the May 2nd, 2023 Planning Commission hearing, by a vote of 7-0 with two Commissioners absent and two Commission seats vacant, that Commission moved to accept the findings and recommendations of staff and moved to recommend approval to the City Commission the proposed subdivision plat, Green Acres Second Addition as outlined within the staff report, as the proposal complies with the Core Neighborhoods Plan, standards of Section 20-0907.B & C, standards of Article 20-06, and all other applicable requirements of the Land Development Code.</p>
<p>Attachments:</p> <ol style="list-style-type: none"> 1. Zoning Map 2. Location Map 3. Preliminary Plat

Minor Subdivision

Green Acres Second Addition

2225, 2233 & 2237 13th Avenue South



Legend

AG	DMU	LC	MHP	RR-1	RR-2
CC	GC	MR-1	NO	RR-3	RR-4
GO	MR-2	MR-3	P/I	RR-5	RR-6
			UMU		City Limits



Fargo Planning Commission
May 2, 2023

Minor Subdivision

Green Acres Second Addition

2225, 2233 & 2237 13th Avenue South



Legend

 City Limits



Fargo Planning Commission
May 2, 2023



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PUBLIC WORKS/OPERATIONS

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

July 18, 2023

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 2023 (RFP23119)

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 July 14, 2023, 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 \$1,060,715.00 without tax. (RFP23119).

Attached for your review is the Bid Tab from July 14, 2023 and the Fuel Contract.

RECOMMENDED MOTION: I/we hereby move to authorize and execute the Forward Fuel Contract (RFP23119) for the 1st and 2nd Quarters of 2024.

Respectfully Submitted,

[Handwritten signature of Allan Erickson]

Allan Erickson Fleet Services Manager



Q1 / Q2 7.14.2023

FUEL BID TAB

		Northdale		Hartland		Farstad Oil Inc.		Mansfield	
		Registration docs		Registration docs		Registration docs		Registration docs	
1st Quarter (Jan 1 - March 31)									
#2 Diesel Fuel	135,000	\$2.7100	yes	\$2.7480	yes	N/B	no	\$2.7894	yes
No-Lead 10% Ethonal 87 Octane	71,000	\$2.2650		\$2.4624		N/B		\$2.4155	
2nd Quarter (April 1 - June 30)									
#2 Diesel Fuel	135,000	\$2.7200		\$2.7061		N/B		\$2.7909	
No-Lead 10% Ethonal 87 Octane	71,000	\$2.3500		\$2.4780		N/B		\$2.4963	
		Avg \$/Gal		Avg \$/Gal		Avg \$/Gal		Avg \$/Gal	
Total Gallons #2	270,000	\$2.7150	\$ 733,050.00	\$2.7271	\$ 736,303.50	#DIV/0!	#DIV/0!	\$2.7902	\$ 753,340.50
Total Gallons No-Lead	142,000	\$2.3075	\$ 327,665.00	\$2.4702	\$ 350,768.40	#DIV/0!	#DIV/0!	\$2.4559	\$ 348,737.80
			\$ 1,060,715.00		\$ 1,087,071.90		#DIV/0!		\$ 1,102,078.30

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:

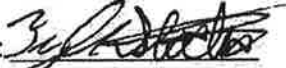
THE TERMS CONTAINED IN THIS CONTRACT CONSTITUTE THE ENTIRE CONTRACT OF THE PARTIES, AND THERE ARE NO CONTRACTS, UNDERSTANDINGS, OBLIGATIONS, PROMISES, ASSURANCES OR CONDITIONS, PRECEDENT OR OTHERWISE, EXCEPT THOSE EXPRESSLY SET OUT HEREIN.

DESTINATION IS CITY OF FARGO FUELING STATIONS

Dated this 18 day of July, 2023.

CONTRACTOR

BUYER

By: 
It: Norwalk Oil, Inc

Dr. Tim Mahoney Mayor

(Both Parties are Signatories)



**PUBLIC
WORKS**

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**FLEET MANAGEMENT, FORESTRY
STREETS & SEWERS
WATERMAINS & HYDRANTS**

402 23rd Street North
Fargo, ND 58102

Phone: 701.241.1453 | Fax: 701.241.8100

FargoND.gov

August 3, 2023

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

RE: (1) Tractor Loader Backhoe (RFP23137)

Commissioners:

On July 31, 2023, four (4) proposals were received and read for the purchase of one (1) Tractor Loader Backhoe.

The results are as follows:

<u>Firm</u>	<u>Price for (1) with Trade</u>
RDO Equipment	\$119,000.00
Titan Machinery	Did not meet specifications
Butler Machinery	Did not meet specifications
General Equipment	Did not meet specifications

The review committee consisting of Ben Dow, Darrell Sweep, and Tom Ganje evaluated four (4) proposals and determined that one proposal was compliant. RDO Equipment met all required specifications and the price was within expected parameters. Funding for this project is included in the 2023 Mains and Hydrants budget.

Our recommendation is to purchase one (1) Tractor Loader Backhoe based on the proposal from RDO Equipment.

SUGGESTED MOTION:

For RFP23137, approve the recommendation to purchase one (1) Tractor Loader Backhoe from RDO Equipment totaling \$119,000.00.

Respectfully Submitted,

Tom Ganje
Fleet Purchasing Manager

**Tractor Loader Backhoe (RFP 23137)
Mains and Hydrants
Thursday, August 3, 2023**

	RDO Equipment	Titan Machinery	Butler Machinery	General Equipment
Make	John Deere	Case	Caterpillar	JCB
Model	320 P	580 SN WT	420	3CX-14 Super
Price	\$141,000.00	\$112,276.00	\$142,985.00	\$153,400.00
Trade-in Unit 761	\$24,500.00	\$20,720.00	\$28,500.00	\$27,000.00
3-year/2000 hr. Full Machine Warrenty	\$2,500.00	\$1,510.00	\$2,120.00	\$2,210.00
Total Price with Trade and Warrenty	\$119,000.00	\$93,066.00	\$116,605.00	\$128,610.00
Estimated Delivery Date	Mar-24	180 Days	Jul-24	180 Days
Met Required Specifications	Yes	No	No	No



PUBLIC WORKS

40

**FLEET MANAGEMENT, FORESTRY
STREETS & SEWERS
WATERMANS & HYDRANTS**
402 23rd Street North
Fargo, ND 58102
Phone: 701.241.1453 | Fax: 701.241.8100
FargoND.gov

August 3, 2023

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

RE: (1) Ford F-450 (PBC23377)

Commissioners:

On July 28, 2023, one (1) quote was received and read for the purchase of one (1) Ford F-450.

The results are as follows:

<u>Firm</u>	<u>Price for (1)</u>
Nelsons Auto Center	\$64,982.14

The review committee consisting of Assistant Chief Stefonowicz, SWAT Commander Christensen, and Tom Ganje evaluated one (1) quote and determined that the quote was compliant with ND Spec SSP18-2. This North Dakota Specification is a cooperative purchasing contract established pursuant to North Dakota Century Code (NDCC) sections 54-44.4-13. Funding for this project is included in the 2023 SWAT budget.

Our recommendation is to purchase one (1) Ford F-450 based on the quote from Nelsons Auto Center.

SUGGESTED MOTION:

For PBC23377, approve the recommendation to purchase one (1) Ford F-450 from Nelsons Auto Center totaling \$64,982.14.

Respectfully Submitted,

Tom Ganje
Fleet Purchasing Manager



FLEET DEPARTMENT
2228 COLLEGE WAY, PO BOX 338
FERGUS FALLS, MN 56538-0338
PHONE: 218-998-8865
TOLL FREE: 800-477-3013 EXT. 8865
mlarson@nelsonfleet.com

VEHICLE QUOTE NUMBER SSP18-2

Sold To: Fargo, ND, City of
Attn: Tom Ganje
Address: 402 23rd St N
 Fargo, ND 58102

Date: 7/28/2023
Phone: 701-241-1460
FAX:

Salesperson: Melissa Larson
 0

Key Code:

Stock No:	Year	Make	Model	New/Used	Vehicle ID Number
SSP18-2	2023	Ford F-450 XL	4WD Crew Cab 8'Box Color: Black	New	

Price of Vehicle:	<i>Per ND Spec: SSP18-2</i>	\$64,489.80
Options & Extras:		\$492.34
15E Gooseneck Dual Hitch Kit (Pre-installed)		\$492.34

Delivery Included

\$64,982.14

Trade - In:

Total Cash Price: **\$64,982.14**

Terms: Net 30 days

Your Purchase Order #

Project #

IFB 110.7-22-065

Thanks for your business!

Ship To / Lessee / End User: Fargo, ND, City of
 Attn: Tom Ganje
 Police Department
 Address: 402 23rd St N
 Fargo, ND 58102

FAX:
 Phone: 701-241-1460
 email: Tom Ganje <TGanje@FargoND.gov>

Signed: _____

Printed Name: _____ Date: _____



**PUBLIC
WORKS**

(41)

**FLEET MANAGEMENT, FORESTRY
STREETS & SEWERS
WATERMAINS & HYDRANTS**
402 23rd Street North
Fargo, ND 58102
Phone: 701.241.1453 | Fax: 701.241.8100
FargoND.gov

August 2, 2023

The Honorable Board of City Commissioners
City of Fargo
225 4th Street N.
Fargo, ND 58102

RE: Request to carry encumbered 2022 Vehicle Replacement Budget Funds forward to 2023 Budget

Commissioners:

As part of the 2022 budget, funding (\$260,000.00) was included for the refurbishment of a City owned Fire Pumper Truck. In December of 2021, the City Commission approved the refurbishment and authorized staff to proceed with the project. Once commission approval was received, staff created a purchase order and encumbered the funds in association with the truck refurbishment. Late in 2022, staff was notified that the truck refurbishment would not be finalized and the truck would not be delivered until 2023.

As part of the 2022 budget, funding (\$54,000.00) was also included for the replacement of two city minivans. The minivans were ordered on November 19, 2021, with the expectation that they would deliver in the 2022 Budget year. At the time of order, staff created a purchase order and encumbered the funds to ensure they would be reserved for when the minivans delivered. Late in 2022, staff was notified that the vans would not deliver until sometime in 2023.

Currently, the Finance Department has not allowed the funds to be pulled forward to the 2023 Budget. In order to complete the transaction, now that the fire truck and minivans are delivering, the funds need to be pulled forward otherwise the 2023 Budget will be overrun.

On June 26, the Finance Committee reviewed and approved the request to carry the 2022 encumbered funds forward for the Fire Truck and Minivans (Enclosed Report of Action).

RECOMMENDED MOTION: I/we hereby move to authorize staff to carry the 2022 encumbered funds for the replacement Fire Pumper Truck, totaling \$260,000, (P.O. 225160) and the two replacement minivans, totaling \$53,096.50, (P.O. 219148) to budget year 2023.

Respectfully submitted,

Ben Dow
Public Works Director

REPORT OF ACTION
FINANCE COMMITTEE

Location: Fargo Public Works

Date of Hearing: June 26, 2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>7/10/2023</u>
Project File	<u>Ben Dow</u>

The Public Works department presented to the Finance Committee on June 26th, a follow up item from the 2022 Vehicle Replacement Budget. Vehicle within this scope included a Fire Department replacement Pumper Truck along with two minivans. These vehicles were ordered in 2021, not received yet but have an now been given delivery dates to the City of Fargo.

Mr. Dow requested that the Finance Committee direct staff to carry the 2022 encumbered funds for the replacement vehicles to the 2023 budget as follows:

- a. Carry the 2022 encumbered funds for the replacement Fire Pumper Truck, totaling \$260,000.00 (PO 225160) to budget year 2023.
- b. Carry the 2022 encumbered funds for the replacement of two minivans, totaling \$53,096.50 (PO 219148) to budget year 2023.

Attached is a copy of the items presented.

MOTION:

Mike Redlinger moved to approve the Fire Truck presented, second by Brenda Derrig and all members present voted in favor.

Steve Sprague moved to approve the Minivans, second by Dave Piepkorn and all members present voted in favor.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Tim Mahoney, Mayor	<u>X</u>	<u>X</u>		
Dave Piepkorn, City Commissioner	<u>X</u>	<u>X</u>		
Mike Redlinger, City Administrator	<u>X</u>	<u>X</u>		
Brenda Derrig, Assistance City Administrator	<u>X</u>	<u>X</u>		
Susan Thompson, Assistant Finance Director	<u>X</u>	<u>X</u>		
Tanner Smedhammer, Purchasing Manager	<u>X</u>	<u>X</u>		
Steve Sprague, City Auditor	<u>X</u>	<u>X</u>		



Michael Redlinger, City Administrator

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August 2, 2023

City Commission
225 N 4th Street N
Fargo, ND 58102

Dear Commissioners:

Attached are the North Dakota State University transit service agreements for the academic year 2023-2024.

Recommended motion is to approve the attached agreements.

Sincerely,



Cole Swingen
Assistant Transit Director – Operations
City of Fargo

**Amendment to
Joint Powers Agreement for Transit Support
Between
The City of Fargo, North Dakota
and
North Dakota State University**

This Amendment to Agreement (attachment A) is effective the 7th day of August, 2023, and is by and between the City of Fargo (“CITY”) and the North Dakota State Board of Higher Education on behalf of North Dakota State University (“NDSU”).

WHEREAS, CITY and NDSU entered into a Joint Powers Agreement for Transit Support dated August 7, 2023; and,

WHEREAS, Article 11 of said Joint Powers Agreement stated that the CITY and NDSU shall be authorized to adjust the financial terms of said agreement and the term of said agreement as they mutually agree in writing, from time to time; and,

WHEREAS, the CITY and NDSU wish to make such adjustments for the school year 2023-2024.

NOW, THEREFORE, it is mutually understood and agreed as follows:

A. Article 3, entitled “Payment” shall be amended to read as follows:

ARTICLE 3 – PAYMENT

3.1 NDSU will pay to the CITY \$726,840 over the term of this agreement.
Payments of \$72,684 will be made each month for 10 months, starting August, 2023.
Said monthly payments shall be made, in arrears, by the end of each month.

B. Article 6, entitled “Term of Agreement” shall be amended to read as follows:

ARTICLE 7 – TERM OF AGREEMENT

This Agreement shall become effective August 7, 2023 and shall remain in full-force and effect for until June 30, 2024, unless terminated earlier as provided in the joint powers agreement (attachment A).

C. Article 11, entitled “Notices” shall be amended to read as follows:

ARTICLE 11 – NOTICES

All notices herein required and any communications with respect to this Agreement shall be effected upon the mailing thereof, and addressed as follows:

NDSU

Mr. Mike Ellingson
Director of Facilities Management
North Dakota State University
Box 6050
Fargo, ND 58105

City of Fargo

Ms. Julie Bommelman
Transit Director
Metro Area Transit Garage
650 23rd St. N.
Fargo, ND 58102

D. In all other respects, the Joint Powers Agreement for Transit Support shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective August 7, 2023.

North Dakota State University

City of Fargo

Mr. Bruce Bollinger
Vice President for Finance and Administration

Dr. Timothy J. Mahoney, Mayor

Date: _____

Date: _____

Attest: City Auditor Date

**Agreement for Transit Services
Between
The City of Fargo, North Dakota
and
North Dakota State University**

This Agreement, dated August 7, 2023, is by and between the City of Fargo (“CITY”) and North Dakota State University (“NDSU”).

WHEREAS, NDSU wishes to provide transit services for the benefit of students using the regular fixed route system serving the Fargo-Moorhead metropolitan area, and four circulator shuttle routes serving the NDSU campus and vicinity, and;

WHEREAS, The CITY, through its Transit Division, in partnership with the City of Moorhead, Minnesota, provides bus service within the Fargo-Moorhead metropolitan area, and;

WHEREAS, The CITY has the infrastructure, vehicles, staffing, funding, and operational capacity to provide these services to NDSU in accordance with the articles in this agreement.

NOW, THEREFORE, for good and valuable consideration hereby acknowledged, it is mutually understood and agreed as follows:

ARTICLE 1 – GENERAL PURPOSE

The purpose of this agreement is to provide public transportation opportunities for NDSU students while reducing traffic congestion in the City of Fargo. This Agreement will allow NDSU students, faculty and staff to ride any bus route within the Fargo-Moorhead Metropolitan Area Transit system free of charge in accordance with Article 3.1 below. Students, faculty and staff must swipe a current NDSU ID card when boarding any non-circulator route. In addition to use of the regular fixed route system, four circulator shuttle routes will be maintained to increase student, faculty and staff mobility in and around the NDSU campus.

ARTICLE 2 – SERVICE

- 2.1 Route: The CITY will maintain service on Route 13 which connects the NDSU campus to the Ground Transportation Center where connections are made to routes serving the Fargo-Moorhead area. The CITY will also maintain four circulator routes in and around the NDSU campus, to be funded in accordance with Article 2.2 below.

- 2.2 Service: The following four circulator shuttle routes will utilize a total of five (5) vehicles and operate in and around the NDSU main and downtown campus. Each will operate on routes/schedules determined by the CITY. Circulator shuttle routes will operate on days which NDSU classes are in session, the day prior to NDSU class starting each semester, and during NDSU finals week of each semester, except on State Holidays. Circulator shuttle routes are listed in article 3.2 below with the total operating hours assigned to each route per day. NDSU will have 57.01 operating hours each day NDSU classes are in session, the day prior to NDSU class starting each semester, and during NDSU finals week of each semester, except on State Holidays.

ARTICLE 3 – PAYMENT

3.1 **Bison Roam Free U-Pass Program:** All enrolled NDSU students regardless of full or part-time status, class standing, or location of residence shall be authorized to ride any fixed route within the Fargo-Moorhead Metropolitan Area Transit system free of charge. This service is referred to as the “Bison Roam Free U-Pass Program”, or simply as “U-Pass.” To be eligible for participation, students must swipe a current NDSU ID at the time of boarding. In exchange, NDSU will pay the CITY an annual amount of \$97,947 for the U-Pass Program, which is in effect starting August 7, 2023 and ending June 30, 2024.

The U-Pass cost is calculated by taking the total percent of NDSU student, faculty and staff ridership from all Fargo non-circulator routes at fifteen percent (15%) of the previous year’s operating costs. The formula below shows the calculation for the previous year.

FTA expectation is 15% farebox recovery. 15% of Operating Expenses = 15% Farebox Recovery * % NDSU Non-Circulator Ridership = U-Pass Cost includes NDSU Students, Faculty and Staff.

U-Pass Cost	2022 Operating Expenses (Fixed)	15% Farebox Recovery	% NDSU Non-Circulator Ridership	Total
	\$10,956,070	\$1,643,410	5.96%	\$97,947

3.2 **Circulator Costs:**

August 21, 2023 to May 31, 2024					
Route	Daily Revenue Hours	Academic Operating Days	Annual Operating Hours	Rate	Cost
Route 31	10.50	161	1,669.5		
Route 32	10.67	161	1,717.87		
Route 33	23.43	161	3,772.23		
Route 34	8.91	161	1,434.51		
On-Demand	3.5	161	563.5		
Totals	57.01		9,178.61	\$82.54	\$757,602

Vehicle advertising is included in the hourly operating costs for NDSU routes. For every 1,000 annual operating hours, NDSU receives one (1) vehicle for advertising on both the interior and exterior of the vehicle. NDSU is allowed a maximum of 9 vehicles at the current rate. The City will handle installation and removal of all wraps. The City will have sole discretion on which vehicles the wraps are placed.

3.3 **Credits:**

In the event any revenue hours are canceled by either NDSU or the City of Fargo, a credit of the total number of hours canceled at the current rate per hour will be credited in the following years cost spreadsheet. Hours credited for the 2022-2023 academic year for this agreement are listed below.

NDSU 2022-2023 Closings (Missed Service due to weather)	Hours	Rate	Total
12/14/22 – Late Start	4.25	\$82.54	\$350.80
12/15/22 – Closed Early	19.06	\$82.54	\$1,573.21
2/14/23 – Closed Early	3.66	\$82.54	\$302.10
2/15/23 – Closed	57.01	\$82.54	\$4,705.61
2/22/23 – Closed Early	3.66	\$82.54	\$302.10
2/23/23 – Closed	57.01	\$82.54	\$4,705.61
3/1/23 – Closed	57.01	\$82.54	\$4,705.61
4/4/23 – Closed	57.01	\$82.54	\$4,705.61
4/5/23 – Closed	57.01	\$82.54	\$4,705.61
4/6/23 – Closed	57.01	\$82.54	\$4,705.61
		TOTAL	\$30,762

3.4 **Payments & Schedule:**

Description	Payment Due	Amount
U-Pass	August 21, 2023	\$97,947
Circulator Service 2023-2024 Academic Year		\$757,602
Credits from 2022-2023 Academic Year		\$30,762
Total Circulator Service		\$726,840
	*10 Payments August 2023 to May 2024	\$72,684

ARTICLE 4 – ROUTE/SERVICE ADJUSTMENTS

The CITY will closely monitor NDSU student ridership statistics, patterns, and other information to create quarterly reports for NDSU. NDSU will consult with students on the usefulness of the transit service, and provide this information to the CITY. Based on this information, the parties may jointly make adjustments to the routes and transit schedule. Both parties acknowledge that any such adjustments must comply with all applicable federal, state and local rules and regulations regarding transit operations, and with basic safety requirements pertaining to the operation of public transit vehicles.

ARTICLE 5 – INSURANCE

The CITY shall maintain and provide casualty, liability, body injury, collision and comprehensive insurance on the buses and equipment it deems necessary, and NDSU shall have no responsibility to provide such coverage. The CITY is authorized to self-insure for such risks, subject to the liability limits of the State of North Dakota.

ARTICLE 6 – FORCE MAJEURE

Neither Party shall be held responsible for delays or lack of performance caused by events or acts beyond their control. Such events and acts include, but are not limited to, acts of God, inclement weather, strikes and labor disputes, lack of fuel, road closures, and changes in government regulation, war, insurrection or civil unrest.

ARTICLE 7 – TERM OF AGREEMENT

This Agreement shall become effective August 8, 2023, and shall remain in full-force and effect until June 30, 2024 unless terminated earlier as herein provided. The U-Pass portion of the agreement is in effect for the term of this agreement, and the shuttle service portions of the agreement that reference days that class is in session are in effect for the NDSU Fall 2023 and Spring 2024 semesters.

ARTICLE 8 – TERMINATION OF AGREEMENT

- 8.1 Changes in City Cost, Funding, or Service: The CITY may terminate or reduce the amount of service in this Agreement if there is, in the opinion of a majority of the City Commission, a significant increase in local costs; or insufficient local, state or federal funding available for the service. In such an event the CITY will provide NDSU a written notice ninety (90) days prior to any changes in the service.
- 8.2 NDSU Initiated Termination of U-Pass Program: NDSU may terminate the portion of this Agreement with the CITY that allows NDSU students to ride for no charge by providing written notice ninety (90) days prior to the termination of the Agreement. Any monies paid by NDSU to the CITY will be reimbursed on a prorated basis in which the numerator is the length of time from the beginning of the term to the termination date and the denominator is the length of time from the beginning of the term to May 10, 2023. NDSU understands that termination of the U-Pass program may result in the termination of the shuttle services due to required compliance with federal rules and regulations.

ARTICLE 9 – GENERAL PROVISIONS

- 9.1 Safety and Environmental Codes: All practices, materials, supplies, and equipment shall comply with the Federal Occupational Safety and Health Act as well as any pertinent federal, state and local safety or environmental codes.
- 9.2 Compliance with Applicable Rules and Regulations: This Agreement shall be subject to, governed by, and construed according to all applicable administrative codes and laws of the City of Fargo, State of North Dakota, and federal government.
- 9.3 Severability Clause: In the event that any provision of the Agreement is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect in any manner the legality or the remaining provisions of the Agreement, and each provision of the Agreement will be, and is deemed to be separate and severable from each other provision.
- 9.4 By the 30th day of each semester start, NDSU will provide the City a complete list of all active NDSU student, faculty and staff ID card numbers ensuring only active students are riding under the U-Pass program.

ARTICLE 10 – AUTHORITY TO AMEND FINANCIAL TERMS OF AGREEMENT

The City and NDSU shall be authorized to adjust the financial terms of this agreement and the term of agreement as they mutually agree, from time to time.

ARTICLE 11 – DISPUTES

In the event of a dispute regarding the performance of, or adherence to the provisions of this Agreement by either party to the Agreement, the CITY and NDSU shall select a representative(s) who will attempt to resolve the dispute. If the representatives are unable to resolve the dispute, the issue will be presented to the City’s Administrator. If the City Administrator cannot resolve the dispute, then it will be referred to the Fargo City Commission. If the Fargo City Commission’s decision does not resolve the dispute, the parties have such remedies as provided by law.

ARTICLE 12 – NOTICES

All notices herein required and any communications with respect to this Agreement shall be effected upon the mailing thereof, and addressed as follows:

NDSU

Mr. Mike Ellingson
Director, Facilities Management
North Dakota State University
Box 6050
Fargo, ND 58105

City of Fargo

Ms. Julie Bommelman
Transit Director
Metro Area Transit Garage
650 23rd St. N.
Fargo, ND 58102

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective August 8, 2023.

North Dakota State University

City of Fargo, a North Dakota municipal corporation

Mr. Bruce Bollinger
Vice President for Finance and Administration

Dr. Timothy J. Mahoney, Mayor

Date: _____

Date: _____

Attest:

Steven Sprague, City Auditor



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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

TO: Board of City Commissioners
FROM: Daniel Portlock, Water Utility Engineer
RE: Contract for Hot Water Heater Project RFP23105
DATE: August 2nd, 2023

The attached contract with Peterson Mechanical is for a hot water heater system at the City of Fargo Water Treatment Plant. This project was approved on the June 26, 2023, Consent agenda item #30. This project will commence in the fall of 2023.

Suggested Motion:

Move to approve the contract with Peterson Mechanical.

Contract Agreement

Peterson Mechanical, Inc. Job No _____ City of Fargo Reference No. RFP23105
 Date: 8/1/2023

HOT WATER HEATER PROJECT (Labor, Equipment & Materials)

Agreement

This Agreement is between the City of Fargo, a North Dakota municipal corporation ("City") and Peterson Mechanical, Inc., a North Dakota corporation ("Contractor") to provide and install Tankless Hot Water Heaters at the Sludge Plant building within the Water Treatment Plant. This Agreement shall commence on September 5th, 2023, and expire on October 15th, 2023.

The contract documents that comprise the entire agreement between City and Contractor include this Agreement, Insurance Certificates, the Request for Proposal, the Contractor Proposal, change orders, and other amendments as agreed to by the parties. All contract documents described are a part of this Agreement though they may not be attached to this Agreement or repeated herein.

ARTICLE 1

CONTRACT PAYMENT: The City agrees to pay Contractor for satisfactory performance of Contractor's Work the sum of: Seventy-Eight Thousand and 00/100 dollars (\$78,000.00) as per the provisions stated in RFP23105.

The City of Fargo will remit payment within 30 days of receipt of the invoice. Contractor must include reference number **RFP23105** on invoice.

ARTICLE 2

SCOPE OF WORK: Contractor will perform all necessary matters to include furnishing and installing all items to complete the Scope of Work within the original RFP. All material and workmanship shall be guaranteed for a period of at least one year upon completion of described work. The contractor shall provide all new items, articles, and materials including all labor, equipment, City permits and incidentals required for the project completion. Contractor shall perform startup to ensure system is working correctly.

ARTICLE 3

SCHEDULE OF WORK: Time is of the essence. Contractor shall provide City with any requested scheduling information of contract's work. The Schedule of Work, including that of this Contractor shall be prepared by City and may be revised as the work progresses.

Contractor recognizes that changes may be in the Schedule of Work and agrees to comply with such changes without any additional compensation.

Contractor shall coordinate its work with all other contractors, subcontractors, and suppliers on the project so as not to delay or damage their performance, work, or the project.

ARTICLE 4

CHANGES: Contractor, without nullifying this Agreement, may direct Subcontractor in writing to make changes to Subcontractor's Work. Adjustment, if any, in the contract price or contract time resulting from such changes shall be set forth in a contract Change Order pursuant to the Contract Documents.

ARTICLE 5

FAILURE OF PERFORMANCE: Should Contractor fail to remedy contractual deficiencies within three (3) working days from the receipt of City's written notice, then the City, without prejudice to any right or remedies, shall have the right to take whatever steps it deems necessary to correct said deficiencies and charge the cost thereof to Contractor, who shall be liable for payment of same, including reasonable overhead, profit, and attorney fees.

ARTICLE 6

INSURANCE: Prior to the start of Contractor's work, Contractor shall procure and maintain in force all insurance required by the Contract Documents including the following on an occurrence basis, with minimum limits stated.

- a. Commercial General Liability including products and completed operations and contractual liability with limits of insurance not less than \$2,000,000 each occurrence and \$2,000,000 aggregate per project.
- b. Business Automobile Liability with limits of insurance not less than \$1,000,000 each accident. Coverage must include liability arising out of all owned, hired, and non-owned automobiles.
- c. Commercial Umbrella Liability with limits of insurance not less than \$2,000,000 each occurrence and aggregate on a primary basis.
- d. Workers Compensation and Employers Liability coverage with limits of insurance of \$500,000 each accident and \$500,000 each employee for injury by disease.

Certificates of Insurance and Additional Insured Endorsements shall be filed with the City prior to commencement of the Contractor's work. These certificates must name the Owner, City of Fargo, as an additional insured.

ARTICLE 7

INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold City of Fargo harmless from all damages, losses, or expenses, including attorneys' fees, from any claims or damages for bodily injury, sickness, disease, or death, or from claims for damage to tangible property, other than the work itself. This indemnification shall extend to claims resulting from performance of this Contract and shall apply only to the extent that the claim or loss is caused in whole or in part by any negligent act or omission of Contractor or any of its agents, employees, or subcontractors. This indemnity shall be effective regardless of the claim or loss is caused in some part by a party to be indemnified.

ARTICLE 8

WARRANTY: Subcontractor warrants its work against all deficiencies and defects in materials and/or workmanship and agrees to satisfy same without cost to Owner for a period of one (1) year from the date of Substantial Completion of the Project or per Contract Documents; whichever is longer.

ARTICLE 9

GOVERNING LAW: This Contract Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

ARTICLE 10

ASSIGNMENT: Contractor may not assign this Agreement without prior written consent of City.

ARTICLE 11

SEVERANCE:

If any term or provision of this Agreement is held to be invalid or unenforceable, the remainder shall be considered valid and enforceable absent that term or provision.

CONTRACTOR:
Peterson Mechanical, Inc.

OWNER:
City of Fargo, North Dakota

Signature: 

Signature: _____

Name/Title: Michael D. Peterson/Vice President

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

Date: 8/1/2023

Date: 8/1/2023

ATTEST:

By: _____
Name/Title: Steven Sprague / City Auditor



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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 3, 2023

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

Subject: Sole Source for Avista Technologies, Inc. (SSP23126)

Dear Commissioners:

Water Utility staff is seeking sole source approval for Avista Technologies, Inc. (Avista) to purchase chemicals for the Reverse Osmosis (RO) system in the Membrane Water Treatment Plant (MWTP). Avista chemicals have performed well since MWTP startup in 2018 and were tested during MWTP planning/design. Water Utility staff is not currently set up to test other manufacturers other than in full scale, which introduces risk. In Water Utility capital planning, testing equipment may be purchased in the future.

This source request with Avista is through December 31, 2027. The Water Utility accounts for RO system chemical purchases in the Water Treatment Plant annual operations budget. Water Utility staff has found methods to be more efficient with Avista chemicals since MWTP startup in 2018. The estimate annual cost with Avista is about \$400,000 based on purchasing history.

Your consideration is greatly appreciated in this matter.

Sincerely,

Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Approve sole source request with Avista Technologies, Inc. for the annual purchase of Reverse Osmosis system chemicals to be used in the Membrane Water Treatment Plant.

REPORT OF ACTION

FINANCE COMMITTEE

Location: Water Treatment Plant

Agenda Item: Sole Source for Avista Technologies, Inc

Presenter: Troy Hall

<u>Routing</u>	<u>Date</u>
Finance Committee	<u>7/24/2023</u>
City Commission	_____

This Sole Source request is to purchase chemicals for Membrane Water Treatment Plant (MWTP) operation. Water Utility staff is recommending the purchase of three chemical categories for the Reverse Osmosis system: Anti-Sealant, high pH cleaner, and low pH cleaner. The chemicals from Avista are proprietary and were used during Reverse Osmosis (RO) equipment pilot testing in advance of MWTP design. Avista chemicals have been used for the first few years of MWTP operation with good reviews. Water Utility staff is recommending a sole source through 2027 until other chemical suppliers and option can be tested. The initial RO operation has been challenging without introducing added unknowns of alternate RO chemicals.

MOTION:

Dave Piepkorn moved to approve, second by Susan Thompson and all members present voted in favor.

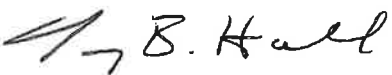
COMMITTEE:	Present	Yes	No	Unanimous
				<u>X</u>
				<u>Proxy</u>
Tim Mahoney, Mayor	X	X		
Dave Piepkorn, City Commissioner	X	X		
Mike Redlinger, City Administrator	X	X		
Brenda Derrig, Assistance City Administrator	X	X		
Susan Thompson, Assistant Finance Director	X	X		
Tanner Smedshammer, Purchasing Manager	X	X		
Steve Sprague, City Auditor	X	X		



 Tim Mahoney, Finance Committee Chair



SOLE SOURCE REQUEST FORM (SSP)

Requested by:	Troy Hall	Department:	Water Treatment Plant
Date of Request:	07/03/2023	Phone Number:	701-241-6741
E-mail:	thall@fargond.gov		
Dept Head Signature:		Estimated Amount of Purchase:	\$400,000 EST (per CY until 12/31/2027)

Sole Source Purchase Requirement:

A contract less than \$50,000 may be awarded without competition when the purchasing manager determines in writing, after conducting a good-faith review of available sources, that there is only one source for the required supply, service, or material. Any sole source procurement greater than \$50,000 must also be approved by the Board of City Commissioners prior to a vendor award using this method.

Product or Service description of the features or capabilities unique to the vendor or brand being requested:

To purchase chemicals for Membrane Water Treatment Plant (MWTP) operation. Water Utility staff is recommending the purchase of three chemical categories for the Reverse Osmosis system: Anti-Scalant, high pH cleaner, and low pH cleaner. The chemicals from Avista are proprietary and were used during Reverse Osmosis (RO) equipment pilot testing in advance of MWTP design. Avista chemicals have been used for the first few years of MWTP operation with good reviews. Water Utility staff is recommending a sole source through 2027 until other chemical suppliers and option can be tested. The initial RO operation has been challenging without introducing added unknowns of alternate RO chemicals.

Chemical costs for Avista are anticipated in annual budgets under Fund 501.

Vendor Name: Avista Technologies, Inc. (Avista)			
Address: 140 Bosstick Blvd			
City: San Marcos	State: CA	Zip Code: 92069	
Contact Person: Sueann Virbouth	Title:		
Telephone:	Email: svirabout@vistatech.com		
Purchasing Manager Approval:			
Sole Source (SSP) Number:		SSP23126	



Water Treatment Plant
435 14th Avenue South
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www.FargoND.gov

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August 3, 2023

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

Subject: Sole Source for Zenon Environmental Corporation (SSP23127)

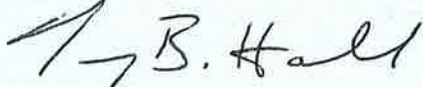
Dear Commissioners:

Water Utility staff is seeking sole source approval for Zenon Environmental Corporation (Zenon) for annual purchases of Ultrafiltration (UF) modules for the Membrane Water Treatment Plant (MWTP). Pictures of UF modules can be seen in the attached pictures. The UF system is a highly EPA-regulated system in the MWTP. Zenon is the only manufacturer allowed to provide UF modules for the MWTP by the North Dakota Department of Environmental Quality (DEQ) to meet the EPA requirements for surface water treatment. Per a 2013 agreement with Zenon, there is fixed base module cost with defined inflation calculation. This was to control costs for 20 years after startup. This sole source request has a time limit of December 31, 2027 since there are no other regulatory options at this time.

Due to high maintenance time requirements, Water Utility staff has a goal to replace all of the original UF modules (installed in 2018) over the next five (5) years. The annual cost will be approximately \$500,000, but the MWTP in general has lower water production costs to operation. Water Utility will account for the annual replacement cost in budget proposals each year.

Your consideration is greatly appreciated in this matter.

Sincerely,



Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Approve sole source request with Zenon Environmental Corporation for annual replacement of Ultrafiltration modules in the Membrane Water Treatment Plant.

REPORT OF ACTION

FINANCE COMMITTEE

Location: Water Treatment Plant

Agenda Item: Sole Source for Zenon Environmental Corp

Presenter: Troy Hall

Routing

Finance Committee
City Commission

Date

7/24/2023

This sole source request is to annually purchase 288 Ultrafiltration (UF) modules for the Membrane Water Treatment Plant (MWTP). FROM A REGULATORY PERSPECTIVE (DRINKING WATER REGULATIONS), THERE ARE NO OTHER APPROVED OPTIONS TO USING ZENON AT THIS TIME. These regulatory requirements are from the North Dakota Department of Environmental Quality and US EPA.

MOTION:

Dave Piepkorn moved to approve, second by Susan Thompson and all members present voted in favor.

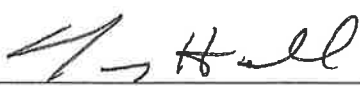
COMMITTEE:	Present	Yes	No	Unanimous <u>X</u> <u>Proxy</u>
Tim Mahoney, Mayor	X	X		
Dave Piepkorn, City Commissioner	X	X		
Mike Redlinger, City Administrator	X	X		
Brenda Derrig, Assistance City Administrator	X	X		
Susan Thompson, Assistant Finance Director	X	X		
Tanner Smedshammer, Purchasing Manager	X	X		
Steve Sprague, City Auditor	X	X		



 Tim Mahoney, Finance Committee Chair



SOLE SOURCE REQUEST FORM (SSP)

Requested by:	Troy Hall	Department:	Water Treatment Plant
Date of Request:	7/5/2023	Phone Number:	701-241-6741
E-mail:	thall@fargond.gov		
Dept Head Approval:		Estimated Amount of Purchase:	\$550,000 (per CY until 12/31/2027)

Sole Source Purchase Requirement:

A contract less than \$50,000 may be awarded without competition when the purchasing manager determines in writing, after conducting a good-faith review of available sources, that there is only one source for the required supply, service, or material. Any sole source procurement greater than \$50,000 must also be approved by the Board of City Commissioners prior to a vendor award using this method.

Product or Service description of the features or capabilities unique to the vendor or brand being requested:

This sole source request is to annually purchase 288 Ultrafiltration (UF) modules for the Membrane Water Treatment Plant (MWTP). FROM A REGULATORY PERSPECTIVE (DRINKING WATER REGULATIONS), THERE ARE NO OTHER APPROVED OPTIONS TO USING ZENON AT THIS TIME. These regulatory requirements are from the North Dakota Department of Environmental Quality and US EPA.

In the Membrane Water Treatment Plant (MWTP), the UF system removes small particles from raw water to protect the MWTP Reverse Osmosis (RO) system. Also, EPA regulatory credit is given for pathogenic microorganism removal. This current sole source request relates to cycling out and replacing all the original UF modules, installed at system startup in 2018. At this time, Water Utility staff plans to replace all of the original UF modules over the next five (5) years. The MWTP is more cost efficient to operate much of the time compared to the older 1997 water plant. This MWTP cost efficiency more than pays for the UF module replacement with lower daily treatment costs and lower sludge production that would need to be hauled to the landfill.

Annual funding for this sole source request of \$550,000 is recommended to come from the annual Renewal & Rehab (R&R) budget line in the Water Utility capital budget. The R&R budget line is funded with Infrastructure Sales Tax (Fund 450). Water utility plans to use the R&R budget line to fund future UF module and RO element replacement projects. If the sole source request is approved, Water Utility will annually set up a specific project code for the UF module replacement with the Finance Department. Currently, we are waiting on an updated Zenon proposal to account for inflation. The annual cost may change due to inflation. An approved agreement with Zenon (under different corporate name) in 2013 provided a SET 20-YEAR PRICE for UF modules with a set inflation calculation.

Vendor Name: Zenon Environmental Corporation (Zenon)			
Address: 14506 Collections Center			
City: Chicago	State: IL	Zip Code: 60693	
Contact Person: Tina St. Pierre		Title: Regional Lifecycle Manager	
Telephone: 416-402-9869		Email: tina.st-pierre@veolia.com	
Purchasing Manager Approval:			
Sole Source (SSP) Number:			



The above picture shows two Suez Ultrafiltration (UF) cassettes. Water Utility personnel and consultants were performing a UF membrane module addition project in April, 2022.

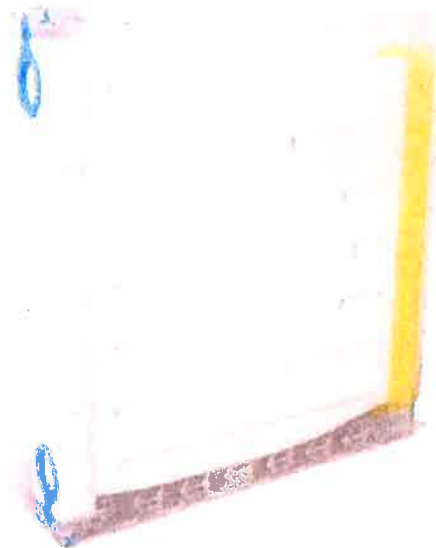


Image is a Suez Ultrafiltration (UF) module. Due to a vacuum, water flows through about 32,000 individual fibers in the module from outside to inside. This removes particles from the water. The particle removal prepares the water for Reverse Osmosis treatment and achieves EPA regulatory credit for pathogenic microorganism removal.