

FARGO CITY COMMISSION AGENDA
Monday, December 11, 2023 – 4:00 P.M.

Executive Session at 4:00 p.m.

Roll Call.

PLEASE NOTE: The City Commission will convene at 4:00 p.m. and retire into Executive Session in the Red River Room for the purpose of attorney consultation regarding pending opioid litigation with McKinsey and Company, and to discuss Fargo Municipal Code Sections 10-0307- Persons Using Streets not to be Molested and 10-0311- Panhandling; to receive its attorneys' advice and guidance on the legal risks, strengths and weaknesses of an action of a public entity, which, to discuss these matters in public in an open meeting would have an adverse fiscal effect on the City. Thus, an Executive Session for these matters is authorized pursuant to North Dakota Century Code 44-04-19.1 subsections 2, 5 and 9.

Regular Meeting at 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, November 27, 2023).

CONSENT AGENDA – APPROVE THE FOLLOWING:

1. Letter of Support for J & S Holdings, LLC project to the ND Opportunity Fund.
2. Amendment to Developer Agreement, Tax Increment Note, Certificate of Completion and Private Placement Memorandum with Wild Oak Group, LLC (Tax Increment Financing District 2020-01).
3. Application for Abatement or Refund of Taxes #4549 for property located at 2609 11th Street South requesting a reduction in value from \$319,900.00 to \$270,400.00; staff is recommending a reduction in value to \$289,800.00 for 2023.
4. Findings, Conclusions and Order of the Board of City Commissioners of the City of Fargo regarding the License Violation of District 64.
5. Extension to Lease Agreement with Red River Properties, LLP for the Police Department Building.
6. 1st reading of an Ordinance Enacting Section 8-0610 of Article 8-06 of Chapter 8 of the Fargo Municipal Code Relating to Rotary Traffic Islands.

7. 1st reading of an Ordinance Amending Section 25-1508 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages.
8. 2nd reading and final adoption of an Ordinance Rezoning a Certain Parcel of Land Lying in Ekman Addition to the City of Fargo, Cass County, North Dakota; 1st reading, 11/27/23.
9. 2nd reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Urban Plains by Brandt Seventh Addition to the City of Fargo, Cass County, North Dakota; 1st reading, 11/27/23.
10. 2nd reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Timber Parkway Eighth Addition to the City of Fargo, Cass County, North Dakota; 1st reading, 11/27/23.
11. 2nd reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Timber Parkway Tenth Addition to the City of Fargo, Cass County, North Dakota; 1st reading, 11/27/23.
12. Applications for Games of Chance:
 - a. NDSU Saddle and Sirloin for a raffle on 2/10/24.
 - b. NDSU Men's Lacrosse Club for a raffle on 3/15/24.
 - c. The Outdoor Adventure Foundation, Inc. for a raffle and raffle board on 3/23/24.
13. Consent to Construct Agreement with 221 Main, LLC for property located at 221 Main Avenue.
14. Developer Agreement with Urban Plains Land Company, LLC for Urban Plains by Brandt Seventh Addition.
15. Negative Final Balancing Change Order No. 2 in the amount of -\$135,314.00 and 31-day time extension to substantial and final completion dates for Project No. SR-23-A1.
16. Negative Final Balancing Change Order No. 1 in the amount of -\$163,765.00 for Project No. SR-23-B1.
17. Negative Final Balancing Change Order No. 2 in the amount of -\$71,174.60 for Project No. TM-23-A1.
18. Change Order No. 1 in the amount of \$99,725.00 for Project No. FM-21-A2.
19. Bid advertisement for Project No. NR-24-A.
20. Bid award to Parsons Electric LLC in the amount of \$927,349.00 for Project No. SL-23-B1.
21. Bid award to Northern Improvement Company in the amount of \$346,494.03 for Project No. SN-23-B1.
22. Bid award to PCI Roads LLC in the amount of \$536,628.71 for Project No. QR-24-A1.
23. Purchase Agreement, Sales Contract Addendum and Agreement Addendum Buyer's Conflict of Interest Disclosure with Wells Fargo Bank, N.A., as Trustee of the Jeffrey Donat Trust U/A (Improvement District No. BN-23-E1).
24. Create Improvement District No. TN-23-A (Traffic Signal Improvements).

25. Amended Engineer's Report for Improvement District No. BR-23-G.
26. Negative Final Balancing Change Order No. 6 in the amount of -\$504,886.62 for Improvement District No. BN-22-C1.
27. Final Balancing Change Order No. 3 in the amount of \$6,509.21 for Improvement District No. BN-22-F1.
28. Final Balancing Change Order No. 3 in the amount of \$43,496.90 for Improvement District No. BR-23-C1.
29. Negative Final Balancing Change Order No. 2 in the amount of -\$167,152.75 for Improvement District No. UN-23-A1.
30. Contract and bond for Improvement District No. BR-24-A1.
31. Master Services Agreements for Engineering/Architectural Services (RFP24010 and RFP24011).
32. Receive and file General Fund – Budget to Actual unaudited monthly financial statements through 11/30/23.
33. Resolutions Prescribing Rates and Charges for the Forestry Utility and the Street Lighting and Traffic Control Devices System Utility beginning on 1/1/24 as part of the 2024 budget.
34. First Amendment to the Joint Powers Agreement (Red River Regional Dispatch Center) with Cities of West Fargo and Moorhead, and the Counties of Cass and Clay.
35. Notice of Grant Award from the ND Department of Emergency Services for the FY 2023 State Homeland Security Program in the amount of \$136,000.00 and related budget adjustments (CFDA #97.067).
36. Mutual Aid Agreement – Memorandum of Understanding with the City of Jamestown, ND Fire Department.
37. Bid award to Carr's Tree Service, Inc. in the amount of \$144,899.00 for winter pruning operations (RFP24012).
38. Notice of Grant Award from the ND Department of Health and Human Services for the Regional Public Health Network and related budget adjustments. (CFDA #93.991).
39. City of Fargo Employment Policy Revisions, as presented.
40. Memorandum of Understanding with the Bureau of Alcohol, Tobacco, Firearms and Explosives Regarding the National Integrated Ballistic Information Network (NIBIN) system implementation.
41. Direct the City Attorney to draft an amendment to City Ordinance 8-0806 - Officer to Report.
42. Bid award to Sanitation Products in the amount of \$598,674.00 for the purchase of two auto side load refuse trucks (RFP24014).
43. Bid award to Sanitation Products in the amount of \$144,760.00 for the purchase of one container handler truck (RFP24015).

44. Bid award to Sanitation Products in the amount of \$353,839.00 for the purchase of one high compaction front load refuse truck (RFP24016).
45. Purchase of eight Police Department Replacement Vehicles for 2024 from Nelsons Auto Center in the amount of \$380,759.52 (PBC23376).
46. Final Balancing Change Order No. 5 in the amount of \$60,145.19 for Project No. SW 22-01.
47. Memorandum of Understanding with the City of Moorhead Regarding Purchase of Software for the MATBUS Transit System.
48. Resolution Authorizing the Issuance and Sale of \$6,400,000.00 City of Fargo Taxable Sales Tax and Water Revenue Bond and ND State Revolving Fund Program Loan Agreement with the ND Public Finance Authority for Project No. WA2255.
49. Bills.

REGULAR AGENDA:

50. **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:**

51. **CONTINUE TO 1/8/24 - PUBLIC HEARING** - Application filed by John Deere Electronic Solutions, a Division of John Deere & Company, for a property tax exemption for a project to be located at 4101 19th Avenue North, which the applicant will use primarily for manufacturing and programming of receivers, displays, controllers, modems and inverters.
52. Application for Abatement or Refund of Taxes #4552 for property located at 2653 45th Street South requesting a reduction in value for 2023 from \$2,378,000.00 to \$1,100,000.00.
53. Discussion regarding the North Broadway Bridge (Project No. QR-23-A0).
54. Reconsideration of the City Commission's action taken on November 27, 2023 on the Public Hearing Appeal of a Board of Adjustment's decision regarding a Land Management Permit at 338 9th Avenue South, which was denied.
55. Recommendations for appointments to the Metro Flood Diversion Board of Authority and Committees.
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. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements.

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



City Administration
225 4th Street North
Fargo, ND 58102

MEMORANDUM

TO: Fargo City Commission

FROM: Jim Gilmour, Director of Strategic Planning and Research

A handwritten signature in black ink, appearing to be "JG", written over the name "Jim Gilmour" in the "FROM" line.

DATE: December 1, 2023

SUBJECT: Letter of Support for J & S Holdings

The City of Fargo is a member of the North Dakota Opportunity Fund (NDOF) Consortium along with 37 other communities in North Dakota. This fund originated as part of the Small Business Jobs Act of 2010.

The fund provides loans and investments to small businesses. In order for a business to receive support, the Consortium requires an endorsement letter from the City indicating support for the project and NDOF involvement in the financing. There is no City financial support included or required with the letter of support.

Johnson and Schock Excavating is planning to lease space in a new building to expand their business. The building will be owned by J & S Holdings and leased to Johnson and Schock Excavating. See the attached letter.

The building is not located in the City of Fargo, but is in the extraterritorial zoning jurisdiction area. The location is shown on the attached map. The NDOF allows for letters of support from its members for businesses located outside the City.

Recommended Motion

Provide a letter in support of the J & S Holdings project to the North Dakota Opportunity Fund providing match of the Bank of ND interest buy down program.



November 8, 2023

221 First Avenue West
PO Box 1287
Dickinson, ND 58602
Telephone: 701.483.1962
Toll Free: 1.866.918.8074
Facsimile: 701.483.8225

City of Fargo
Attn: Jim Gilmour
225 4th St N
Fargo, ND 58102

www.kirkwoodbank.com

Dear Mr. Gilmour

This letter is in reference to a potential Flex Pace loan for J & S Holdings, LLC. I am requesting a letter of support from you, so that Kirkwood Bank & Trust, along with our borrower, can use the North Dakota Opportunity Fund loan program to provide the local match for the Flex Pace buydown program through the Bank of North Dakota.

Our borrower, J & S Holdings, LLC is currently constructing a shop/office building located at 4080 98th Ave South, Fargo, ND 58104. The principals of the company are Joshua Johnson and Christopher Schock. This entity is a holding company that will own the real estate being constructed.

Upon completion, the building will be leased to another company that the principals own and operate. That company is Johnson & Schock Excavating, LLC and was formed in 2018. This company specializes in the construction of site utilities (water, sewer and storm water lines) and also does sanitary sewer relining. Their primary service area is Fargo, West Fargo, Moorhead, Horace and some of the smaller communities in that general area.

The company began with 2 employees, along with the 2 owners and has grown to 12 employees, plus the 2 owners. The ability to utilize the Flex Pace program will allow the company to continue to grow and expand its services to the area. They are excited about this new location and the future growth of the surrounding area.

To give you an idea of the scope of work that the company does, the following is a short list of local projects they have been involved with over the last few years:

- Casselton Water Tower Project
- Gateway West Site Project
- Central Cass School Addition
- Sanford West Fargo Clinic
- City of Fargo Water Service Lowerings
- Horace High School and Athletics Fields

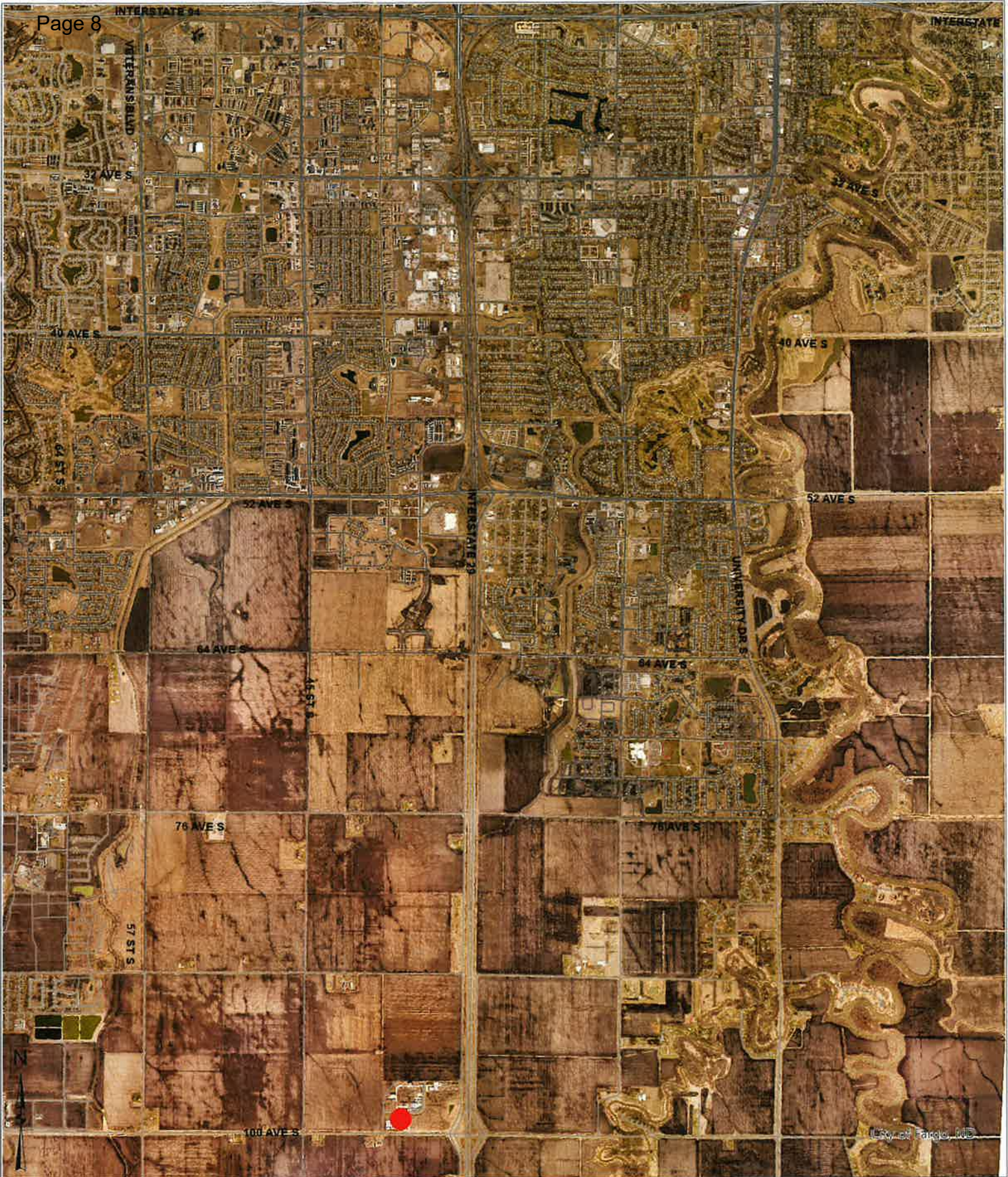
Please consider our request for a letter of support, so that we can utilize the North Dakota Opportunity Fund for the local community buydown on this great project.

If you have any questions, please contact me at 701-483-1962 or by email at scottm@kirkwoodbank.com.

Sincerely



Scott Meschke
President
NMLS#718569



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

4080 98th Ave South

1:72,224

11/20/2023 1:26 PM

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





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City Administration
225 4th Street North
Fargo, ND 58102

MEMORANDUM

TO: Fargo City Commission

FROM: Jim Gilmour, Director of Strategic Planning and Research 

DATE: December 5, 2023

SUBJECT: Completion Documents for Wild Oak Renewal Project

The developer of the Wild Oak housing project has completed the project and complied with the terms of the developer agreement. The City has inspected the project and documented all of the costs eligible for Tax Increment Financing (TIF).

An Amendment to the Development Agreement is needed to better define the 15-year term of the TIF note, clarifying the start and end of the 15-year term.

Also, an amendment to the Developer Agreement and a Levee Agreement is needed to assign the agreements to the current owners of the property, a transfer from Craig Enclave OG, LLC and Wild Oak Group, LLC.

Attached for your approval are the two amendments to the agreements, the Certificate of Completion, the Tax Increment Note and the Private Placement Memorandum.

Recommended Motion

Approve and authorize the Mayor to sign the Amendment to the Developer Agreement, the Amendment to the Development Agreement and Levee Agreement, the Certificate of Completion and the Tax Increment Note.

**AMENDMENT TO
DEVELOPER AGREEMENT**

By and Between

CITY OF FARGO, NORTH DAKOTA

And

Wild Oak Group, LLC

THIS AMENDMENT TO DEVELOPER AGREEMENT (this “Agreement”) is made as of the Effective Date, by and among the City of Fargo, North Dakota, a municipal corporation (the “City”) and Wild Oak Group, LLC, a North Dakota limited liability company (“Developer”).

RECITALS:

WHEREAS, Developer’s predecessor in interest, Craig Enclave OG, LLC, a North Dakota limited liability company and City entered into a Developer Agreement dated as of November 30, 2020 [hereinafter the “Developer Agreement”] pertaining to a project that is now commonly known as the “Wild Oak Project”;

WHEREAS, Craig Enclave OG, LLC, and Developer entered into an Assignment and Assumption of Agreements dated as of December 31, 2021, to which agreement the City consented;

WHEREAS, the Wild Oak Project has reached the completion of construction and the City and Developer have taken such steps as contemplated in the Developer Agreement that are necessary and appropriate for the issuance by the City of a Certificate of Completion and a TIF Note; however, prior to the issuance thereof, the parties wish to amend the Developer Agreement in order to establish certain modifications to the payment to the Developer under the TIF Note and, therefore, to amend the Developer Agreement accordingly;

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into this Amendment to Developer Agreement, and the mutual promises, undertakings and covenants hereinafter set forth, and intending to be legally bound hereby, the City and Developer covenant and agree as follows:

I. Certain definitions in Section 1.1 of ARTICLE I of the Developer Agreement are hereby amended to read as follows:

“Developer’s Taxes” means taxes paid for the first (1st) Tax Year through the fifteenth (15th) Tax Year with respect to the portions of the Development Property and Improvements thereon. Taxes for the sixteenth (16th) Tax Year or for any subsequent year are not included as Developer’s Taxes.

“Developer Tax Increments” means the portion of Developer’s Taxes which constitutes Tax Increments, or the portion of Tax Increments, derived from Developer’s Taxes.

“Improvements” means the improvements constructed or to be constructed on the Development Property, including all related landscaping, lighting, parking, and other site improvements. The Improvements may exceed, but shall not be less than, the Minimum Improvements, as provided in Section 4.1.

"Maturity Date" means the date that is three (3) years from the November 15th Payment Date for the fifteenth (15th) Tax Year.

"Tax Year" is one of a maximum of fifteen (15) successive calendar years, with the first year being the calendar year identified and deemed to be the first (1st) Tax Year in the Tax Increment Note and with the successive fourteen (14) consecutive calendar years being the second (2nd) through fifteenth (15th) Tax Years.

II. Subsections (a) and (e) of Section 3.3 of Article III of the Developer Agreement is hereby amended to read as follows:

(a) There shall be one (1) Tax Increment Note. The amount of the Tax Increment Note shall be determined by adding the \$3,560,000.00 (or so much thereof as shall be demonstrated as set forth in Section 3.3(d)) plus a sum equal to Capitalized Interest. The Tax Increment Note shall provide for payments to be made by the City to Developer of Developer's Tax Increment received by the City from the County for the Project for the first (1st) Tax Year and for each of fourteen (14) subsequent Tax Years, with payments to be made annually on the Payment Dates, it being further provided that Available Tax Increment exists pertaining to the fifteenth (15th) or earlier Tax Years. The Tax Increment Note shall continue to be payable on Payment Dates, as defined below, through the Maturity Date.

* * *

(d) If the conditions set forth in this Section are met, the Tax Increment Note shall be issued and delivered when the Certificate of Completion has been delivered and when the Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the Developer has incurred and paid eligible costs of the Improvements to be borne by Developer which will not be otherwise reimbursed or paid hereunder. The Tax Increment Note shall identify the first (1st) Tax Year of a series of fifteen (15) such Tax Years and the Tax Increment Note shall, therefor, with the City's obligation under said Tax Increment Note to be limited to the Developer's Tax Increment from said first (1st) Tax Year received by the City from the County for the Project as set forth at Section 3.3(e), below. Demonstration of eligible costs of Improvements up to the maximum amount of the Tax Increment Note shall be made pursuant to one or more certifications in form and substance satisfactory to the City that all or a portion of the costs of the Improvements have been incurred, together with evidence satisfactory to the City of the nature and amount of the costs of the Improvements and of the costs incurred by the Developer. Each certification shall demonstrate the specific purpose and amount of the costs of the Improvements and their compliance with the representation set forth at Section 2.2(g). The City's determination of a cost's compliance with the representation set forth at Section 2.2(g) shall, if based on the advice of its city attorney after consultation with the Developer or its counsel, be conclusive. The delivery of the Tax Increment Note itself constitutes reimbursement of expenditures in an amount equal to the principal amount of the Tax Increment Note; there are no monetary proceeds received by Developer upon delivery of the Tax Increment Note.

(e) Subject to the provisions of the Tax Increment Note, the principal of and interest on the Tax Increment Note shall in the aggregate be payable on each May 15th and November 15th, following the first (1st) Tax Year as identified in the Tax Increment Note and on May 15th and November 15th of each year thereafter until the Maturity Date, each of said May 15th and November 15th dates being referred to herein as a “Payment Date” or collectively as the “Payment Dates” (the "Payment Dates"). The first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project that resulted from the first (1st) Tax Year. For all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since the prior payment. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever.

(i) In the event that Developer’s Taxes are paid in full on or before February 15th of a particular year, the City agrees, and the City’s Finance Director is hereby authorized, to pay out the full amount of Available Tax Increments received from the County Auditor upon written request submitted by the Developer. In such instance, the City’s Finance Director is authorized to make such payment within the later of (a) forty (40) days after receipt by the City of the Available Tax Increments are received by the City from the County Auditor, or (b) forty days from the date of receipt of said written request. If such payment is made, then it shall be unnecessary to make the payout of annual increment in two payments as is otherwise provided in this subparagraph e.

- III. The Developer Agreement is hereby amended with respect to Exhibit C, the form of the TIF Note to read as set forth on the attachment to this Amendment, also entitled “Exhibit C”, incorporated as if fully set forth herein.
- IV. In all other respects the Developer Agreement shall remain in full force and effect.
- V. Effective Date. This Amendment to Developer Agreement shall be effective as of January 1, 2024 [the “Effective Date”].

IN WITNESS WHEREOF, the Parties have executed this Amendment to Developer Agreement to take effect as of the Effective Date.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW]

CITY OF FARGO, NORTH DAKOTA

By _____
Dr. Tim Mahoney, its Mayor

(SEAL)

ATTEST:

By _____
Steven Sprague, City Auditor

This document drafted by:

Erik R. Johnson
Assistant City Attorney
Ph: 701-371-6850

Wild Oak Group, LLC

By: Syndica, LLC, its Manager

By 
Benjamin N. Meland, Partner

EXHIBIT A TO AMENDMENT

None

EXHIBIT B TO AMENDMENT

None

**EXHIBIT C TO AMENDMENT
TAX INCREMENT NOTE
(ATTACHED)**

TAX INCREMENT NOTE

No. R-1

\$3,592,234.56

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
CASS COUNTY
CITY OF FARGO

TAX INCREMENT
REVENUE NOTE OF 2024
(TAX INCREMENT DISTRICT 2020-01)

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, a North Dakota municipal corporation (the "City"), certifies that it is indebted and for value received promises to pay to **Wild Oak Group, LLC** (the "Developer"), or the registered assign, the principal sum of **Three Million Five Hundred Ninety Two Thousand Two Hundred Thirty Four and 56/100 Dollars (\$3,592,234.56)**, an amount issued in reimbursement of eligible costs paid by the Developer, unless due sooner by redemption or early payment, on the Maturity Date defined below; but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided; and to pay interest on the unpaid principal amount of this Note at the rate of interest of **Four Percent (4%) per annum**, compounded annually. Interest shall accrue from the date of this Note on the amount issued and shall be computed on the basis of a 360-day year consisting of 12 30-day months. This Note is the "Tax Increment Note" (the "Note") described and defined in that certain Developer Agreement, dated as of November 30, 2020 (as the same may be amended from time to time, the "Developer Agreement"), by and between the City and Wild Oak Group, LLC, a North Dakota limited liability company, as the successor in interest to Craig Enclave OG, LLC, the initial Developer under the Developer Agreement. Each capitalized term which is used but not otherwise defined in this Note shall have the meaning given to that term in the Developer Agreement or in the resolution authorizing the issuance of this Note. Principal and interest are payable at such address as shall be designated in writing by Wild Oak Group, LLC, or other registered holder of this Note, in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

Payment Dates. Subject to the terms hereof, the principal of and interest on this Note shall in the aggregate be payable on each May 15th and November 15th, following the first (1st) Tax Year as identified in the Tax Increment Note and on May 15th and November 15th of each year thereafter until the Maturity Date, each of said May 15th and November 15th dates being referred to herein as a "Payment Date" or collectively as the "Payment Dates" (the "Payment Dates"). The first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project that resulted from the first (1st) Tax Year. For all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since

the prior payment. Notwithstanding the previous sentence, in the event that Developer's Taxes are paid in full on or before February 15th of each year, the City agrees, and the City's Finance Director is hereby authorized, to pay out the full amount of Available Tax Increments received from the County Auditor upon written request submitted by the Developer. The City's Finance Director is authorized to make such payment within the later of (a) forty (40) days after receipt by the City of the Available Tax Increments are received by the City from the County Auditor, or (b) forty days from the date of receipt of said written request.

Early Payment of Taxes. In the event that Developer's Taxes are paid in full on or before February 15th of a particular year, the City agrees, and the City's Finance Director is hereby authorized, to pay out the full amount of Available Tax Increments received from the County Auditor upon written request submitted by the Developer. In such instance, the City's Finance Director is authorized to make such payment within the later of (a) forty (40) days after receipt by the City of the Available Tax Increments are received by the City from the County Auditor, or (b) forty days from the date of receipt of said written request. If such payment is made, then it shall be unnecessary to make the payout of annual increment in two payments as is otherwise provided herein.

Payment Amounts. On each Payment Date (or, if not a business day of the City, the first business day thereafter) the City shall pay by check or draft mailed to the person that was the Registered Owner of the Note at the close of the last business day of the City preceding such Payment Date an amount as follows: (a) the first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received prior to said date by the City on the Project from the first Tax Year and (b) for all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since the prior payment. All such payments made on the Tax Increment Note shall be from the Developer's Taxes. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever. In no event shall any City be obligated to remit payment of principal in excess of the aggregate amount of the unpaid principal of the Note. The City shall have the option at any time to prepay in whole or in part the principal amount of this Note at par plus accrued interest. All payments made by the City under this Note shall be applied first to pay accrued and unpaid interest on this Note and second toward payment of principal hereof.

Redemption. In addition to the amounts of principal required to be paid by the City as hereinabove set forth, the City shall have the right to prepay on any date the entire principal amount hereof then remaining unpaid, or such lesser portion thereof as it may determine upon, in multiples of \$1,000, at par plus accrued interest. Notice of any such optional prepayment shall be given prior to the prepayment date by mailing to the registered owner of this Note a notice fixing such prepayment date and the amount of principal to be prepaid.

Available Tax Increments. "Available Tax Increments" are defined in the Developer Agreement as follows:

"Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby."

In addition, "Developer Tax Increments" are defined in the Developer Agreement as follows:

"Developer Tax Increments" means the portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments, derived from Developer's Taxes."

"Tax Increments" are defined in the Developer Agreement as follows:

"Tax Increments" means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass County, from time to time from the TIF District pursuant to the Urban Renewal Law."

"Developer's Taxes" are defined in the Developer Agreement as follows:

"Developer's Taxes" means taxes paid for the first (1st) Tax Year through the fifteenth (15th) Tax Year with respect to the portions of the Development Property and Improvements thereon. Taxes for the sixteenth (16th) Tax Year or for any subsequent year are not included as Developer's Taxes.

"Tax Year" is defined in the Developer Agreement as follows:

"Tax Year" is one of a maximum of fifteen (15) successive calendar years, with the first year being the calendar year identified and deemed to be the first (1st) Tax Year in the Tax Increment Note and with the successive fourteen (14) consecutive calendar years being the second (2nd) through fifteenth (15th) Tax Years.

"Maturity Date" is defined in the Developer Agreement as follows:

"Maturity Date" means the date that is three (3) years from the November 15th Payment Date for the fifteenth (15th) Tax Year.

In addition, Section 3.6 of the Developer Agreement provides as follows:

"The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

- (a) to make payments on the Tax Increment Note; and,

(b) after payment of the City Development Costs and Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

No Payment Upon Default. No payments will be made on this Note during such time as there is an Event of Default under the Developer Agreement which has not been cured by the Developer.

Lack of Protective Covenants. The City of Fargo, North Dakota (the "City"), has not covenanted to endeavor in any fashion to cause Tax Increments to be sufficient to generate Available Tax Increments sufficient to pay this Note, nor have they covenanted to take actions under the Developer Agreement with such sufficiency as a goal.

Sufficiency of Revenues. The City makes no representation or covenant, express or implied, that the revenues described herein will be sufficient to pay, in whole or in part, the amounts which are or may otherwise become due and payable hereunder. Any amounts which have not become due and payable on this Note on or before the Maturity Date shall no longer be payable, as if this Note had ceased to be any debt or obligation of the City or of the City whatsoever.

Issuance; Purpose; Special Limited Obligation. This Note is in the aggregate principal amount of \$3,592,234.56 (the "Note"), which Note has been issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota including North Dakota Century Code Chapter 40-58, for the purpose of providing money to finance certain eligible costs within the City's Urban Renewal District 2020-01, specifically the costs identified in Section 3.3 of the Developer Agreement. The Notes are payable out of the Tax Increment Revenue Note of 2024 Fund of the City, to which have been pledged amounts representing Available Tax Increments to be received by the City from the City's Tax Increment District No. 2020-01 in the City. This Note is not any obligation of any kind whatsoever of any public body, except that this Note is a special and limited revenue obligation but not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications and limitations stated or referenced herein. Neither the full faith and credit nor the taxing powers of the City or of the City are pledged to or available for the payment of the principal of or interest on this Note, and no property or other asset of the City or of the City, save and except the above referenced Available Tax Increments, is or shall constitute a source of payment of the City's obligations hereunder.

Limitation on Transfer. This Note may only be transferred to a person who is (1) a successor of Wild Oak Group, LLC, by reorganization, merger or acquisition, (2) a member of Wild Oak Group, LLC, (3) to a lender of Wild Oak Group, LLC, as collateral for financing as permitted by the Developer Agreement, (4) a related person to such partner or successor, (5) a "qualified institutional buyer" as defined in Rule 144A promulgated under the federal Securities Act of 1933, or (6) an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) promulgated under the federal Securities Act of 1933. The City shall not register any transfer of this Note unless (i) a registered owner's prospective transferee delivers a representation letter in form satisfactory to the City verifying that the

transferee is a "qualified institutional buyer"; or (ii) such transferee is an "accredited investor" which has delivered a representation letter in form satisfactory to the City; or (iii) the prospective transferee demonstrates to the satisfaction of the City that it is the successor, partner or related person to Wild Oak Group, LLC, noted above.

Any registered owner desiring to effect a transfer shall, and does hereby, agree to indemnify the City against any liability, cost or expense (including attorneys' fees) that may result if the transfer is not so made.

Registration: Transfer. This Note shall be registered in the name of the payee on the books of the City by presenting this Note for registration to the officer of the City performing the functions of the Treasurer, who will endorse his or her name and note the date of registration opposite the name of the payee in the certificate of registration on the reverse side hereof. Thereafter this Note may be transferred to a bona fide purchaser who is a permitted transferee only by delivery with an assignment duly executed by the registered owner or his, her or its legal representative, and the City may treat the registered owner as the person exclusively entitled to exercise all the rights and powers of an owner until this Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Treasurer of the City.

Developer Agreement. The terms and conditions of the Developer Agreement are incorporated herein by reference and made a part hereof. The Developer Agreement may be attached to this Note, and shall be attached to this Note if the holder of this Note is any person other than **Wild Oak Group, LLC**. No payments will be made on this Note during such time as there is a Specified Event of Default under the Developer Agreement which has not been cured by the Developer.

Taxable Obligation. This Note is intended to bear interest that is included in the gross income of the owner.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to happen and to be performed, precedent to and in the issuance of this Note, have been done, have happened and have been performed, in regular and due form, time and manner as required by law; and that this Note, together with all other debts of the City outstanding on the date hereof, being the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, the City of Fargo, Cass County, North Dakota, by its Board of City Commissioners has caused this Note to be executed on its behalf by the signature of its Mayor and attested by the signature of the City Auditor, all as of January 1, 2024.

CITY OF FARGO,
a North Dakota municipal corporation

By: _____
Timothy Mahoney, its Mayor

ATTEST:

Steven Sprague, City Auditor

(SEAL)

CERTIFICATE OF REGISTRATION

The transfer of ownership of the principal amount of the attached Note may be made only by the registered owner or his, her or its legal representative last noted below.

DATE OF
REGISTRATION

REGISTERED OWNER

SIGNATURE OF
AUTHORITY'S
REPRESENTATIVE

Wild Oak Group, LLC

Wild Oak Group, LLC
By: Syndica LLC, its Mgr
fBy: Benjamin N. Meland, Ptrn

_____, 20____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ASSIGNMENT AND ASSUMPTION OF AGREEMENTS

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENTS (“Assignment”) is entered into as of the 29th day of December, 2021 (the “Assignment Date”), by and between Craig Enclave OG, LLC, a North Dakota limited liability company (“Assignor”), and Wild Oak Group, LLC, a North Dakota limited liability company (“Assignee”).

RECITALS

A. Assignor and City of Fargo, North Dakota, a municipal corporation and political subdivision of the State of North Dakota (“City”), are parties to a certain Developer Agreement entered into as of November 30, 2020, as may have been amended (the “Agreement”).

B. Assignor desires to transfer to Assignee, and Assignee desires to assume from Assignor, all of Assignor’s rights, duties and obligations under the Agreement.

C. A Levee Development Agreement dated November 15, 2021, (the “Levee Development Agreement”) provided for a certain flood risk mitigation infrastructure for the benefit of the public upon the Craig Enclave Oak Grove Project, as described in the Levee Development Agreement that was to be constructed by Assignor’s contractor which Levee Development Agreement was executed by Assignee as the “Developer” of the project prior to Assignee having title to the subject property.

D. The Levee Development Agreement has since been fully performed with the exception that the Developer under said agreement was, and is, to be obligated to provide mowing and weed control on the resulting flood control levee.

E. A Memorandum of Agreement, dated November 15, 2021, was recorded at the Office of the Cass County Recorder on July 20, 2022 as Document No. 1671041, said Memorandum having been executed by the City of Fargo and Assignee, and said Memorandum calling attention to the Developer’s continuing obligation to provide mowing and weed control on the flood control levee.

AGREEMENTS

In consideration of the Recitals, the following mutual agreements for other value received, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Assignor transfers and assigns to Assignee all rights, duties and obligations held by Assignor in and to the Agreement and the Levee Development Agreement, and Assignee accepts such assignment and assumes all rights, duties and obligations of Assignor under the Agreement and the Levee Development Agreement. Assignor shall indemnify, defend and hold Assignee harmless from and against all breaches under the Agreement and the Levee Development Agreement occurring prior to the Assignment Date. Assignee shall indemnify, defend and hold Assignor harmless from and against all breaches under the Agreement and the Levee Development Agreement occurring on or after the Assignment Date.

2. This Assignment may be signed in any number of counterparts, all of which when taken together shall constitute one complete instrument. A facsimile, email or .pdf copy of a party's signature shall be deemed a party's original signature and shall bind such party as if it were the party's original signature.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment on the day and year first above written.


ASSIGNOR:
Craig Enclave OG, LLC

ASSIGNEE:
Wild Oak Group, LLC

By: Syndica, LLP, its Manager

By: Syndica, LLP, its Manager

By: 
Austin J. Morris, Partner

By: 
Benjamin N. Meland, Partner

CITY CONSENT

City hereby acknowledges, consents, and agrees to the foregoing Assignment and Assumption of Agreements.

CITY OF FARGO, NORTH DAKOTA

(SEAL)

By _____
Timothy Mahoney, its Mayor

ATTEST:

By _____
Steven Sprague, City Auditor

CERTIFICATE OF COMPLETION

WHEREAS, the City of Fargo, a North Dakota municipal corporation, (the "City") and **Wild Oak Group, LLC**, a North Dakota limited liability company (the "Developer"), as the successor in interest to the initial developer, Craig Enclave OG, LLC, have entered into an agreement dated as of November 30, 2020; and

WHEREAS, the Developer has to the present date performed said covenants and conditions insofar as it is able in a manner deemed sufficient by the City to permit the execution and recording of this certification;

NOW, THEREFORE, this is to certify that all building construction and other physical improvements specified to be done and made by the Developer have been completed, and the above covenants and conditions in said Developer Agreement have been performed by the Developer therein, and that the Tax Increment Note, referred to in said Developer Agreement, may be issued to Developer by the City.

CITY OF FARGO,
a North Dakota municipal corporation

By: _____
Timothy Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

PRIVATE PLACEMENT
MEMORANDUM

Relating to

CITY OF FARGO, NORTH DAKOTA

\$3,592,234.56 Tax Increment Revenue Note of 2024
(Tax Increment Finance District 2020-01)

Dated: January 1, 2024

This Private Placement Memorandum sets forth in brief form certain information relevant to the holders of the \$3,592,234.56 Tax Increment Revenue Note of 2024 relating to TIF District 2020-01 (the "Note") issued by the City of Fargo, North Dakota (the "City" or "Issuer").

GENERAL INFORMATION

Authorization. The Note is issued pursuant to a resolution adopted November 30, 2020, when conditions are met that are set forth in a Developer Agreement dated as of November 30, 2020 (the "Development Agreement"), by and between the City and Craig Enclave OG, LLC, the predecessor in interest to Wild Oak Group, LLC (the "Developer" herein). The Note is the "Tax Increment Revenue Note" as defined in the Developer Agreement.

Consideration for the Note. The consideration for the Note is the Developer's payment of certain expenditures that are eligible public redevelopment costs of the City's Tax Increment District 2020-01 (the "Tax Increment District"). The Note is not issued for cash, but rather is issued in reimbursement of those expenditures paid by the Developer.

PAYMENT SOURCE; TAX INCREMENTS

Payment Sources for the Note; Sufficiency. The Note is payable solely and only from Tax Increments of the Tax Increment District if and as received. The Note states,

"Sufficiency of Revenues. The City makes no representation or covenant, express or implied, that the revenues described herein will be sufficient to pay, in whole or in part, the amounts which are or may otherwise become due and payable hereunder. Any amounts which have not become due and payable on this Note on or before the Maturity Date shall no longer be payable, as if this Note had ceased to be any debt or obligation of the City or of the City whatsoever."

Available Tax Increments. "Available Tax Increments" are defined in the Developer Agreement as follows:

" Available Tax Increments" means the Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement

and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby.

Subordinate Use of Tax Increments. Section 3.6 of the Development Agreement provides an order of priority for use of tax increments that causes the Note to be subordinate to actual administrative expenses. Section 3.6 reads as follows:

“Section 3.6. Use of Tax Increments.

The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

- (1) to make payments on the Tax Increment Note; and
- (2) after payment of the Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

No Payment Upon Default. No payments will be made on the Note during such time as there is an Event of Default under the Development Assistance Agreement which has not been cured by the Developer.

Lack of Protective Covenants. The City of Fargo, North Dakota (the “City”), has not covenanted to endeavor in any fashion to cause Tax Increments to be sufficient to generate Available Tax Increments sufficient to pay the Note, nor have they covenanted to take actions under the Developer Agreement with such sufficiency as a goal. There can be no assurance that taxes collected on such Assessor’s Minimum Market Value will be sufficient to pay the Note.

Projected Tax Increments for Note. Tax increments are expected to be sufficient to pay the Note and the interest thereon in full; however, tax increments at such a level may not be achieved.

Tax Increment Risks. Tax increments are taxes received on property in a tax increment district from the increased taxable value of the property over its base value at the time that the tax increment district was created, which base value is called "original net tax capacity". There are risk factors for persons relying on tax increments to be received over time, including the following:

- (a) Incomplete Completion of the Improvements. The Tax Increment Notes are issued to encourage the development of specific Improvements in the Tax Increment District, identified in the Developer Agreement. If the contemplated Improvements were completed at a lesser level of value than originally contemplated, they would generate fewer taxes and therefore fewer tax increments than originally contemplated.

- (b) Damage or Destruction. If the Improvements are damaged or destroyed after completion, their value would be reduced, and taxes and tax increments would be reduced. Repair, restoration or replacement of the Improvements may not occur, may occur after only a substantial time delay, or may involve property with a lower value than the Improvements, all of which would reduce taxes and tax increments.
- (c) Change in Use to Tax-Exempt. The Improvements could be acquired by a party that devotes them to a use which causes the property to be exempt from real property taxation. Taxes and tax increments would then cease.
- (d) Depreciation. The Improvements could decline in value due to changes in the market for such property or due to the decline in the physical condition of the property. Lower market valuation will lead to lower taxes and lower tax increments.
- (e) Non-payment of Taxes. If the property owner does not pay property taxes, either in whole or in part, the lack of taxes received will cause a lack of tax increments. The North Dakota system of collecting delinquent property taxes is a lengthy one that could result in substantial delays in the receipt of taxes and tax increments, and there is no assurance that the full amount of delinquent taxes would be collected. Amounts distributed to taxing jurisdictions upon a sale following a tax forfeiture of the property are not tax increments.
- (f) Reductions in Taxes Levied. If property taxes are reduced due to decreased municipal levies, taxes and tax increments will be reduced. Reasons for such reduction could include lower local expenditures or changes in state aids to municipalities.
- (g) Reductions in Tax Capacity Rates. The taxable value of real property is determined by multiplying the market value of the property by a tax capacity rate. Tax capacity rates vary by certain categories of property; for example, the tax capacity rates for residential homesteads are currently less than the tax capacity rates for commercial and industrial property.
- (h) Legislation. The North Dakota Legislature has the authority to modify laws affecting real property taxes, particularly as they relate to mill levies and the overall level of taxes.
- (i) Combinations of Factors. Factors that reduce taxes and tax increments can occur in combinations that reduce tax increments further than any one factor alone.

Factors noted above present risks for the receipt of tax increments; changes in the other direction could increase taxes and tax increments.

Pay-as-You-Go Format. The Tax Increment Notes are instruments which municipalities refer to as "pay as you go" notes. Issued in reimbursement of eligible costs paid by others, such notes involve no initial cash to or from the municipality. They are issued to developers of property

improvements, the same parties who are expected to own the real property and pay the taxes. As long as the same party both owns the property and holds the note, the tax increment risks noted above to some extent cancel out economically, making the changes somewhat a "wash". For instance, if the property owner does not pay its taxes, the same party as holder of the note does not receive tax increments (because, due to non-payment of taxes, there are none). If tax capacity rates fall, leading taxes and tax increments to fall, the note holder receives fewer tax increments in payment of the note but the same person as owner of the property has "saved" a similar amount in not paying taxes. If the ownership of the real property and the note cease to be in the same party, this offsetting of tax increment risks by attendant property tax benefits is broken. Upon the initial issuance of the Note, the holder is the Developer.

TAX TREATMENT OF NOTE

No Information About Tax Treatment of Note. The Issuer does not know, and makes no representation about, the tax treatment of, or tax consequences for the Developer of, (1) the Issuer's issuance of the Note in reimbursement of public costs of redevelopment paid by the Developer, or (2) the later retention or disposition of the Note or the retention or disposition of the property whose costs were reimbursed by the issuance of the Note.

NO LEGAL OPINION

The Developer is not being provided with any opinion of bond counsel with respect to the issuance of the Note. The City's bond counsel does not ordinarily issue an opinion with respect to taxable pay-as-you-go notes.

INTEREST TAXABLE

The Note bears interest that is intended to be included in gross income of the holder.

NOT QUALIFIED TAX EXEMPT OBLIGATIONS

The City has not designated the Note as a "qualified tax exempt obligation" for purposes of Section 265(b)(3) of the federal Internal Revenue Code of 1986, as amended, relating to the ability of financial institutions to deduct from income for federal income tax purposes interest expense that is allocable to carrying and acquiring tax exempt obligations. "Qualified tax exempt obligations" are treated as acquired by the financial institution before August 8, 1986. Interest allocable to such obligations remains subject to the 20% disallowance contained in prior law. The Note is taxable and does not qualify for such designation.

NOT COMPREHENSIVE

Not Comprehensive. This Private Placement Memorandum is not intended to be a complete or comprehensive description of the Note or a complete presentation of all matters relevant to owning or holding the Note. It is intended for use with the Developer or a sophisticated investor, each of whom are encouraged to engage in such diligence reviews of matters of fact and law and inquiries as to matters of fact and law as will provide sufficient information for a business decision about ownership of the Note. The Developer to whom the Note is originally issued will

provide the City with a certificate as to making its own determinations and not relying on the City or information provided by the City.

RECEIPT AND ACKNOWLEDGEMENT
PRIVATE PLACEMENT MEMORANDUM

The undersigned does hereby acknowledge receipt of the Private Placement Memorandum delivered to the undersigned dated the 1st day of January, 2024.

DATED: _____

Wild Oak Group, LLC
By: Syndica, LLC, Manager

By: _____
Benjamin N. Meland, Partner

TAX INCREMENT NOTE

No. R-1

\$3,592,234.56

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
CASS COUNTY
CITY OF FARGO

TAX INCREMENT
REVENUE NOTE OF 2024
(TAX INCREMENT DISTRICT 2020-01)

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, a North Dakota municipal corporation (the "City"), certifies that it is indebted and for value received promises to pay to **Wild Oak Group, LLC** (the "Developer"), or the registered assign, the principal sum of **Three Million Five Hundred Ninety Two Thousand Two Hundred Thirty Four and 56/100 Dollars (\$3,592,234.56)**, an amount issued in reimbursement of eligible costs paid by the Developer, unless due sooner by redemption or early payment, on the Maturity Date defined below; but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided; and to pay interest on the unpaid principal amount of this Note at the rate of interest of **Four Percent (4%) per annum**, compounded annually. Interest shall accrue from the date of this Note on the amount issued and shall be computed on the basis of a 360-day year consisting of 12 30-day months. This Note is the "Tax Increment Note" (the "Note") described and defined in that certain Developer Agreement, dated as of November 30, 2020 (as the same may be amended from time to time, the "Developer Agreement"), by and between the City and Wild Oak Group, LLC, a North Dakota limited liability company, as the successor in interest to Craig Enclave OG, LLC, the initial Developer under the Developer Agreement. Each capitalized term which is used but not otherwise defined in this Note shall have the meaning given to that term in the Developer Agreement or in the resolution authorizing the issuance of this Note. Principal and interest are payable at such address as shall be designated in writing by Wild Oak Group, LLC, or other registered holder of this Note, in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

Payment Dates. Subject to the terms hereof, the principal of and interest on this Note shall in the aggregate be payable on each May 15th and November 15th, following the first (1st) Tax Year as identified in the Tax Increment Note and on May 15th and November 15th of each year thereafter until the Maturity Date, each of said May 15th and November 15th dates being referred to herein as a "Payment Date" or collectively as the "Payment Dates" (the "Payment Dates"). The first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project that resulted from the first (1st) Tax Year. For all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since

the prior payment. Notwithstanding the previous sentence, in the event that Developer's Taxes are paid in full on or before February 15th of each year, the City agrees, and the City's Finance Director is hereby authorized, to pay out the full amount of Available Tax Increments received from the County Auditor upon written request submitted by the Developer. The City's Finance Director is authorized to make such payment within the later of (a) forty (40) days after receipt by the City of the Available Tax Increments are received by the City from the County Auditor, or (b) forty days from the date of receipt of said written request.

Early Payment of Taxes. In the event that Developer's Taxes are paid in full on or before February 15th of a particular year, the City agrees, and the City's Finance Director is hereby authorized, to pay out the full amount of Available Tax Increments received from the County Auditor upon written request submitted by the Developer. In such instance, the City's Finance Director is authorized to make such payment within the later of (a) forty (40) days after receipt by the City of the Available Tax Increments are received by the City from the County Auditor, or (b) forty days from the date of receipt of said written request. If such payment is made, then it shall be unnecessary to make the payout of annual increment in two payments as is otherwise provided herein.

Payment Amounts. On each Payment Date (or, if not a business day of the City, the first business day thereafter) the City shall pay by check or draft mailed to the person that was the Registered Owner of the Note at the close of the last business day of the City preceding such Payment Date an amount as follows: (a) the first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received prior to said date by the City on the Project from the first Tax Year and (b) for all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since the prior payment. All such payments made on the Tax Increment Note shall be from the Developer's Taxes. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever. In no event shall any City be obligated to remit payment of principal in excess of the aggregate amount of the unpaid principal of the Note. The City shall have the option at any time to prepay in whole or in part the principal amount of this Note at par plus accrued interest. All payments made by the City under this Note shall be applied first to pay accrued and unpaid interest on this Note and second toward payment of principal hereof.

Redemption. In addition to the amounts of principal required to be paid by the City as hereinabove set forth, the City shall have the right to prepay on any date the entire principal amount hereof then remaining unpaid, or such lesser portion thereof as it may determine upon, in multiples of \$1,000, at par plus accrued interest. Notice of any such optional prepayment shall be given prior to the prepayment date by mailing to the registered owner of this Note a notice fixing such prepayment date and the amount of principal to be prepaid.

Available Tax Increments. "Available Tax Increments" are defined in the Developer Agreement as follows:

"Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby."

In addition, "Developer Tax Increments" are defined in the Developer Agreement as follows:

"Developer Tax Increments" means the portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments, derived from Developer's Taxes."

"Tax Increments" are defined in the Developer Agreement as follows:

"Tax Increments' means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass County, from time to time from the TIF District pursuant to the Urban Renewal Law."

"Developer's Taxes" are defined in the Developer Agreement as follows:

"Developer's Taxes' means taxes paid for the first (1st) Tax Year through the fifteenth (15th) Tax Year with respect to the portions of the Development Property and Improvements thereon. Taxes for the sixteenth (16th) Tax Year or for any subsequent year are not included as Developer's Taxes.

"Tax Year" is defined in the Developer Agreement as follows:

"Tax Year" is one of a maximum of fifteen (15) successive calendar years, with the first year being the calendar year identified and deemed to be the first (1st) Tax Year in the Tax Increment Note and with the successive fourteen (14) consecutive calendar years being the second (2nd) through fifteenth (15th) Tax Years.

"Maturity Date" is defined in the Developer Agreement as follows:

"Maturity Date" means the date that is three (3) years from the November 15th Payment Date for the fifteenth (15th) Tax Year.

In addition, Section 3.6 of the Developer Agreement provides as follows:

"The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

- (a) to make payments on the Tax Increment Note; and,

(b) after payment of the City Development Costs and Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

No Payment Upon Default. No payments will be made on this Note during such time as there is an Event of Default under the Developer Agreement which has not been cured by the Developer.

Lack of Protective Covenants. The City of Fargo, North Dakota (the "City"), has not covenanted to endeavor in any fashion to cause Tax Increments to be sufficient to generate Available Tax Increments sufficient to pay this Note, nor have they covenanted to take actions under the Developer Agreement with such sufficiency as a goal.

Sufficiency of Revenues. The City makes no representation or covenant, express or implied, that the revenues described herein will be sufficient to pay, in whole or in part, the amounts which are or may otherwise become due and payable hereunder. Any amounts which have not become due and payable on this Note on or before the Maturity Date shall no longer be payable, as if this Note had ceased to be any debt or obligation of the City or of the City whatsoever.

Issuance; Purpose; Special Limited Obligation. This Note is in the aggregate principal amount of \$3,592,234.56 (the "Note"), which Note has been issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota including North Dakota Century Code Chapter 40-58, for the purpose of providing money to finance certain eligible costs within the City's Urban Renewal District 2020-01, specifically the costs identified in Section 3.3 of the Developer Agreement. The Notes are payable out of the Tax Increment Revenue Note of 2024 Fund of the City, to which have been pledged amounts representing Available Tax Increments to be received by the City from the City's Tax Increment District No. 2020-01 in the City. This Note is not any obligation of any kind whatsoever of any public body, except that this Note is a special and limited revenue obligation but not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications and limitations stated or referenced herein. Neither the full faith and credit nor the taxing powers of the City or of the City are pledged to or available for the payment of the principal of or interest on this Note, and no property or other asset of the City or of the City, save and except the above referenced Available Tax Increments, is or shall constitute a source of payment of the City's obligations hereunder.

Limitation on Transfer. This Note may only be transferred to a person who is (1) a successor of Wild Oak Group, LLC, by reorganization, merger or acquisition, (2) a member of Wild Oak Group, LLC, (3) to a lender of Wild Oak Group, LLC, as collateral for financing as permitted by the Developer Agreement, (4) a related person to such partner or successor, (5) a "qualified institutional buyer" as defined in Rule 144A promulgated under the federal Securities Act of 1933, or (6) an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) promulgated under the federal Securities Act of 1933. The City shall not register any transfer of this Note unless (i) a registered owner's prospective transferee delivers a representation letter in form satisfactory to the City verifying that the

transferee is a "qualified institutional buyer"; or (ii) such transferee is an "accredited investor" which has delivered a representation letter in form satisfactory to the City; or (iii) the prospective transferee demonstrates to the satisfaction of the City that it is the successor, partner or related person to Wild Oak Group, LLC, noted above.

Any registered owner desiring to effect a transfer shall, and does hereby, agree to indemnify the City against any liability, cost or expense (including attorneys' fees) that may result if the transfer is not so made.

Registration; Transfer. This Note shall be registered in the name of the payee on the books of the City by presenting this Note for registration to the officer of the City performing the functions of the Treasurer, who will endorse his or her name and note the date of registration opposite the name of the payee in the certificate of registration on the reverse side hereof. Thereafter this Note may be transferred to a bona fide purchaser who is a permitted transferee only by delivery with an assignment duly executed by the registered owner or his, her or its legal representative, and the City may treat the registered owner as the person exclusively entitled to exercise all the rights and powers of an owner until this Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Treasurer of the City.

Developer Agreement. The terms and conditions of the Developer Agreement are incorporated herein by reference and made a part hereof. The Developer Agreement may be attached to this Note, and shall be attached to this Note if the holder of this Note is any person other than **Wild Oak Group, LLC**. No payments will be made on this Note during such time as there is a Specified Event of Default under the Developer Agreement which has not been cured by the Developer.

Taxable Obligation. This Note is intended to bear interest that is included in the gross income of the owner.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to happen and to be performed, precedent to and in the issuance of this Note, have been done, have happened and have been performed, in regular and due form, time and manner as required by law; and that this Note, together with all other debts of the City outstanding on the date hereof, being the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, the City of Fargo, Cass County, North Dakota, by its Board of City Commissioners has caused this Note to be executed on its behalf by the signature of its Mayor and attested by the signature of the City Auditor, all as of January 1, 2024.

CITY OF FARGO,
a North Dakota municipal corporation

By: _____
Timothy Mahoney, its Mayor

ATTEST:

Steven Sprague, City Auditor

(SEAL)

CERTIFICATE OF REGISTRATION

The transfer of ownership of the principal amount of the attached Note may be made only by the registered owner or his, her or its legal representative last noted below.

DATE OF
REGISTRATION

REGISTERED OWNER

SIGNATURE OF
AUTHORITY'S
REPRESENTATIVE

Wild Oak Group, LLC

Wild Oak Group, LLC
By: Syndica LLC, its Mgr
fBy: Benjamin N. Meland, Ptrr

_____, 20____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



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ASSESSOR'S OFFICE
Fargo City Hall
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1340 | Fax: 701.241.1339
www.FargoND.gov

December 1, 2023

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Attached is the Application for Abatement or Refund of Taxes #4549. The application is for a residence located at 2609 11 St S. The application requests the following:


#4549 – for 2023, a reduction from \$319,900 to \$270,400

We have provided information regarding the valuation of this property and the reasons for a value adjustment. With the information provided by the owner and our staff appraiser's review, and based on the current conditions of the property, we created new approaches to value and recommend value adjustments as provided below.

The applicant has accepted the proposed value and has waived the city hearing.

SUGGESTED MOTION:

**Adjust the property values at 2609 11 St S in the following manner:
#4549 – reduce the 2023 certified value to \$289,800**

Sincerely,

Michael Splonskowski
Fargo City Assessor

Application For Abatement Or Refund Of Taxes

North Dakota Century Code § 57-23-04

File with the County Auditor on or before November 1 of the year following the year in which the tax becomes delinquent.

State of North Dakota Assessment District Fargo
 County of CASS Property I.D. No. 01-2860-00750-000
 Name STARR THIES Telephone No. [REDACTED]
 Address 2609 11th St S

Legal description of the property involved in this application:
Lot 74 Block 0 Southwood lot 74

Total true and full value of the property described above for the year 2023 is:
 Land \$ 80,900
 Improvements \$ 239,000
 Total \$ 319,900
 (1)

Total true and full value of the property described above for the year 2023 should be:
 Land \$ 80,900
 Improvements \$ 189,500
 Total \$ 270,400
 (2)

The difference of \$ 49,500.00 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
- 2. Residential or commercial property's true and full value exceeds the market value
- 3. Error in property description, entering the description, or extending the tax
- 4. Nonexisting improvement assessed
- 5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
- 6. Duplicate assessment
- 7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
- 8. Error in noting payment of taxes, taxes erroneously paid
- 9. Property qualifies for Homestead Credit (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of the application.
- 10. Other (explain) Fargo Assessor came to assess the home

The following facts relate to the market value of the residential or commercial property described above. For agricultural property, go directly to question #5.

1. Purchase price of property: \$ 262,500 Date of purchase: 11-05-2021
 Terms: Cash _____ Contract _____ Trade _____ Other (explain) _____
 Was there personal property involved in the purchase price? N Estimated value: \$ _____
 yes/no

2. Has the property been offered for sale on the open market? N If yes, how long? _____
 yes/no
 Asking price: \$ _____ Terms of sale: _____

3. The property was independently appraised: Y Purpose of appraisal: Assessment for Taxes
 yes/no
 Market value estimate: \$ 270,400
 Appraisal was made by whom? Fargo City Assessor

4. The applicant's estimate of market value of the property involved in this application is \$ _____

5. The estimated agricultural productive value of this property is excessive because of the following condition(s): _____

Applicant asks that Please amend 2023 assessment to match the new assessment made by fargo city assessor's

By filing this application, I consent to an inspection of the above-described property by an authorized assessment official for the purpose of making an appraisal of the property. I understand the official will give me reasonable notification of the inspection. See N.D.C.C. § 57-23-05.1.

I declare under the penalties of N.D.C.C. § 12.1-11-02, which provides for a Class A misdemeanor for making a false statement in a governmental matter, that this application is, to the best of my knowledge and belief, a true and correct application.

Signature of Preparer (if other than applicant) _____ Date 10-4-23 Signature of Applicant Starr Thies Date 10-4-23

Recommendation of the Governing Body of the City or Township

Recommendation of the governing board of _____

On _____, _____, the governing board of this municipality, after examination of this application and the facts, passed a resolution recommending to the Board of County Commissioners that the application be _____

Dated this _____ day of _____, _____

 City Auditor or Township Clerk

Action by the Board of County Commissioners

Application was _____ by action of _____ County Board of Commissioners.

 Approved/Rejected

Based upon an examination of the facts and the provisions of North Dakota Century Code § 57-23-04, we approve this application. The taxable valuation is reduced from \$ _____ to \$ _____ and the taxes are reduced accordingly. The taxes, if paid, will be refunded to the extent of \$ _____. The Board accepts \$ _____ in full settlement of taxes for the tax year _____.

We reject this application in whole or in part for the following reason(s). Written explanation of the rationale for the decision must be attached. _____

Dated _____, _____

 County Auditor _____ Chairperson

Certification of County Auditor

I certify that the Board of County Commissioners took the action stated above and the records of my office and the office of the County Treasurer show the following facts as to the assessment and the payment of taxes on the property described in this application.

Year	Taxable Value	Tax	Date Paid (if paid)	Payment Made Under Written Protest? yes/no

I further certify that the taxable valuation and the taxes ordered abated or refunded by the Board of County Commissioner are as follows:

Year	Reduction in Taxable Valuation	Reduction in Taxes

 County Auditor _____ Date

Application For Abatement
 Or Refund Of Taxes

Name of Applicant Starr Thies

County Auditor's File No. 4549

Date Application Was Filed With The County Auditor 10/19/2023

Date County Auditor Mailed Application to Township Clerk or City Auditor 10/11/2023
(must be within the business days of filing date)

Thies Residence

Parcel Number: 01-2860-00750-000

2609 11 ST S

Owner: Starr Lynn Thies

Appeal of Assessment for Year: 2023

Name of Applicant: Starr Thies

2023 True & Full Value 319,900 \$208 / sf

Applicants Requested Value(s) 270,400 \$176 / sf - 15.5%

Sale Price (11/2021) 284,200 \$185 / sf

General Property Information

Property Type Single Family Dwelling

Year Built 1963

Building Story Height Two Story

Total Living Area (Above Grade) 1,536 sf

 4 Beds / 2.5 Baths

Staff Recommendation 289,800 \$189 / sf - 9.4%

**Summary**

Appellant appealed the 2023 true and full value on September 28, 2023. The property characteristics were previously estimated based on publicly available information. The value was re-appraised for the 2022 tax year. The value was increased for 2023 due to market conditions.

The subject was estimated to be in good overall condition. Publically available information indicated updated flooring and bathrooms. The subject appeared to be well maintained. Upon inspection, assessment staff discovered issues with the foundation walls (heaving), leaking and / or non-functional windows, and settling issues with the front porch. Staff reduced the condition of the home to "average" considering the blend of updates and deficiencies noted during the inspection. City staff adjusted the value with the 2022 value model, adjusted forward for market conditions. This method keeps the subject value equitable with the neighborhood, while accounting for conditions found during the field visit.

All homes in the Lincoln Map Zone were re-appraised for the 2022 tax year. Values were adjusted +15% for 2023 due to market conditions. The following homes are deemed most comparable to the subject. The 2023 value was over-assessed and un-equalized with its neighbors of similar character. The differences in assessed values below are largely tied to the land value of each parcel.

Comparable Sales Summary

Address	Map Zone	Year Built	Size	Style	Beds	Baths	Garage Stalls	Sale Date	Sale Price (with SPUN)	Price \$/SF
507 22 Ave S	Lincoln	1966	1,536	2 Story	4	2.5	2 Stall / Att	06/2022	318,400	207
914 21 Ave S	Lincoln	1965	2,024	2 Story	4	2.5	2 Stall / Att	03/2021	348,200	172
113 26 Ave N	Northport	1962	1,552	2 Story	4	1.5	2 Stall / Att	05/2022	293,000	189
1333 10 St S	Clara Barton	1951	1,805	1.5 Story	3	3	2 Stall / Det	10/2022	367,800	204
1808 Park Blvd S	South High	1977	1,590	1.5 Story	2	2	2 Stall / Att	11/2021	311,100	196
Subject		1963	1,536	2 Story	4	2.5		Proposed	289,800	189

Competing Properties (Assessed Values) Summary

Address	Map Zone	Year Built	Size	Style	Beds	Baths	Garage Stalls	Tax Year	Sale Price (with SPUN)	Price \$/SF
2601 11 ST S	Lincoln	1967	1,532	2 Story	4	2.5	2 Stall / Att	2023	294,400	192
507 22 AVE S	Lincoln	1966	1,536	2 Story	4	2.5	2 Stall / Att	2023	275,900	180
615 24 AVE S	Lincoln	1963	1,620	2 Story	4	2.5	2 Stall / Att	2023	289,600	179
514 22 AVE S	Lincoln	1966	1,632	2 Story	4	2.5	2 Stall / Att	2023	288,400	177
Subject Before		1963	1,536	2 Story	4	2.5		2023	319,900	208
Subject After								Proposed	289,800	189

Staff Recommendation: Reduce the true and full value for the 2023 tax year to \$289,800

Information provided above is a summary of the analysis conducted. Full analysis is provided in the Assessment Department's work file.

CITY ATTORNEY

Nancy J. Morris

4

ASSISTANT CITY ATTORNEYS

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

December 7, 2023

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

**RE: Findings, Conclusions and Order of the Board of City Commissioners of the city of
Fargo regarding the License Violation of District 64**

Mayor and Commissioners,

Presented for your consideration and approval please find Findings, Conclusions and Order in accordance with Fargo Municipal Code § 25-1513 regarding your previous unanimous decision finding District 64 in violation of Fargo Municipal Code § 25-1509- minors in a liquor establishment.

Suggested Motion: I move to adopt the Finding, Conclusion and Order regarding the District 64 liquor license violation, as presented.

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

Regards,



Nancy J. Morris

cc: Steve Sprague
Chief David Zibolski

Findings, Conclusions and Order of the Board of City Commissioners of the city of Fargo regarding the License Violation of District 64

The matter before the board of City Commissioners of the city of Fargo (City Commission) is whether or not there is a factual basis to find that it is more likely than not that District 64 violated Fargo Municipal Code §25-1509 on May 5-6, 2023 or on May 19, 2023, Minors in a Liquor Establishment. If the City Commission finds one or more violation to have occurred, the administrative penalty(s) in accordance with Fargo Municipal Code §25-1512 shall be applied. The licensee received notice of the asserted violations and was heard by the Liquor Control Board on September 13, 2023, and the City Commission at a Special Meeting on October 25, 2023. Fargo Police Chief David Zibolski presented the factual basis to the City Commission recommending a finding of a violation of Fargo Municipal Code §25-1509. The licensee was represented by attorney Tim O’Keeffe both before the Liquor Control Board and Board of City Commissioners. The City Commission further considered the submitted documents, the finding of the Liquor Control Board and documents presented to the Liquor Control Board.

The City Commission makes the following Findings of Fact, Conclusions and Order in accordance with Fargo Municipal Code §25-1513.

FINDINGS OF FACT

1. By notice dated August 17, 2023, City Auditor Steven Sprague advised licensee District 64 of his findings based on Police Department Liquor Establishment Report Forms and confirmation of convictions of offenses in Municipal Court that violations of Fargo Municipal Code § 25-1509 pertaining to minors in a liquor establishment were found to occur on May 5-6, and again on May 19, 2023.

2. The Liquor Control Board met and heard evidence of the liquor license violations on September 13, 2023.
3. Chief of Police David Zibolski presented a factual recitation of the violations to the Liquor Control Board, including the entry of plea and judgments of the minors wherein six (6) minors pled guilty for being present in the liquor establishment, on May 5-6, 2023 and four (4) minors similarly admitted they were present in District 64 in violation of the law on May 19, 2023.
4. District 64 presented testimony that the establishment takes several measures to ensure that all entrants present identification to secure entry, and further that fake identifications are a problem and concern for liquor establishments.
5. District 64 did not deny the fact that minors were present in the liquor establishment on May 5-6 and May 19, 2023.
6. The Liquor Control Board considered all the evidence and recommended a finding of one violation on May 5-6, 2023, recognizing the efforts undertaken by District 64 to address the violations by taking further steps to comply with the license provisions.
7. District 64 requested a hearing before the City Commission following the Liquor Control Board recommendation. A special City Commission hearing was held on October 25, 2023.
8. Chief Zibolski presented the factual basis for consideration by the City Commission to independently find a violation of Fargo Municipal Code § 25-1509:
 - a. Chief Zibolski provided the history of the multiple interactions the Fargo Police Depart and others have had with District 64 over the course of several months, including a meeting on March 8, 2023, wherein District 64 was made aware of

- reports of minors being permitted into the liquor establishment. District 64 provided assurances at that meeting that a scanner would be utilized to attempt to prevent the entry of minors; and
- b. Chief Zibolski established the conviction of minors in District 64 on May 5-6, and again on May 19, 2023; and
 - c. District 64 admitted the presence of minors in the liquor establishment on the dates in contention; and
 - d. District 64 asserted the minors must have presented fake identification to gain entry, and that a delay in making the establishment aware of the alleged violations hindered its ability to present video evidence that proper precautions were employed to attempt to prevent the minors from being admitted in District 64 on May 5-6 and May 19, 2023; and
 - e. Chief Zibolski, assisted by Sergeant Jarrod Wagner, presented video evidence from District 64 obtained pursuant to a search warrant that shows the admission of a person known to be a minor into District 64 without identification being requested or a scanner being utilized on June 24, 2023.

CONCLUSIONS

The board of City Commissioners of the city of Fargo find that minors were in fact in District 64 on May 5-6, 2023 and again on May 19, 2023, in violation of Fargo Municipal Code §25-1509, as admitted by District 64.

The board of City Commissioners of the city of Fargo expressed its appreciation and recognition of the strategies implemented by District 64 to address the issue of fake identifications being utilized by minors to gain entry into liquor establishments, but noted that the video from June

24, 2023, highlights that District 64 did not employ tools available to prevent the entry of minors to the extent possible at all times.

The board of City Commissioners of the city of Fargo acknowledged District 64's assertion that video retention may have demonstrated the minors in the establishment on May 5-6, 2023 and May 19, 2023, presented fake identification to the security personnel, but rejected the assertion that the delay of notice absolved the violations.

ORDER

After considerable discussion among the board of City Commissioners of the city of Fargo and a closing statement by counsel acknowledging the existence of minors in the liquor establishment, Commissioner Piepkorn moved to support the recommendation of the Liquor Control Board and further find that a single violation of Fargo Municipal Code § 25-1509, permitting a person under 21 years of age to enter a liquor establishment, is factually supported, and to impose a \$500 administrative penalty.

Commissioner Kolpack seconded the motion. On roll call vote, the motion was passed unanimously.

DATED this ____ day of December, 2023.

BOARD of CITY COMMISSIONERS of the CITY
OF FARGO, a North Dakota Municipal Corporation

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

ATTEST:

Steven Sprague, City Auditor

CITY ATTORNEY

Nancy J. Morris

5

ASSISTANT CITY ATTORNEYS

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

December 7, 2023

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

RE: Lease Extension Agreement- Red River Properties, LLP (Police Department Building)

Dear Mayor and Commissioners,

Please find attached a Lease Extension as contemplated in the original Lease for the existing Police Department facility. As you may recall, the Lease provides for an Option to Purchase. On March 6, 2023 this Commission approved with giving Notice of Intent to Purchase and such Notice was delivered to the Owners. An appraisal has been secured and negotiations are underway to acquire the property. However, during the pendency of those negotiations and in the unlikely event that a purchase price cannot be agreed upon, the Lease Agreement Extension presented for your consideration will provide for continued, uninterrupted occupancy at the Lease rate provided for in the Lease Extension. The Lease further provides for one additional five year extension should acquisition not be accomplished as intended.

Suggested Motion: I move to approve the Lease Extension Agreement as presented.

Please feel free to contact me with any questions, comments, or concerns.

Regards,



Nancy J. Morris

cc: Michael Redlinger
Bekki Majerus
Chief David Zibolski
Susan Thompson

EXTENSION TO LEASE AGREEMENT

Pursuant to Lease Agreement with Option to Purchase (Lease) by and between Red River Properties, LLP (Landlord) and city of Fargo (Tenant) dated February 21, 2017, the parties wish to extend the Lease as provided in paragraphs 3 and 4. The parties agree and understand that such extension is effective January 1, 2024, for monthly installments of rent in the amount of \$84,520.00. The parties further understand and agree that City intends to purchase the real estate, and that the acquisition process is ongoing. Should the parties be unable to agree to a purchase price, the Lease renewal shall be effective from January 1, 2024 to December 31, 2028, and thereafter as provided in the Lease. Until such time as the parties close or reach an impasse as to purchase price, the Lease will be extended on a month to month basis.

Dated this ____ day of December, 2023.

RED RIVER PROPERTIES, LLP, a North Dakota
Limited Liability Partnership

Gregory G. Hoffelt, Managing Partner

Dated this ____ day of December, 2023.

CITY OF FARGO, a North Dakota municipal
corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA



ORDINANCE NO. _____

AN ORDINANCE ENACTING SECTION 8-0610 OF ARTICLE 8-06 OF
CHAPTER 8 OF THE FARGO MUNICIPAL CODE
RELATING TO ROTARY TRAFFIC ISLANDS

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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 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, 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. Enactment.

Section 8-0610 of Article 8-06 of Chapter 8 of the Fargo Municipal Code is hereby enacted as follows:

8-0610 – Rotary Traffic Islands

1. A vehicle passing around a rotary traffic island must be driven only to the right of such island.
2. After a vehicle enters a rotary traffic island, the vehicle may not exit from any position within the rotary traffic island without first giving a signal of intention to exit the rotary traffic island.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Penalty.

A person who violates Fargo Municipal Code section 8-0610 shall be deemed to have committed a non-criminal offense and shall pay a fee of \$40 as provided in Section 1-0305 of the Fargo Municipal Code, as may be amended from time to time.

Section 3. Effective Date.

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

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

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading and Final Passage:
Publication:

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 25-1508 OF ARTICLE 25-15
OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE RELATING
TO ALCOHOLIC BEVERAGES

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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 25-1508 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby amended to read as follows:

* * *

L. Self-Serve Dispenser Utilization (Beer and Wine only). An establishment holding an on-sale license that allows for the sale of beer and wine only may utilize a self-serve dispenser, provided all of the requirements for self-serve dispenser utilization are met:

1. Only draft beer and wine may be dispensed from the self-serve dispenser; no spirits or mixed drinks may be dispensed; and
2. All alcohol dispensed must be consumed on the licensed premises; and

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- 1 3. The self-serve dispenser shall require access controlled by the licensee as to the method
2 and amount of the alcohol accessible to the patron. Controlled access may be by any
3 technology or device so long as the liquor cannot be drawn or obtained by a patron
4 without being first approved for access to the dispenser by the licensee, and each
5 approved access restricts the amount of liquor that may be dispensed by the patron as
6 required under this section; and
- 7 4. Each access transaction provided by the licensee to the patron shall be deemed as and
8 constitutes a sale or the service of liquor to the patron as is otherwise regulated by Fargo
9 Municipal Code Chapter 25-15; and
- 10 5. Each access transaction for a patron to the self-serve liquor dispenser shall limit the
11 patron access to no more than 32 fluid ounces of beer and 10 liquid ounces of wine. No
12 patron shall have or be provided at any one time with access to more than the restricted
13 amount; and
- 14 6. Certified server trained employees shall be required for all self-serve liquor access
15 transactions; and
- 16 7. Subsequent access transactions shall be closely monitored, and access provided in lesser
17 amounts as appropriate; and
- 18 8. Prior to approving or reapproving any dispenser transaction, the patron's age shall be
19 verified to ensure the patron is age 21 or older; and
- 20 9. No persons under the age of 21 shall be permitted in the licensed premises; and
- 21 10. All access transaction authorizations shall terminate or be disabled prior to the patron
22 leaving the licensed premises; and
- 23 11. No patron shall transfer or share any access transaction device or passcode to another
person or remove the access device from the licensed premises; and
12. The licensed premises must be attended by the licensee at all times while the self-serve
dispensary is operational and patrons are present in the licensed premises.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Penalty.

1 A person who willfully violates this ordinance is guilty of an infraction. Every person,
2 firm or corporation violating an ordinance which is punishable as an infraction shall be punished
3 by a fine not to exceed \$1,500; the court to have power to suspend said sentence and to revoke
the suspension thereof.

4 * * * *

5 Section 3. Effective Date.

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

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11 _____
Timothy J. Mahoney, M.D., Mayor

12 Attest:

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14 _____
Steven Sprague, City Auditor

15 First Reading:
16 Second Reading:
17 Final Passage:
18 Publication:
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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

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ORDINANCE NO. _____

AN ORDINANCE REZONING A CERTAIN PARCEL
OF LAND LYING IN EKMAN ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

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

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on November 7, 2023; and,

WHEREAS, the rezoning changes were approved by the City Commission on November 27, 2023,

NOW, THEREFORE,

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

Section 1. The following described property:

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

is hereby rezoned from "GC", General Commercial, District to "MR-3", Multi-Dwelling Residential, District.

Section 3. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 4. This ordinance shall be in full force and effect from and after its passage and approval.

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

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
2 LYING IN URBAN PLAINS BY
3 BRANDT SEVENTH ADDITION TO THE
4 CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

5 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the
6 City of Fargo have held hearings pursuant to published notice to consider the proposed rezoning of
7 certain parcels of land lying in the proposed Urban Plains by Brandt Seventh Addition to the City of
8 Fargo, Cass County, North Dakota; and,

9 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
10 request on October 3, 2023; and,

11 WHEREAS, the rezoning changes were approved by the City Commission on November
12 27, 2023,

13 NOW, THEREFORE,

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

15 Section 1. The following described property:

16 All of Urban Plains by Brandt Seventh Addition to the City of Fargo, Cass County,
17 North Dakota,

18 that is currently zoned "LC", Limited Commercial, District, subject to the existing "C-O",
19 Conditional Overlay, Districts, as established by Fargo Municipal Ordinance Nos. 5103,
20 5153, and 4978, will hereby retain the base zoning of "LC", Limited Commercial, District,
21 repealing and re-establishing the "C-O", Conditional Overlay, Districts, as follows:

22 Requirements for mixed-use and non-residential development

- 23 1. Description. This C-O, Conditional Overlay District is primarily intended to encourage high-quality, durable, and long-lasting investments to enhance the quality of life and discourage blight. All properties should be designed to a human scale, and buildings should have architectural interest and variety through the use of articulated faades.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2. Building form and style.

1 2.1 All building elevations/façades greater than 150 feet in length, measured horizontally
2 from vertical edge to vertical edge, shall incorporate wall plane projections or recesses.
3 Each projection and/or recess shall have a depth of at least two (2) feet, and the
4 cumulative total horizontal width of all projections and/or recesses within a façade shall
5 equate to at least an accumulated total of twenty (20) percent of the overall horizontal
6 length of the façade. No uninterrupted length of any façade shall exceed 150 horizontal
7 feet.

8 2.2 Ground floor façades that face public streets shall have arcades, display windows,
9 entry areas, awnings, or other such features of pedestrian scale along no less than fifty
10 (50) percent of their horizontal length. If the façade facing the street is not the front, it
11 shall include the same features and/or landscaping in scale with the façade.

12 2.3 All buildings, regardless of size, shall have clearly defined, highly-visible public
13 entrances that connect to public spaces, streets, pedestrian paths, and plazas with no
14 fewer than two (2) of the following: canopies, awnings or porticos; recesses/projections
15 varying the façade; raised corniced parapets over the door; peaked roof forms; arches or
16 arcades; entry courts; raised landscape planters and/or wing walls integrated with the
17 building.

18 2.4 Exterior walls shall be constructed or clad with natural stone, synthetic stone, brick,
19 stucco, integrally colored and textured concrete masonry units or systems, EIFS, fiber
20 cement, architectural metal panels, curtain walls, rainscreen systems, or glass. All
21 materials shall be commercial grade, durable, and have a multi-generational life span.

22 2.5 Accent materials such as finished wood and vinyl may be used to construct or clad
23 exterior walls up to twenty (20) percent of each building façade.

2.6 Flat roofs and rooftop mechanical equipment shall be concealed from public view at
ground level by parapets or other enclosures.

2.7 Loading/unloading areas, building service entrances, loading docks, overhead doors,
and ground-level HVAC units shall be visually screened from adjacent public right-of-
way by structures and/or landscaping. All structures used for visual screening shall be
constructed or clad with the same materials used for the primary building.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 2.8 Dumpsters, refuse containers, and outdoor storage areas shall be located at the side or
2 rear of buildings and visually screened from adjacent public right-of-way by permanent
3 walls. The permanent walls shall be constructed or clad with the same materials used for
4 the primary building. Dumpsters and refuse containers shall contain permanent walls on
at least three (3) sides, with the service opening not directly facing any public right-of-
way or residentially zoned property. The fourth side shall incorporate a metal gate to
visually screen the dumpsters or refuse containers.

5 3. Site Design.

6 3.1 A minimum of five (5) percent of the internal surface area of the parking lot shall be
7 landscaped through the use of planter islands and peninsulas.

8 3.2. Separate vehicular and pedestrian circulation systems shall be provided. Adjacent
9 properties may share pedestrian circulation systems that connect to public sidewalks with
10 Zoning Administrator approval. An on-site system of pedestrian walkways shall be
provided between building entrances and the following:

11 3.2.1. Parking lots or parking structures;

12 3.2.2. Any public sidewalk or multi-use path along the perimeter of the lot;

13 3.2.3. Entrances of other buildings on the site;

14 3.2.4. Any public sidewalk system along the perimeter streets adjacent to the
development; and

15 3.2.5. Adjacent pedestrian origins and destinations— including, but not limited to,
16 transit stops, residential development, office buildings, and retail shopping
17 buildings— where deemed practical and appropriate by the Zoning
18 Administrator.
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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

4. Prohibited uses include the following:

1 4.1 Portable advertising signs;

2 4.2 Detention facilities;

3 4.3 Self-service storage;

4 4.4 Vehicle repair;

5 4.5 Vehicle service, limited; and

6 4.6 Industrial uses.

7
8 5. Conditional Uses. For the purposes of this Conditional Overlay, the following use(s)
9 require approval of a Conditional Use Permit in accordance with Section 20-0909 of the
10 Land Development Code:

11 5.1 Off-premises advertising

12 6. Definitions.

13 6.1 Façade: Any exterior side of a building as viewed from a single direction, typically
14 perpendicular to the exterior side of the building being viewed.

15 6.2 Depth: A horizontal distance perpendicular to a building façade.

16 6.3 Elevation: A horizontal orthographic projection of a building onto a vertical plane,
17 parallel to one side of the building.

18 6.4 Landscaped: To make an area of land more attractive by adding plants.

19 6.5 Permanent Walls: constructed of bricks and cement or similar materials, anchored to
20 a permanent foundation.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

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

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

10

ORDINANCE NO. _____

1 AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
2 LYING IN TIMBER PARKWAY EIGHTH ADDITION
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

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

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
9 request on November 7, 2023; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on November
11 27, 2023,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 Lot One (1), Block One (1) of Timber Parkway Eighth Addition to the City of
16 Fargo, Cass County, North Dakota,

17 that is currently zoned "GC", General Commercial, District, subject to the existing "C-O",
18 Conditional Overlay, District, as established by Fargo Municipal Ordinance No. 4908, will
19 hereby retain the base zoning of "GC", General Commercial, District, repealing and re-
20 establishing the "C-O", Conditional Overlay, District as follows:

21 A. Description

- 22 a. This C-O, Conditional Overlay, District, is primarily intended to encourage high-
23 quality, durable, and long-lasting investments.

B. Design Standards

a. Building Massing

- i. All buildings shall have architectural interest and variety to avoid the
effect of a single, long, or massive wall.
- ii. All buildings shall include variations in size and shape.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- 1 iii. All building elevations or façades facing or viewable from rights-of-way
2 or parking lots that are greater than 150 feet in length, measured
3 horizontally from vertical edge to vertical edge, shall incorporate wall
4 plane projections or recesses. Each projection and/or recess shall have a
5 depth of at least five (5) feet, and the cumulative total horizontal width of
6 all projections and/or recesses within a façade shall equate to at least an
7 accumulated total of twenty (20) percent of the overall horizontal length of
8 the façade. No uninterrupted length of any façade shall exceed 150 feet
9 measured horizontally.
- 10 iv. Ground floor facades that are within 200 feet of the right-of-way, measured
11 from the exterior wall, shall have arcades, display windows, entry areas,
12 awnings, spandrel glass, ground-level landscaping or other such features
13 along no less than sixty (60) percent of its horizontal length. If the façade
14 facing the right of way is not the front, it shall include the same features and
15 or landscaping in scale with the façade.
- 16 v. Four-sided design. All building façades shall be designed with a similar
17 level of design detail, respective to building massing and building
18 materials.

19 b. Building Materials

- 20 i. All primary buildings shall be constructed or clad with materials that are
21 durable, economically maintained, and of a quality that will retain their
22 appearance over time, including but not limited to, natural or synthetic
23 stone; brick; stucco; integrally-colored textured or glazed concrete
 masonry units; high-quality pre-stressed concrete systems; EIFS; glass;
 metal panels (similar to Aluco Bond) and synthetic panels (similar to
 Trespa). Natural, but durable synthetic materials with the appearance of
 wood, may be used. Horizontal metal lap siding and vertical metal batten
 shall be allowed on residential and commercial structures but shall not
 exceed seventy-five (75) percent of the building elevation for residential
 structures and fifty (50) percent for commercial structures.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

c. Screening of Dumpsters/Refuse Containers and Loading Areas

i. Dumpsters

1. All structures or permanent walls used for screening dumpsters, refuse containers, or loading areas shall be clad with materials that are the same or complementary to the primary building materials. Complementary materials should be durable and coordinate with the color palette of the building.
2. Loading and/or service areas shall be located at the side or rear of buildings and screened from public streets by structure, permanent wall, and/or landscaping, with a minimum opacity of fifty (50) percent.
3. Dumpsters and outdoor storage areas must be completely screened from view. Collection area enclosures shall contain six (6) foot-high permanent walls in height on at least three (3) sides. The fourth side shall incorporate a metal gate to visually screen the dumpster or compactor; however, if the service side does not directly face any public right-of-way or residentially zoned property the metal gate shall not be required.

d. Screening of Rooftop and Ground Level Mechanical Equipment

- i. Rooftop mechanical equipment shall be fifty (50) percent concealed from public view, when the viewing angle is from the Finish Floor elevation, measured at 150 feet from the exterior wall.
- ii. All ground-level HVAC units and utility boxes shall be screened from view by a structure, wall, fence, or landscaping.

e. Parking Lot Landscaping

- i. A minimum of ten (10) percent of the internal surface area of the parking lot shall be landscaped with plantings but shall be allowed to be reduced to five (5) percent with approved landscape buffers as outlined in subparagraph B.(f)(i).

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

f. Landscape Buffer

1 i. A fifty (50) foot landscape easement was dedicated in March of 2014 by
2 Document Number 1412948 on file with the Cass County Recorder's
3 Office along the north side of the development. The developer shall be
4 required to submit a landscape plan for this easement area which shall
5 include a combination of trees and landscaped berms, and the overall
6 landscape plan shall be approved by the Zoning Administrator. The
7 developer intends this buffer to provide a high-quality transition between
8 residential and commercial properties while also providing an added
9 aesthetic element to the development. If, in the opinion of the Zoning
10 Administrator, the proposed landscape plan meets the intended objective
11 and is reflective of high-quality design and materials, the requirement for
12 landscaping internal to parking lots as contemplated under subparagraph
13 2.(f)(ii) of Ordinance Number 4908 shall be reduced from ten (10) percent
14 to five (5) percent. The landscaping plan shall be implemented within the
15 easement area within twelve (12) months following the issuance of any
16 building permit as described in Ordinance Number 4908. Trees shall be of
17 a minimum two (2) inch caliper.

C. Prohibited Uses

- 13 a. Within the Use Category for Retail Sales/Service and Office, sales and leasing of
14 consumer vehicles including passenger vehicles, light/medium trucks, and other
15 recreational vehicles that include outdoor storage/display/sales are prohibited;
16 b. Detention Facilities;
17 c. Adult Establishment;
18 d. Self-Service Storage;
19 e. Vehicle Repair (excluding tire sales and vehicle service, limited);
20 f. Industrial Service;
21 g. Manufacturing and Production;
22 h. Warehouse and Freight Movement (excluding furniture/appliance stores);
23 i. Wholesale Sales; and
24 j. Aviation/Surface Transportation.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

D. Site Design

- a. Separate vehicular and pedestrian circulation systems shall be provided. An on-site system of pedestrian walkways shall be provided between building entrances and the following:
 - i. Any public sidewalk system along the perimeter streets adjacent to the development, or along the perimeter of the lot;
 - ii. Primary entrances of other buildings on the site; and
 - iii. Adjacent pedestrian origins and destinations – including, but not limited to, transit stops, residential development, office buildings, and retail buildings – where deemed practical and appropriate by the Zoning Administrator.

E. Signage

- a. Off-premises signs and digital billboards shall be prohibited.
- b. Advertising of businesses within said development is not considered off-premises advertising.

Unless otherwise specified above, all other provisions within the Fargo Sign Code, located in Article 20-13 of the Fargo Mun. Code shall remain in full force and effect.

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

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

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

11

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
2 LYING IN TIMBER PARKWAY TENTH ADDITION
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

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

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
9 request on November 7, 2023; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on November
11 27, 2023,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 Lots One (1) and Two (2), Block One (1) of Timber Parkway Tenth Addition to the
16 City of Fargo, Cass County, North Dakota,

17 that is currently zoned "GC", General Commercial, District, subject to the existing "C-O",
18 Conditional Overlay, District, as established by Fargo Municipal Ordinance No. 4908, will
19 hereby retain the base zoning of "GC", General Commercial, District, repealing and re-
20 establishing the "C-O", Conditional Overlay, District as follows:

21 A. Description

22 a. This C-O, Conditional Overlay, District, is primarily intended to encourage high-
23 quality, durable, and long-lasting investments.

B. Design Standards

a. Building Massing

i. All buildings shall have architectural interest and variety to avoid the
effect of a single, long, or massive wall.

ii. All buildings shall include variations in size and shape.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- 1 iii. All building elevations or façades facing or viewable from rights-of-way
2 or parking lots that are greater than 150 feet in length, measured
3 horizontally from vertical edge to vertical edge, shall incorporate wall
4 plane projections or recesses. Each projection and/or recess shall have a
5 depth of at least five (5) feet, and the cumulative total horizontal width of
6 all projections and/or recesses within a façade shall equate to at least an
7 accumulated total of twenty (20) percent of the overall horizontal length of
8 the façade. No uninterrupted length of any façade shall exceed 150 feet
9 measured horizontally.
- 10 iv. Ground floor facades that are within 200 feet of the right-of-way, measured
11 from the exterior wall, shall have arcades, display windows, entry areas,
12 awnings, spandrel glass, ground-level landscaping or other such features
13 along no less than sixty (60) percent of its horizontal length. If the façade
14 facing the right of way is not the front, it shall include the same features and
15 or landscaping in scale with the façade.
- 16 v. Four-sided design. All building façades shall be designed with a similar
17 level of design detail, respective to building massing and building
18 materials.

19 b. Building Materials

- 20 i. All primary buildings shall be constructed or clad with materials that are
21 durable, economically maintained, and of a quality that will retain their
22 appearance over time, including but not limited to, natural or synthetic
23 stone; brick; stucco; integrally-colored textured or glazed concrete
 masonry units; high-quality pre-stressed concrete systems; EIFS; glass;
 metal panels (similar to Aluco Bond) and synthetic panels (similar to
 Trespa). Natural, but durable synthetic materials with the appearance of
 wood, may be used. Horizontal metal lap siding and vertical metal batten
 shall be allowed on residential and commercial structures but shall not
 exceed seventy-five (75) percent of the building elevation for residential
 structures and fifty (50) percent for commercial structures.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

c. Screening of Dumpsters/Refuse Containers and Loading Areas

i. Dumpsters

1. All structures or permanent walls used for screening dumpsters, refuse containers, or loading areas shall be clad with materials that are the same or complementary to the primary building materials. Complementary materials should be durable and coordinate with the color palette of the building.
2. Loading and/or service areas shall be located at the side or rear of buildings and screened from public streets by structure, permanent wall, and/or landscaping, with a minimum opacity of fifty (50) percent.
3. Dumpsters and outdoor storage areas must be completely screened from view. Collection area enclosures shall contain six (6) foot-high permanent walls in height on at least three (3) sides. The fourth side shall incorporate a metal gate to visually screen the dumpster or compactor; however, if the service side does not directly face any public right-of-way or residentially zoned property the metal gate shall not be required.

d. Screening of Rooftop and Ground Level Mechanical Equipment

- i. Rooftop mechanical equipment shall be fifty (50) percent concealed from public view, when the viewing angle is from the Finish Floor elevation, measured at 150 feet from the exterior wall.
- ii. All ground-level HVAC units and utility boxes shall be screened from view by a structure, wall, fence, or landscaping.

e. Parking Lot Landscaping

- i. A minimum of ten (10) percent of the internal surface area of the parking lot shall be landscaped with plantings but shall be allowed to be reduced to five (5) percent with approved landscape buffers as outlined in subparagraph B.(f)(i).

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

f. Landscape Buffer

1 i. A fifty (50) foot landscape easement was dedicated in March of 2014 by
2 Document Number 1412948 on file with the Cass County Recorder's
3 Office along the north side of the development. The developer shall be
4 required to submit a landscape plan for this easement area which shall
5 include a combination of trees and landscaped berms, and the overall
6 landscape plan shall be approved by the Zoning Administrator. The
7 developer intends this buffer to provide a high-quality transition between
8 residential and commercial properties while also providing an added
9 aesthetic element to the development. If, in the opinion of the Zoning
10 Administrator, the proposed landscape plan meets the intended objective
11 and is reflective of high-quality design and materials, the requirement for
12 landscaping internal to parking lots as contemplated under subparagraph
13 2.(f)(ii) of Ordinance Number 4908 shall be reduced from ten (10) percent
14 to five (5) percent. The landscaping plan shall be implemented within the
15 easement area within twelve (12) months following the issuance of any
16 building permit as described in Ordinance Number 4908. Trees shall be of
17 a minimum two (2) inch caliper.

C. Prohibited Uses

- 13 a. Within the Use Category for Retail Sales/Service and Office, sales and leasing of
14 consumer vehicles including passenger vehicles, light/medium trucks, and other
15 recreational vehicles that include outdoor storage/display/sales are prohibited;
16 b. Detention Facilities;
17 c. Adult Establishment;
18 d. Self-Service Storage;
19 e. Vehicle Repair (excluding tire sales and vehicle service, limited);
20 f. Industrial Service;
21 g. Manufacturing and Production;
22 h. Warehouse and Freight Movement (excluding furniture/appliance stores);
23 i. Wholesale Sales; and
24 j. Aviation/Surface Transportation.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

D. Site Design

- a. Separate vehicular and pedestrian circulation systems shall be provided. An on-site system of pedestrian walkways shall be provided between building entrances and the following:
 - i. Any public sidewalk system along the perimeter streets adjacent to the development, or along the perimeter of the lot;
 - ii. Primary entrances of other buildings on the site; and
 - iii. Adjacent pedestrian origins and destinations – including, but not limited to, transit stops, residential development, office buildings, and retail buildings – where deemed practical and appropriate by the Zoning Administrator.

E. Signage

- a. Off-premises signs and digital billboards shall be prohibited.
- b. Advertising of businesses within said development is not considered off-premises advertising.

Unless otherwise specified above, all other provisions within the Fargo Sign Code, located in Article 20-13 of the Fargo Mun. Code shall remain in full force and effect.

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

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

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:



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

1200

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 Saddle and Sirloin		Dates of Activity (Does not include dates for the sales of tickets) 2/10/24	
Organization or Group Contact Person DeLaney Scanson	E-mail delaney.scanson@ndsu.edu	Telephone Number 701-527-9425	
Business Address 1300 Albrecht Blvd N	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Shepperd Arena	County Cass
Site Physical Address 1350 Albrecht Blvd N	City Fargo
State ND	ZIP Code 58102

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)
2/10/24

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

Game Type	Description of Prize	Exact Retail Value of Prize
50/50 RAFFLE	money	\$1000
Send students to Natl Black & Bridle Conference		Total (limit \$40,000 per year) \$ 1000

ADDITIONAL REQUIRED INFORMATION

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 DeLaney Scanson	Telephone Number 701-527-9425	E-mail Address delaney.scanson@ndsu.edu
Signature of Organization Group's Permit Organizer <i>DeLaney Scanson</i>	Title Fundraising Co-Chair	Date 11/2/24



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

126

Applying for (check one)

Local Permit Restricted Event Permit*

Games to be conducted

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

*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddiewheels 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 Mens Lacrosse Club		Dates of Activity (Does not include dates for the sales of tickets) 3/15/2024	
Organization or Group Contact Person Zach Wollak	E-mail zachwollak@gmail.com	Telephone Number 6512728437	
Business Address PO BOX 6050 Dept 2837 c/o Student Government	City Fargo	State ND	ZIP Code 58108
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Memorial Union		County	
Site Physical Address 1401 Administration Ave	City Fargo	State ND	ZIP Code 58105
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-3/15/2024			

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	Ballards Fishing Trip	3,000.00
Raffle	Scheels GC	250.00
Raffle	Scheels GC	100.00
Total (limit \$40,000 per year)		\$ 3,350.00

Intended Uses of Gaming Proceeds
Help to offset to travel costs for season

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 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 Zach Bosh	Title Head Coach	Telephone Number 2183291964	E-mail Address ndsulacrosse@gmail.com
Signature of Organization or Group's Top Official		Title Head Coach	Date Dec 1, 2023



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

(120)

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 The Outdoor Adventure Foundation, Inc.		Dates of Activity (Does not include dates for the sales of tickets) 3-23-24	
Organization or Group Contact Person Brian Solum	E-mail brians@ndoaf.org	Telephone Number 701 361-1888	
Business Address 415 38th St. S. Suite E	City Fargo	State ND	ZIP Code 58103
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name The Hilton Garden Inn Convention Center Grand Ballroom		County Cass	
Site Physical Address 4351 17th 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.)			

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	Polaris ATV	\$7,800.
Raffle Boards	Guns	\$8,500.
General Raffle	Hunting, Fishing, & Camping Gear	\$5,250.
Total (limit \$40,000 per year)		\$ 21,550.00

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds
To provide hunting, fishing, & other outdoor adventures for youth's diagnosed with cancer and combat disabled Veteran's.

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 Brian Solum	Telephone Number 701 361-1888	E-mail Address brians@ndoaf.org
Signature of Organization Group's Permit Organizer <i>Brian Solum</i>	Title President	Date 12-1-23

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Consent to Construct

Location: 221 Main Avenue

Date of Hearing: 12/4/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>12/11/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding a Consent to Construction Agreement for 221 Main Avenue.

The storage garages on the north side of Main Avenue, just west of 2nd Street, have been acquired by a different owner. The new owner plans to rehabilitate the garages, insulate and heat some of the units, and place a fence around the entire site with an automated gate. The west side of the property has a platted easement with a City sanitary sewer main in the easement servicing the properties to the west. The proposed fence will be built over the easement. This Consent to Construct would allow the fence on the easement but defines the responsibilities in the event the sanitary sewer needs to be maintained,

Staff recommends approval of the Consent to Construct.

On a motion by Nicole Crutchfield, seconded by Tim Mahoney, the Committee voted to recommend approval of the Consent to Construct on the easement for the property at 221 Main Avenue.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Consent to Construct for 221 Main Avenue.

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)

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

COMMITTEE

- Tim Mahoney, Mayor
- Nicole Crutchfield, Director of Planning
- Steve Dirksen, Fire Chief
- Brenda Derrig, Assistant City Administrator
- Ben Dow, Director of Operations
- Steve Sprague, City Auditor
- Tom Knakmuhs, City Engineer
- Susan Thompson, 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"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


 Tom Knakmuhs, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Kevin Gorder, Division Engineer
Date: November 30, 2023
Re: Consent to Construct – 221 Main Avenue

Background:

The storage garages on the north side of Main Avenue, just west of 2nd Street have been acquired by a different owner. The new owner plans to rehabilitate the garages, insulate and heat some of the units, and place a fence around the entire site with an automated gate. The west side of the property has a platted easement with a City sanitary sewer main in the easement servicing the properties to the west. The proposed fence will be built over the easement. This Consent to Construct would allow the fence on the easement but defines the responsibilities in the event the sanitary sewer needs to be maintained.

Recommended Motion:

Recommend approval of the Consent to Construct on the easement for the property at 221 Main Avenue.

KOG/klb
Attachment

CONSENT TO CONSTRUCTION AGREEMENT

COME NOW, the City of Fargo, a North Dakota municipal corporation, 225 4th Street North, Fargo, ND (hereafter "City"), and 221 Main, LLC, a North Dakota limited liability company, 9690 42nd St S, Fargo, ND (hereafter "221 Main"), and enter into this Consent to Construction Agreement.

WHEREAS, by Plat recorded on July 7, 1972 as Document #460026 with the Cass County Recorder, a portion of Block 1, of North Dakota R2 Urban Renewal Addition to the City of Fargo, Cass County was dedicated as an easement allowing the City to construct, install, operate, and maintain a sanitary sewer and related infrastructure.

WHEREAS, 221 Main is the successor in interest to the real property upon which the easement is located. The easement is more particularly described as:

The west 16 feet of Block 1, of North Dakota R2 Urban Renewal Addition situated in Fargo, Cass County, ND.

Referred to herein as the "Easement Area."

WHEREAS, 221 Main seeks permission to use the Easement Area in a manner inconsistent with the grant and purpose of the easement. Specifically, 221 Main wishes to build a perimeter security fence with remote gates on the parcel with a parking lot upon the Easement Area.


NOW, THEREFORE, the City consents to 221 Main constructing a perimeter security fence, remote gates, and parking lot upon the Easement Area subject to the following terms and conditions, and the parties hereby further agree:

1. 221 Main shall be responsible for all costs and expenses of constructing, installing, maintaining, and repairing the perimeter security fence, remote gates, and parking lot.
2. If it becomes necessary for City to have all or any portion of the fence, remote gates, or parking lot removed to perform maintenance or repairs to the sanitary sewer, or related infrastructure, then to the extent possible, City shall provide 221 Main with 30 days written notice for 221 Main to remove the perimeter security fence, remote gates, and parking lot, except in the event of an emergency. If the City, in its sole discretion, determines an emergency exists, the City may begin any necessary repairs without notice to 221 Main and will give notice as soon as reasonably possible, either before or after the emergency repairs begin. Upon completion of City's work, it will fill the excavation site, if necessary, and return the Easement Area to level surface. If the perimeter security fence, remote gates, and parking lot or any portion thereof is removed to protect the City's infrastructure or allow maintenance or repairs as described herein, then 221 Main shall be solely responsible for the removal and all costs and expenses thereof as well as replacing the perimeter security fence, remote gates, and parking lot after completion of the City's work. City shall in no event be responsible for the actual removal or replacement of the perimeter security fence, remote gates, or parking lot nor any of the costs or expense of the perimeter security fence, remote gates, or parking lot.
3. City shall not be responsible for any damage or repairs to the parking lot contemplated herein within, near, or upon the Easement Area, nor shall City be responsible for any costs or expenses incurred by 221 Main to ensure protection of the City's infrastructure located within the Easement Area. 221 Main shall be responsible for all the costs and expenses of any repairs, removal, or relocation of the City's infrastructure for which the original easement was given, which is damaged by any of the construction activities undertaken by 221 Main as permitted herein or by 221 Main's activity upon or near the Easement Area.
4. 221 Main shall protect the integrity of the City's sanitary sewer and related infrastructure during construction of the perimeter security fence, remote gates, and parking lot. 221 Main agrees to coordinate with City so the City may inspect and verify all work is in compliance with all specifications and requirements. 221 Main shall follow all North Dakota One Call requirements, N.D. Cent. Code § 49-23-01, for the construction of the perimeter security fence, remote gates, and parking lot.
5. 221 Main is allowed to park upon the Easement Area. The Easement Area shall not be used to store any construction materials or heavy equipment.
6. 221 Main shall give the City a 30 day notice of any change of use in the Easement Area. 221 Main shall allow the City time to review the proposed change to determine any impacts to the sanitary sewer or related infrastructure. 221 Main agrees to amend this Agreement if the change of use impacts the maintenance and operation of the sanitary sewer or related infrastructure.
7. To the fullest extent permitted by law, 221 Main agrees to hold the City harmless against any and all expenses, demands, claims or suits for damages or injury of any kind that may be brought against the City, its officers, agents and employees arising from 221 Main's construction of the perimeter security fence, remote gates, and parking lot, and future use and existence of the parking lot upon the Easement Area.

8. 221 Main hereby recognizes and acknowledges that the easement upon the subject property affords City the reasonable right of access to the Easement Area for the customary use and purpose of the dedication, including the rights of ingress and egress to perform maintenance, repairs, and improvements to the City's infrastructure located within, upon, or below the Easement Area. 221 Main hereby agrees it will not undertake any actions to impede or impair the City's right of access.
9. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree that any dispute arising out of this Agreement shall be venued in State District Court in Cass County, North Dakota, and the parties hereby expressly waive any objection to personal jurisdiction.
10. 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 will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.
11. This Agreement constitutes the entire agreement between the parties regarding the matters described herein.
12. Any modifications or amendments of this Agreement must be in writing and signed by both parties.

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this 20 day of November, 2023.

221 Main, LLC, a North Dakota limited liability company



By: Adam J. Stonestreet

Its: MANAGING MEMBER

STATE OF _____)
) ss.
COUNTY OF _____)

On this 20 day of November, 2023, before me, a notary public in and for said county and state, personally appeared Adam Stonestreet, the member of 221 Main, I.I.C, the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.




Notary Public
_____ County, _____
~~My Commission expires:~~ _____

(SEAL)

IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this _____ day of _____, 2023.

City of Fargo,
North Dakota Municipal Corporation

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

ATTEST

Steven Sprague, City Auditor

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

On this ____ day of _____, 2023, before me, a notary public in and for said county and state, personally appeared DR. TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

Notary Public
Cass County, ND
My Commission expires:

(SEAL)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

14

Type: Developer Agreement

Location: Urban Plains by Brandt Seventh Addition

Date of Hearing: 11/20/2023

<u>Routing</u>	<u>Date</u>
City Commission	12/11/2023
PWPEC File	X
Project File	<u>Nathan Boerboom</u>

The Committee reviewed the accompanying correspondence from Assistant City Engineer, Nathan Boerboom, regarding a Developer Agreement for the Urban Plains by Brandt Seventh Addition.

Staff has been coordinating with the Developer on the private and public infrastructure associated with Urban Plains and as a result, a Developer Agreement has been developed. One of the key items is the future installation of a right turn lane into Urban Plains by Brandt Seventh Addition. This right turn lane is necessary to support the driveway location proposed by the Developer while minimizing impacts to traffic on Veterans Boulevard.

The cost for the right turn lane will be 100% Special Assessed to the properties within the development. Per the Developer Agreement, the Developer has waived the right to protest the resolution of necessity for the project.

On a motion by Steve Dirksen, seconded by Steve Sprague, the Committee voted to recommend approval of the Developer Agreement for Urban Plains by Brandt Seventh Addition.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Developer Agreement for Urban Plains by Brandt Seventh Addition.

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)

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Tim Mahoney, Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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, 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, Assistant City Engineer
Date: November 17, 2023
Re: Developer Agreement for Urban Plains by Brandt Seventh Addition

Background:

Staff has been coordinating with the Developer on the private and public infrastructure associated with Urban Plains by Brandt Seventh Addition. As a result of this coordination, we have developed a Developer Agreement to support the development of this addition. The key item included within this Agreement is the future installation of a right turn lane into Urban Plains by Brandt Seventh Addition. This right turn lane was determined to be necessary to support the driveway location proposed by the Developer while minimizing impacts to traffic on Veterans Boulevard.

The cost for this right turn lane will be 100% Special Assessed to the properties within the development, which per the Developer Agreement, the Developer has waived 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 Urban Plains by Brandt Seventh Addition with private and public infrastructure.

Recommended Motion:

Approve the Developer Agreement for the Urban Plains by Brandt Seventh Addition.

NAB/klb
Attachment

Developer Agreement

This Agreement, made and entered into between Urban Plains Land Company, 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, and Three in Block One of the Urban Plains by Brandt Seventh Addition in the City of Fargo, Cass County, North Dakota. Developer intends to develop the Development Property.
2. Developer will fund design, construction, maintenance, and rehabilitation of private roads and utilities to service the Development Property. The private roads will have one connection to Veterans Boulevard, one connection to 32nd Avenue South and two connections to Seter Parkway South. The three private roads shall all be located within the private access, sanitary sewer, storm sewer, and water main easement(s), as depicted on the Urban Plains by Brandt Seventh Addition plat.

The parties hereby agree that the City shall not be involved in nor responsible for any of the design, construction, maintenance, or improvements to the private utilities or private roads within the Development Property. The parties further agree the City shall not be responsible for nor liable for any of the costs or expenses associated with the design, construction, maintenance, or improvements to the private utilities or private roads within the Development Property.

3. Developer agrees that traffic volumes on Veterans Boulevard necessitate the installation of a right turn lane on Veterans Boulevard at Larry Way (allowing access onto Larry Way). The City will complete the design and construction of the right turn

lane. The timing of the construction of the right turn lane shall be at the sole discretion of the City. However, it is anticipated that the construction of the right turn lane will be completed either in 2024 or 2025.

4. Developer agrees the funding of this right turn lane improvement 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 improvement 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 lane.
6. 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.
7. The parties hereby agree that this Agreement may be recorded against the Development Property.
8. 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.
9. 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.

10. 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.
11. 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.
12. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

Developer

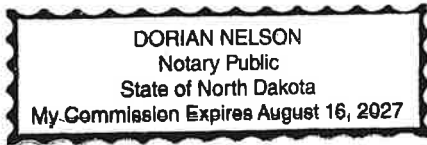
Urban Plains Land Company, LLC

Dated: 11/22/23

By: [Signature]
Michael VANNETT
Its: MANAGER

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

On this 22 day of November, 2023, before me, a notary public in and for said county and state, personally appeared Mike Vannett, an authorized signatory of Urban Plains Land Company, 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)

City of Fargo, a municipal corporation

Dated: _____

Timothy J. Mahoney, Mayor

ATTEST

Steve Sprague, City Auditor

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

On this ___ day of _____, 2023, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

Notary Public
Cass County, ND
My Commission expires:

(SEAL)

Exhibit A- Development Property

Lots One, Two, and Three in Block One of the Urban Plains by Brandt Seventh Addition in the City of Fargo, Cass County, North Dakota

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

15

Project No. SR-23-A1 Type: Negative Final Balancing Change Order #2 & Time Extension
Location: Citywide Date of Hearing: 12/4/2023

Routing Date
City Commission 12/11/2023
PWPEC File X
Project File Brandon Beaudry

The Committee reviewed the accompanying correspondence from Project Manager, Brandon Beaudry, regarding Negative Final Balancing Change Order #2 in the amount of \$-135,314.00, which reconciles the measured quantities used in the field with those estimated for the contract, along with the associated time extension as shown below:

Table with 3 columns: Original Completion Dates, Revised Previously, Revised This Memo. Rows show dates for Substantial and Final completion stages.

Staff is recommending approval of Negative Final Balancing Change Order #2 in the amount of \$-135,314.00, bringing the total contract amount to \$967,336.00, along with the associated time extension.

On a motion by Brenda Derrig, seconded by Steve Dirksen, the Committee voted to recommend approval of Negative Final Balancing Change Order #2 and the associated time extension to Master Construction.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #2 in the amount of \$-135,314.00, bringing the total contract amount to \$967,336.00 and the associated 31-day time extension to Master Construction.

PROJECT FINANCING INFORMATION:

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

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

COMMITTEE

Table with 4 columns: Present, Yes, No, Unanimous. Lists committee members and their voting status.

ATTEST:

C: Kristi Olson

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

Memorandum

To: Members of PWPEC
From: Brandon Beaudry, Project Inspector
Date: November 28, 2023
Re: Project No. SR-23-A1 – Negative Final Balancing Change Order #2 & Time Extension Sidewalk & Shared Use Path Rehab/Reconstruction

Background:

Master Construction is requesting a 31-day time extension to complete additional sidewalk reconstruction work added to the contract.

Attached is a Negative Final Balancing Change Order for Improvement District No. SR-23-A1 in the amount of -\$135,314.00 bringing the total contract amount to \$967,336.00. This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

The original contract bid price for this project was \$1,037,200.00 and this Negative FBCO will bring the project final amount to \$967,336.00 (6.73% Decrease).

Recommended Motion:

Approve Final Balancing Change Order #2 in the amount of -\$135,314.00 with a 31-day time extension to Master Construction.

Original Completion Dates	Revised Previously	Revised This Memo
Substantial – September 22, 2023 Final – October 13, 2023	Substantial – October 27, 2023 Final – November 13, 2023	Substantial – November 27, 2023 Final – November 27, 2023

BGB/jmg
 Attachment

C: Tom Knakmuhs, City Engineer
 Kevin Gorder, Division Engineer

CHANGE ORDER REPORT
SIDEWALK & SHARED USE PATH REHAB/RECONSTRUCTION
PROJECT NO. SR-23-A1
VARIOUS AREAS CITY WIDE

Change Order No 2 **Change Order Date** 11/27/2023
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 # 2

Final Balancing Change Order

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Assessed		Rem & Repl Driveway 6" Thick Reinf Conc	SY	50		50	-50	0	\$175.00	-\$8,750.00
									Assessed Sub Total	-\$8,750.00
City Paid		Rem & Repl Pavement 9" Thick Asph	SY	20		20	-20	0	\$225.00	-\$4,500.00
									City Paid Sub Total	-\$4,500.00
Assessed		Sodding	SY	20		20	-20	0	\$20.00	-\$400.00
	1	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	2662	1393	2975	-327	2648	\$135.00	-\$44,145.00
	2	Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	361	363	363	-53	310	\$170.00	-\$9,010.00
	3	F&I Sidewalk 4" Thick Reinf Conc	SY	1542	80	1550	-395	1155	\$115.00	-\$45,425.00
	4	F&I Sidewalk 6" Thick Reinf Conc	SY	57	125	125	-17	108	\$130.00	-\$2,210.00
	5	Rem & Repl Pavement 6" Thick Asph	SY	35	0	35	-20	15	\$200.00	-\$4,000.00
									Assessed Sub Total	-\$105,190.00

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 (\$)
City Paid	6	Rem & Repl Curb & Gutter	LF	335	0	335	7	342	\$90.00	\$630.00
	7	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	1420	1393	1393	13	1406	\$135.00	\$1,755.00
	8	Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	250	363	217	-18	199	\$170.00	-\$3,060.00
	9	F&I Sidewalk 4" Thick Reinf Conc	SY	435	80	80	-32	48	\$115.00	-\$3,680.00
	10	F&I Sidewalk 6" Thick Reinf Conc	SY	-26	125	32	-7	25	\$130.00	-\$910.00
	11	F&I Det Wam Panels Cast Iron	SF	420	0	420	44	464	\$60.00	\$2,640.00
	12	Casting to Grade - w/Conc	EA	4	7	7	-4	3	\$1,100.00	-\$4,400.00
	13	Curb Stop Box to Grade	EA	12	0	12	-2	10	\$50.00	-\$100.00
	15	Mulching Type 1 Hydro	SY	4200	4500	4500	-809	3691	\$5.00	-\$4,045.00
	16	Seeding Type B	SY	4200	4500	4500	-809	3691	\$6.00	-\$4,854.00
	17	Remove Driveway All Thicknesses All Types	SY	20	40	40	-6	34	\$30.00	-\$180.00
	18	Remove Sidewalk All Thicknesses All Types	SY	20	0	20	1	21	\$30.00	\$30.00
	19	Topsoil - Import Special	CY	150	0	150	-10	140	\$70.00	-\$700.00
								City Paid Sub Total		-\$16,874.00

Summary.

Source Of Funding	Special Assessed / Sales Tax
Net Amount Change Order # 2 (\$)	-\$135,314.00
Previous Change Orders (\$)	\$65,450.00
Original Contract Amount (\$)	\$1,037,200.00
Total Contract Amount (\$)	\$967,336.00

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

CONTRACT DATES

Current Substantial Completion Date	Current Final Completion Date
10/27/2023	11/13/2023
Additional Days Substantial Completion	Additional Days Final Completion
31	14
New Substantial Completion Date	New Final Completion Date
11/27/2023	11/27/2023

Interim Completion Dates

APPROVED
For Contractor
Title


Mike Antony
Controller

APPROVED DATE
Department Head
Mayor
Attest



116

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. SR-23-B1

Type: Negative Final Balancing Change Order #1

Location: Citywide

Date of Hearing: 12/4/2023

<u>Routing</u>	<u>Date</u>
City Commission	12/11/2023
PWPEC File	X
Project File	Brandon Beaudry

The Committee reviewed the accompanying correspondence from Project Manager, Brandon Beaudry, regarding Negative Final Balancing Change Order #1 in the amount of \$-163,765.00, 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 \$-163,765.00, bringing the total contract amount to \$667,250.00.

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

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #1 in the amount of \$-163,765.00, bringing the total contract amount to \$667,250.00 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	_____	_____
Agreement for payment of specials required of developer	_____	_____
Letter of Credit required (per policy approved 5-28-13)	_____	_____

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
	_____	_____	_____	_____
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson



 Tom Knakmuhs, P.E.
 City Engineer



CHANGE ORDER REPORT

SIDEWALK & SHARED USE PATH REHAB/RECONSTRUCTION
PROJECT NO. SR-23-B1
VARIOUS AREAS CITY WIDE.

Change Order No 1 Change Order Date 11/27/2023
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
Final Balancing Change Order

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
City Cost		Rem & Repl Pavement 9" Thick Reinf Conc	SY	20		20	-20	0	\$250.00	-\$5,000.00
Assessed		Remove Sidewalk All Thicknesses All Types	SY	-11		20	-20	0	\$100.00	-\$2,000.00
City Cost		Remove Driveway All Thicknesses All Types	SY	397		20	-20	0	\$100.00	-\$2,000.00
Assessed		Rem & Repl Driveway 6" Thick Reinf Conc	SY	40		40	-40	0	\$180.00	-\$7,200.00
		F&I Sidewalk 6" Thick Reinf Conc	SY	40		40	-40	0	\$130.00	-\$5,200.00
		F&I Driveway 7" Thick Reinf Conc	SY	68		68	-68	0	\$150.00	-\$10,200.00
		Sodding	SY	20		20	-20	0	\$50.00	-\$1,000.00
	1	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	64		90	30	120	\$150.00	\$4,500.00
		City Cost Sub Total								-\$5,000.00
		Assessed Sub Total								-\$2,000.00
		City Cost Sub Total								-\$2,000.00

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 (\$)
	2	Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	-6	0	20	-8	12	\$180.00	-\$1,440.00
	3	Rem & Repl Driveway 7" Thick Reinf Conc	SY	93	0	93	22	115	\$190.00	\$4,180.00
	4	Rem & Repl Curb & Gutter	LF	159	0	126	-56	70	\$90.00	-\$5,040.00
	5	F&I Sidewalk 4" Thick Reinf Conc	SY	4876	0	4900	-1211	3689	\$110.00	-\$133,210.00
	6	Remove Driveway All Thicknesses All Types	SY	965	0	965	-397	568	\$25.00	-\$9,925.00
	7	Rem & Repl Pavement 6" Thick Reinf Conc	SY	20	0	20	56	76	\$200.00	\$11,200.00
	8	Topsoil - Import	CY	180	0	180	-110	70	\$60.00	-\$6,600.00
City Cost	10	Rem & Repl Curb & Gutter	LF	266	0	210	-33	177	\$90.00	-\$2,970.00
	11	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	20	0	50	26	76	\$150.00	\$3,900.00
	12	Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	48	0	40	26	66	\$180.00	\$4,680.00
	13	F&I Sidewalk 4" Thick Reinf Conc	SY	1411	0	200	24	224	\$115.00	\$2,760.00
	15	F&I Det Warn Panels Cast Iron	SF	168	0	168	120	288	\$60.00	\$7,200.00
	16	Casting to Grade - w/Conc	EA	3	0	3	3	6	\$1,100.00	\$3,300.00
	17	Curb Stop Box to Grade	EA	4	0	4	2	6	\$50.00	\$100.00
	18	Seeding Type B	SY	4500	0	4500	-1300	3200	\$6.00	-\$7,800.00
	19	Mulching Type 1 Hydro	SY	4500	0	4500	-1300	3200	\$6.00	-\$7,800.00
	20	Remove Sidewalk All Thicknesses All Types	SY	20	0	20	11	31	\$100.00	\$1,100.00
	21	Topsoil - Import Special	CY	100	0	100	10	110	\$70.00	\$700.00
								City Cost Sub Total		\$5,170.00

Summary.


Source Of Funding	Special Assessed
Net Amount Change Order # 1 (\$)	-\$163,765.00
Previous Change Orders (\$)	\$0.00
Original Contract Amount (\$)	\$831,015.00
Total Contract Amount (\$)	\$667,250.00

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

APPROVED

For Contractor

Title



Jake Anthony
Controller

APPROVED DATE

Department Head

Mayor

Attest



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PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. TM-23-A1 Type: Negative Final Balancing Change Order #2
 Location: Citywide Date of Hearing: 12/4/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>12/11/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Jacob Rick</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jacob Rick, regarding Negative Final Balancing Change Order #2 in the amount of \$-71,174.60, 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 \$-71,174.60, bringing the total contract amount to \$822,382.40.

On a motion by Brenda Derrig, seconded by Steve Dirksen, the Committee voted to recommend approval of Negative Final Balancing Change Order #2 to Northstar Safety.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #2 in the amount of \$-71,174.60, bringing the total contract amount to \$822,382.40 to Northstar Safety.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax Funds

	<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>✓</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"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


 Tom Knakmuhs, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Jacob Rick, Project Manager Traffic
Date: November 30, 2023
Re: Project No. TM-23-A1– Negative Final Balancing Change Order #2
Pavement Markings

Background:

Project No. TM-23-A1 is a Citywide pavement marking project.

Northstar Safety is the Prime Contractor on this project.

All work has been completed by Northstar Safety and accepted by the City of Fargo.

Original Contract Amount	\$884,857.00
Previously Approved Change Orders	<u>\$ 8,700.00</u>
Total Approved Contract	\$893,557.00
Final Contract Amount	\$822,382.40
FBCO Amount due	\$ -71,174.60

Attached is the Negative Final Balancing Change Order #2 in the amount of -\$71,174.60.

Recommended Motion:

Approve Negative Final Balancing Change Order #2 in the amount of -\$71,174.60 for Project No TM-23-A1.

JJR/klb
Attachment

Change Order No 2 Change Order Date 11/27/2023
Contractor Northstar Safety 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 # 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 (\$)
Site 1	1	F&I Contrast Tape Messages	SF	192		192	64	256	\$45.00	\$2,880.00
	2	F&I Grooved Plastic Film 6" Wide	LF	4558		4558	1361	5919	\$11.00	\$14,971.00
	3	F&I Grooved Contrast Film 7" Wide	LF	6358		6358	13	6371	\$12.50	\$162.50
	4	F&I Grooved Contrast Film 11" Wide	LF	1386		1386	241	1627	\$20.00	\$4,820.00
	5	Paint Epoxy Line 6" Wide	LF	734		734	350	1084	\$10.00	\$3,500.00
								Site 1 Sub Total		\$26,333.50
Site 2	10	F&I Contrast Tape Messages	SF	320		320	-122	198	\$45.00	-\$5,490.00
	11	F&I Grooved Plastic Film Message	SF	159		159	-31	128	\$40.00	-\$1,240.00
	12	F&I Grooved Plastic Film 16" Wide	LF	100		100	437	537	\$25.00	\$10,925.00
	13	F&I Grooved Plastic Film 24" Wide	LF	1100		1100	-800	300	\$45.00	-\$36,000.00

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 (\$)
	14	F&I Grooved Contrast Film 7" Wide	LF	2300		2300	-1220	1080	\$12.50	-\$15,250.00
	15	F&I Grooved Contrast Film 11" Wide	LF	2500		2500	-1152	1348	\$20.00	-\$23,040.00
Site 3	16	F&I Contrast Tape Messages	SF	64		64	-32	32	\$45.00	-\$1,440.00
	17	F&I Grooved Plastic Film Message	SF	106		106	-74	32	\$40.00	-\$2,960.00
	18	F&I Grooved Plastic Film 16" Wide	LF	50		50	-18	32	\$25.00	-\$450.00
	19	F&I Grooved Plastic Film 24" Wide	LF	200		200	22	222	\$45.00	\$990.00
	20	F&I Grooved Contrast Film 7" Wide	LF	2242		2242	-446	1796	\$12.50	-\$5,575.00
	21	F&I Grooved Contrast Film 11" Wide	LF	220		220	-15	205	\$20.00	-\$300.00
Site 4	22	F&I Grooved Plastic Film Message	SF	96		96	-96	0	\$40.00	-\$3,840.00
	23	F&I Grooved Plastic Film 16" Wide	LF	50		50	95	145	\$25.00	\$2,375.00
	24	F&I Grooved Plastic Film 24" Wide	LF	100		100	338	438	\$45.00	\$15,210.00
	25	F&I Grooved Contrast Film 7" Wide	LF	200		200	36	236	\$12.50	\$450.00
	26	F&I Grooved Contrast Film 11" Wide	LF	40		40	-25	15	\$20.00	-\$500.00
								Site 2 Sub Total		-\$70,095.00
								Site 3 Sub Total		-\$9,735.00
								Site 4 Sub Total		\$13,695.00

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 (\$)
Site 5	27	F&I Grooved Plastic Film 16" Wide	LF	62		62	-2	60	\$25.00	-\$50.00
	28	F&I Grooved Plastic Film 24" Wide	LF	192		192	-12	180	\$45.00	-\$540.00
Site 6	29	F&I Grooved Plastic Film 24" Wide	LF	168		168	56	224	\$45.00	\$2,520.00
Site 7	30	F&I Contrast Tape Messages	SF	480		480	-16	464	\$45.00	-\$720.00
	31	F&I Grooved Plastic Film 16" Wide	LF	156		156	-81	75	\$25.00	-\$2,025.00
	32	F&I Grooved Plastic Film 24" Wide	LF	524		524	-64	460	\$45.00	-\$2,880.00
	33	F&I Grooved Contrast Film 7" Wide	LF	11974		11974	-627	11347	\$12.50	-\$7,837.50
	34	F&I Grooved Contrast Film 11" Wide	LF	1100		1100	-41	1059	\$20.00	-\$820.00
Site 8	35	F&I Grooved Plastic Film 24" Wide	LF	1506		1506	-1266	240	\$45.00	-\$56,970.00
Site 9	36	F&I Contrast Tape Messages	SF	208		208	-32	176	\$45.00	-\$1,440.00
	37	F&I Grooved Plastic Film 16" Wide	LF	125		125	-125	0	\$25.00	-\$3,125.00
	38	F&I Grooved Plastic Film 24" Wide	LF	290		290	-290	0	\$45.00	-\$13,050.00
	39	F&I Grooved Contrast Film 7" Wide	LF	3960		3960	1048	5008	\$12.50	\$13,100.00
								Site 5 Sub Total		-\$590.00
								Site 6 Sub Total		\$2,520.00
								Site 7 Sub Total		-\$14,282.50
								Site 8 Sub Total		-\$56,970.00

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 (\$)
	40	F&I Grooved Contrast Film 11" Wide	LF	650		650	2	652	\$20.00	\$40.00
Site 10	41	F&I Grooved Plastic Film 16" Wide	LF	30		30	3	33	\$25.00	\$75.00
	43	Paint Epoxy Line 24" Wide	LF	144		144	162	306	\$20.00	\$3,240.00
Site 11	44	Paint Epoxy Line 4" Wide	LF	7040		7040	2841	9881	\$2.70	\$7,670.70
	45	Paint Epoxy Line 8" Wide	LF	360		360	363	723	\$6.00	\$2,178.00
	46	Paint Epoxy Line 16" Wide	LF	200		200	18	218	\$12.00	\$216.00
	47	Paint Epoxy Line 24" Wide	LF	400		400	212	612	\$20.00	\$4,240.00
	48	Paint Epoxy Message	SF	511		511	614	1125	\$20.00	\$12,280.00
Site 12	49	Paint Epoxy Line 4" Wide	LF	12310		12310	1161	13471	\$2.70	\$3,134.70
	50	Paint Epoxy Line 8" Wide	LF	425		425	323	748	\$6.00	\$1,938.00
	51	Paint Epoxy Line 16" Wide	LF	102		102	86	188	\$12.00	\$1,032.00
	53	Paint Epoxy Message	SF	224		224	321	545	\$20.00	\$6,420.00
								Site 9 Sub Total		-\$4,475.00
								Site 10 Sub Total		\$3,315.00
								Site 11 Sub Total		\$26,584.70
								Site 12 Sub Total		\$12,524.70

Summary.

Source Of Funding

Infrastructure Sales Tax Funds

Net Amount Change Order # 2 (\$)

-\$71,174.60

Previous Change Orders (\$)

\$8,700.00

Original Contract Amount (\$)

\$884,857.00

Total Contract Amount (\$)

\$822,382.40

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

APPROVED

Stephan Lindemann

APPROVED DATE

For Contractor

NorthStar Safety, Inc.

Department Head

Title

Vice President

Mayor

Attest



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PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-21-A2 Type: Change Order #1
Location: Red River at University Dr & 52nd Ave S Date of Hearing: 12/4/2023

Routing Date
City Commission 12/11/2023
PWPEC File X
Project File Roger Kluck

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, related to Change Order #1 in the amount of \$99,725.00 for additional work.

Staff is recommending approval of Change Order #1 in the amount of \$99,725.00, which brings the total contract amount to \$2,483,956.55.

On a motion by Brenda Derrig, seconded by Steve Dirksen, the Committee voted to recommend approval of Change Order #1 to Excavating Inc.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #1 in the amount of \$99,725.00, bringing the total contract amount to \$2,483,956.55 to Excavating Inc.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax

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

COMMITTEE

Table with 4 columns: Present, Yes, No, Unanimous. Rows list committee members: Tim Mahoney, Mayor; Nicole Crutchfield, Director of Planning; Steve Dirksen, Fire Chief; Brenda Derrig, Assistant City Administrator; Ben Dow, Director of Operations; Steve Sprague, City Auditor; Tom Knakmuhs, City Engineer; Susan Thompson, Finance Director.

ATTEST:

C: Kristi Olson

Signature of Tom Knakmuhs, P.E.
Tom Knakmuhs, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Roger E. Kluck, PE, CFM Civil Engineer II Storm Sewer & Floodplain
Date: November 29, 2023
Re: Project No. FM-21-A2– Change Order #1
Red River Erosion Protection & Bank Stabilization

Background:

The project construction started in February 2023. The design plans include removal of existing embankment to stabilize 52nd Avenue from sliding further and rebuilding of parts of 52nd Avenue South. Flexible delineators were added to identify 52nd Avenue pavement failure areas for 2023-2024 winter until the pavement could be replaced for a cost of \$1,625.00. During the excavation of the existing embankment, soil debris was found and needed special handling and disposal of 8,000 CY at a price of \$12.00 per CY. Concrete chunks were also found and needed special handling and disposal of 700 CY at a price of \$3.00 per CY. Total cost for Change Order #1 is \$99,725.00.

The Engineer and Fargo Engineering recommends approval of these changes. Funding for this project will come from the Diversion Budget.

Recommended Motion:

Approve Change Order #1 in the amount of \$99,725.00 to Excavating, Inc.

Attachment

C: Jody Bertrand, Division Engineer
Nathan Boerboom, Assistant City Engineer

CHANGE ORDER REPORT
FLOOD RISK MANAGEMENT
PROJECT NO. FM-21-A2
RED RIVER EROSION PROTECTION & BANK STABILIZATION UNIVERSITY DR S AND
52ND AVE S

Change Order No 1 **Change Order Date** 11/29/2023
Contractor Excavating, Inc - Fargo

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

EXPLANATION OF CHANGE Change Order # 1

Change Order 1 covers items changed on the project. Flexible delineators were added to identify 52nd avenue pavement failure area for 2023-2024 winter until the pavement could be replaced. During the excavation of the existing embankment soil with debris 8,000 cy, and concrete chunks 700 cy were found buried and had to be removed.

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	20	Excavate & Haul - Excess Material	CY	0	0	0	8000	8000	\$12.00	\$96,000.00
	21	Fill - Haul	CY	0	0	0	700	700	\$3.00	\$2,100.00
	22	F&I Flexible Delineator	EA	0	0	0	13	13	\$125.00	\$1,625.00
Change Order 1 Sub Total										\$99,725.00

Summary.

Source Of Funding	Infrastructure (Flood) Sales Tax Fund 460
Net Amount Change Order # 1 (\$)	\$99,725.00
Previous Change Orders (\$)	\$0.00
Original Contract Amount (\$)	\$2,384,231.55
Total Contract Amount (\$)	\$2,483,956.55

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

APPROVED

For Contractor

Title Estimator/Project Manager



APPROVED DATE

Department Head

Mayor

Attest



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:

Storm LS #27, Storm, Sanitary, Water, Levee & Incidentals

199

Project No.	<u>NR-24-A</u>
Call For Bids	<u>December 11</u> , <u>2023</u>
Advertise Dates	<u>Dec. 20 & 27, 2023 & Jan. 3</u> , <u>2024</u>
Bid Opening Date	<u>January 17</u> , <u>2024</u>
Substantial Completion Date	<u>May 30</u> , <u>2025</u>
Final Completion Date	<u>June 30</u> , <u>2025</u>

- N/A PWPEC Report (Part of 2024 CIP)
- 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)
- X **WIFIA, SRF** Language Included

Project Engineer Robert Hasey

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
STORM LS #27, STORM, SANITARY, WATER, LEVEE & INCIDENTALS
PROJECT NO. NR-24-A
STORM SEWER LIFT STATION #27 LOCATED ON 32ND AVENUE SOUTH EAST OF 11TH STREET.

Nature & Scope

This project is for the reconstruction of storm sewer lift station #27 located on 32nd Avenue South east of 11th Street. An earthen levee will also be constructed east of the YWCA building located at 1101 32nd Avenue South.

Purpose

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

Feasibility

The estimated cost of construction is \$6,989,856.25. The cost breakdown is as follows:

Flood Sales Tax Fund 460		
Construction Cost		\$6,989,856.25
Fees		
Contingency	10%	\$698,985.63
Total Estimated Cost		\$7,688,841.88
Funding		
Sales Tax Funds - Flood Control - 460	100.00%	\$7,688,841.88


Miscellaneous Costs			
Permanent ROW and Easements			\$100,000.00
Utility Relocations			\$150,000.00
Outside Engineering			\$550,000.00
Total Miscellaneous Costs			\$800,000.00
Funding			
Sales Tax Funds - Flood Control - 460	100.00%		\$800,000.00

Project Funding Summary			
Sales Tax Funds - Flood Control - 460	100.00%		\$8,488,841.88
Total Estimated Project Cost			\$8,488,841.88

This project does not have any alternate or optional containers.

We believe this project to be cost effective.




Thomas Knakmuhs, PE
City Engineer

20

December 11, 2023

Honorable Board of
City Commissioners
200 3rd Street N
Fargo, ND 58102

Re: Recommend Award to Low Bidder
Street Light Fixture Replacement, Fargo
City of Fargo Project No. SL-23-B1
NDDOT Project No. CRP-8-984(178), PCN 24017

Dear Commissioners:

Bids were opened by the NDDOT on Friday, November 17th 2023, for the 42nd Street Bridge over I-94.

The bids were as follows:

Parsons Electric LLC	\$ 927,349.00
Fargo Electric Construction Inc	\$ 1,023,243.75
Engineer's Estimate	\$ 1,221,100.00

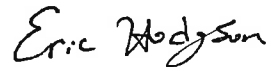
There are no Special Assessments associated with this project. Fargo's share of this project is \$272,221.99.

Recommended Motion

Concur with low bid and recommend the NDDOT award the low bid to Parsons Electric LLC in the amount of \$ 927,349.00 as the best bid, subject to review of the Contractor's Disadvantaged Business Enterprise Program by the NDDOT.

Sincerely,

Eric Hodgson, PE
Civil Engineer II



Attachments

- NDDOT Notice of Bids

ENGINEER'S STATEMENT OF ESTIMATED COST

Street Lighting

PROJECT NUMBER NO. SL-23-B1
 CRP-8-984(178)
 PCN-24017

Street Light Fixture Replacement, Fargo

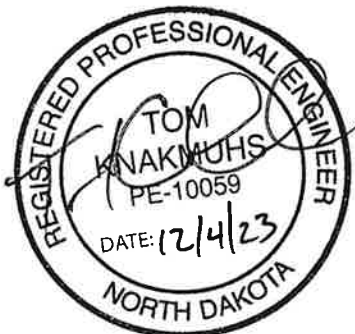
Summary of low bid by Parsons Electric LLC: \$927,349.00

<u>Construction Cost</u>	\$	927,349.00
<u>Amount Federally Funded</u>	\$	750,503.55
 <u>Amount Locally Funded</u>	\$	176,845.45
Plus 4% Administration Fee:	\$	7,073.82
Plus 4% Interest Fee:	\$	7,073.82
Plus 3% Legal/Miscellaneous Fee:	\$	5,305.36
Plus 10% Contingency:	\$	17,684.55
Total Estimated Construction Cost:	\$	213,982.99
 <u>Miscellaneous Costs</u>		
Plus Land/Easements/ROW Fee:	\$	0.00
Outside Design Engineering:	\$	58,239.00
Total Estimated Local Project Cost:	\$	272,221.99
 <u>Project Funding Summary</u>		
Federal Carbon Reduction Program	73.38%	\$ 750,503.55
Streetlight/Traffic Utility Funds	26.62%	\$ 272,221.99

We believe this project to be cost effective.



Thomas Knakmuhs, P.E.
 City Engineer



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November 20, 2023

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

PROJECT: CRP-8-984(178), PCN 24017 – FARGO CITYWIDE

Dear Mr. Knakmuhs:

Bids for the construction on the above noted project were taken at our bid opening of November 17, 2023. A copy of the Contract Detail Estimate and Abstract of Bids are enclosed.

The low bid for Street Light Fixture Replacement, LED Lighting was submitted by PEC Solutions of the Dakotas LLC of Minneapolis, MN in the amount of \$927,349.00. According to the agreement with the City of Fargo, the City's share for **CRP-8-984(178)** is estimated to be \$194,530.00. CRP Federal Funds for this project is limited to \$937,883.00. The balance of the project cost is the obligation of the City.

The Department will review the low bidder's proposal to assure that the Disadvantaged Business Enterprise Program requirements have been met. Upon review of the contractor's Disadvantaged Business Enterprise Program, the Department will advise you via email whether this project may be awarded. The City must award the contract before the Department will concur in the award; therefore, the City must notify the Department in writing as soon as possible after the award is made. Contracts cannot be executed prior to the date of the Department's concurrence.

Questions should be addressed to the Construction Services Division at 701-328-2566.

Sincerely,



Phillip Murdoff, PE
Construction Services Engineer

80/pm/jmm
Enclosure

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
 CONTRACT DETAIL ESTIMATE UPON WHICH PROJECT AGREEMENT IS TO BE BASED

North Dakota **FEDERAL AID**

Bid Opening Date: **11/17/2023**

Project Number: **CRP-8-984(178)**

PCN: **24017**

Job Number: **24017**

English/Metric: **ENGLISH**

Contract with **PARSONS ELECTRIC LLC MINNEAPOLIS, MN**

Signed Date:

County(s): **CASS**

Location: **VARIOUS LOCATIONS - FARGO**

Roadway: **URBAN**

Type: **STREET LIGHT FIXTURE REPLACEMENT, LED LIGHTING**

Participating: **Y**

Spec Code	Item Description	Quantity	Unit	Unit Price	Amount
103 0100	CONTRACT BOND	1.000	L SUM	\$7,420.00	\$7,420.00
702 0100	MOBILIZATION	1.000	L SUM	\$52,500.00	\$52,500.00
704 1000	TRAFFIC CONTROL SIGNS	595.000	UNIT	\$1.00	\$595.00
770 4211	LED LUMINAIRE - TYPE A	444.000	EA	\$418.00	\$185,592.00
770 4213	LED LUMINAIRE - TYPE C	575.000	EA	\$639.00	\$367,425.00
770 4521	REVISE LIGHT STANDARD	889.000	EA	\$353.00	\$313,817.00
Subtotal					\$927,349.00
Eng and Contg					\$92,734.90
Total					\$1,020,083.90

Length **0.0000 Miles**

Estimated Cost		<u>Construction</u>
		\$1,020,083.90
CRP FEDERAL FUNDS	80.93%	\$825,553.90
CRP FARGO CITY FUNDS	19.07%	\$194,530.00

Summary for Project

Length **0.0000 Miles**

Estimated Total Construction Cost:		<u>Construction</u>	<u>Total</u>
		\$1,020,083.90	\$1,020,083.90
Estimated Total Eng and Contg:			\$92,734.90
		\$825,553.90	\$825,553.90
		\$194,530.00	\$194,530.00

NDDOT TO MAKE CONTRACTOR PAYMENTS. CRP FEDERAL FUNDS FOR THIS PROJECT IS LIMITED TO \$937,883. ANY COSTS OVER THIS LIMITED AMOUNT WILL BE CITY RESPONSIBILITY.

ND DEPARTMENT OF TRANSPORTATION		SHEET NO 1 OF 2		ABSTRACT OF BIDS RECEIVED			
PROJECT NO. CRP-8-984(178)		NO. 24017		BIDDER ENGINEERS ESTIMATE		BIDDER PARSONS ELECTRIC LLC	
COUNTRY & DATE CASS (0177) NOV 17, 2023 09:30AM		C.C. CHECK RANK 00		MINNEAPOLIS, MN		BIDDER FARGO ELECTRIC CONST	
LENGTH & TYPE FARGO CITYWIDE		C.C. CHECK RANK 00		MINNEAPOLIS, MN		BIDDER FARGO ELECTRIC CONST	
COMPLETION TIME 10/31/24 STREET LIGHT FIXTURE REPLACEMENT, LED L		C.C. CHECK RANK 00		MINNEAPOLIS, MN		BIDDER FARGO ELECTRIC CONST	
SPEC. NO.	ITEM DESCRIPTION	UNIT	QUANTITY	BID PRICE	AMOUNT	BID PRICE	AMOUNT
103	CONTRACT BOND	L SUM	1000	10000000	10000000	10000000	10000000
702	MOBILIZATION	L UNIT	1000	50000000	50000000	50000000	50000000
704	TRAFFIC CONTROL SIGNS	EA	595000	20000	1190000	1000	59500
770	LED LUMINAIRE - TYPE A	EA	444000	775000	34410000	418000	18559200
770	LED LUMINAIRE - TYPE C	EA	575000	975000	56062500	639000	36742500
770	REVISE LIGHT STANDARD	EA	889000	275000	24447500	353000	31381700
	TOTAL				122110000	NO LIMIT	92734900
						NO LIMIT	102324375

ACTION TAKEN BY DEPARTMENT OF TRANSPORTATION
Deputy Director For Engineering

76

AWARD TO:

PARSONS ELECTRIC LLC

DATE OF AWARD

WHEN PRELIMINARY ARRANGEMENTS ARE COMPLETED.

DEPARTMENT OF TRANSPORTATION Deputy Director For Engineering

ND DEPARTMENT OF TRANSPORTATION		SHEET NO. 2 OF 2		ABSTRACT OF BIDS RECEIVED			
PROJECT NO. CRP-8-984(178)		BIDDER STRATA CORPORATION		BIDDER			
COUNTRY & DATE CASS (0177) NOV 17, 2023 09:30AM		C.C. BOND RANK 03		C.C.			
LENGTH & TYPE FARGO CITYWIDE		C.C.		C.C.			
COMPLETION TIME 10/31/24 STREET LIGHT FIXTURE REPLACEMENT, LED L		C.C.		C.C.			
NO.	ITEM DESCRIPTION	UNIT	QUANTITY	BID PRICE	AMOUNT	BID PRICE	AMOUNT
103	CONTRACT BOND	L SUM	1000	10500000	10500000		
702	MOBILIZATION	L UNIT	1000	113150000	113150000		
704	TRAFFIC CONTROL STGNS	EA	595000	1000	595000		
770	LED LUMINAIRE - TYPE A	EA	444000	650000	288600000		
770	LED LUMINAIRE - TYPE C	EA	575000	825000	474375000		
770	REVISE LIGHT STANDARD	EA	889000	975000	866775000		
TOTAL				NO LIMIT	1753399500		

ACTION TAKEN BY DEPARTMENT OF TRANSPORTATION
Deputy Director For Engineering:

77

AWARD TO:

PARSONS ELECTRIC LLC

DATE OF AWARD

WHEN PRELIMINARY ARRANGEMENTS ARE COMPLETED.

DEPARTMENT OF TRANSPORTATION Deputy Director For Engineering

(21)

December 11, 2023

Honorable Board of
City Commissioners
200 3rd Street N
Fargo, ND 58102

Re: Recommend Award to Low Bidder
River Drive S, S of 35th Ave S to Hackberry Drive S. Share Use Path – Hackberry
Drive S. to Harwood Drive S. Fargo
City of Fargo Project No. SN-23-B1
NDDOT Project No. TAU-8-984(174), PCN 23778

Dear Commissioners:

Bids were opened by the NDDOT on Friday, November 17th 2023, for the River Drive S. Share Use Path project.

The bids were as follows:

Northern Improvement Company	\$ 346,494.03
Ti-Zack Concrete Inc.	\$ 413,457.19
Key Contracting Inc.	\$ 488,798.00
Opp Construction LLC	\$ 577,443.33
Engineer's Estimate	\$ 369,253.25

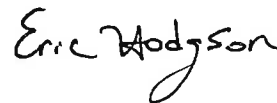
There are no Special Assessments associated with this project. Fargo's share of this project is \$87,131.48.

Recommended Motion

Concur with low bid and recommend the NDDOT award the low bid to Northern Improvement Company in the amount of \$ 346,494.03 as the best bid, subject to review of the Contractor's Disadvantaged Business Enterprise Program by the NDDOT.

Sincerely,

Eric Hodgson, PE
Civil Engineer II



Attachments

- NDDOT Notice of Bids

ENGINEER'S STATEMENT OF ESTIMATED COST

Sidewalk & Shard Use Path Construction

PROJECT NUMBER NO. SN-23-B1
 TAU-8-984(174)
 PCN-23778

River Drive S, S of 35th Ave S to Hackberry Drive S – Hackberry Drive S to Harwood Drive S
 Fargo

Summary of low bid by Northern Improvement Company: \$346,494.03

<u>Construction Cost</u>	\$	346,494.03
<u>Amount Federally Funded</u>	\$	280,417.62
<u>Amount Locally Funded</u>	\$	66,076.41
Plus 4% Administration Fee:	\$	2,643.06
Plus 4% Interest Fee:	\$	2,643.06
Plus 3% Legal/Miscellaneous Fee:	\$	1,982.29
Plus 10% Contingency:	\$	6,607.64
Total Estimated Construction Cost:	\$	79,952.46
<u>Miscellaneous Costs</u>		
Plus Land/Easements/ROW Fee:	\$	1,302.00
Outside Design Engineering (Estimated):	\$	58,008.50
Outside Construction Engineering (Estimated):	\$	35,000.00
Total Estimated Local Project Cost:	\$	174,262.96
<u>Project Funding Summary</u>		
Federal TAP Funds	61.46%	\$ 280,417.62
Fargo Park District	19.27%	\$ 87,131.48
Infrastructure Sales Tax	19.27%	\$ 87,131.48

We believe this project to be cost effective.



TKO
 Thomas Knakmuhs, P.E.
 City Engineer

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November 20, 2023

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

**PROJECT: TAU-8-984(174), PCN 23778 – RIVER RD S, S OF 35TH AVE S TO HACKBERRY DR S;
HACKBERRY DR S TO HARWOOD DR S-FARGO**

Dear Mr. Knakmuhs:

Bids for the construction on the above noted project were taken at our bid opening of November 17, 2023. A copy of the Contract Detail Estimate and Abstract of Bids are enclosed.

The low bid for Grading and Shared Use Path was submitted by Northern Improvement Company of Fargo, ND in the amount of \$346,494.03. According to the agreement with the City of Fargo, the City's share for **TAU-8-984(174)** is estimated to be \$66,076.41. Federal Funds obligated for these projects shall not exceed 80.93 percent of the total eligible project. The balance of the project cost is the obligation of the City.

The Department will review the low bidder's proposal to assure that the Disadvantaged Business Enterprise Program requirements have been met. Upon review of the contractor's Disadvantaged Business Enterprise Program, the Department will advise you via email whether this project may be awarded. The City must award the contract before the Department will concur in the award; therefore, the City must notify the Department in writing as soon as possible after the award is made. Contracts cannot be executed prior to the date of the Department's concurrence.

Questions should be addressed to the Construction Services Division at 701-328-2566.

Sincerely,



Phillip Murdoff, PE
Construction Services Engineer

80/pm/jmm
Enclosure

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
CONTRACT DETAIL ESTIMATE UPON WHICH PROJECT AGREEMENT IS TO BE BASED

North Dakota **FEDERAL AID**

Bid Opening Date: **11/17/2023**

Project Number: **TAU-8-984(174)**

PCN: **23778**

Job Number: **23778**

English/Metric: **ENGLISH**

Contract with **NORTHERN IMPROVEMENT COMPANY FARGO, ND**

Signed Date:

County(s): **CASS**

Location: **RIVER DR S, S OF 35TH AVE S TO HACKBERRY DR S; HACKBERRY DR S TO HARWOOD DR S - FARGO**

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
 CONTRACT DETAIL ESTIMATE UPON WHICH PROJECT AGREEMENT IS TO BE BASED

North Dakota **FEDERAL AID**

Bid Opening Date: **11/17/2023**

Project Number: **TAU-8-984(174)**

PCN: **23778**

Job Number: **23778**

English/Metric: **ENGLISH**

Roadway: **URBAN**

**RIVER DR, L981_017M FR 0.7970 TO 0.9473
 HACKBERRY, L768_017M FR 0.0000 TO 0.2639**

Type: **GRADING AND SHARED USE PATH**

Participating: **Y**

Spec	Code	Item Description	Quantity	Unit	Unit Price	Amount
103	0100	CONTRACT BOND	1.000	L SUM	\$920.00	\$920.00
201	0330	CLEARING & GRUBBING	1.000	L SUM	\$700.00	\$700.00
202	0114	REMOVAL OF CONCRETE PAVEMENT	85.000	SY	\$25.00	\$2,125.00
202	0130	REMOVAL OF CURB & GUTTER	32.000	LF	\$20.00	\$640.00
202	0136	REMOVAL OF PAVEMENT	2.000	TON	\$95.00	\$190.00
203	0101	COMMON EXCAVATION-TYPE A	206.000	CY	\$40.00	\$8,240.00
203	0109	TOPSOIL	1,223.000	CY	\$15.00	\$18,345.00
203	0140	BORROW-EXCAVATION	30.000	CY	\$45.00	\$1,350.00
216	0100	WATER	20.000	M GAL	\$32.50	\$650.00
251	0300	SEEDING CLASS III	0.988	ACRE	\$3,885.00	\$3,838.38
251	2000	TEMPORARY COVER CROP	0.988	ACRE	\$105.00	\$103.74
253	0201	HYDRAULIC MULCH	1.976	ACRE	\$3,885.00	\$7,676.76
261	0112	FIBER ROLLS 12IN	4,658.000	LF	\$4.75	\$22,125.50
261	0113	REMOVE FIBER ROLLS 12IN	2,329.000	LF	\$0.35	\$815.15
430	0500	COMMERCIAL GRADE HOT MIX ASPHALT	2.000	TON	\$385.00	\$770.00
702	0100	MOBILIZATION	1.000	L SUM	\$28,000.00	\$28,000.00
704	1000	TRAFFIC CONTROL SIGNS	259.000	UNIT	\$3.15	\$815.85
704	1054	SIDEWALK BARRICADE	6.000	EA	\$52.50	\$315.00
704	1060	DELINEATOR DRUMS	6.000	EA	\$21.00	\$126.00
704	1067	TUBULAR MARKERS	6.000	EA	\$5.25	\$31.50
708	1540	INLET PROTECTION-SPECIAL	3.000	EA	\$210.00	\$630.00
708	1541	REMOVE INLET PROTECTION-SPECIAL	3.000	EA	\$26.25	\$78.75
748	0120	CURB & GUTTER MOUNTABLE-TYPE I	32.000	LF	\$75.00	\$2,400.00
750	0125	SIDEWALK CONCRETE 5IN	2,614.000	SY	\$87.50	\$228,725.00
750	0140	SIDEWALK CONCRETE 6IN	32.000	SY	\$105.00	\$3,360.00
750	2115	DETECTABLE WARNING PANELS	40.000	SF	\$60.00	\$2,400.00
752	2120	REMOVE VEHICLE GATE	1.000	EA	\$1,830.00	\$1,830.00
754	0110	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	8.000	SF	\$90.30	\$722.40
970	0300	BENCH	2.000	EA	\$2,785.00	\$5,570.00
970	1025	REPLANT TREES	4.000	EA	\$750.00	\$3,000.00
Subtotal						\$346,494.03

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
CONTRACT DETAIL ESTIMATE UPON WHICH PROJECT AGREEMENT IS TO BE BASED

North Dakota **FEDERAL AID**
Project Number: **TAU-8-984(174)**

PCN: **23778**
Job Number: **23778**

Bid Opening Date: **11/17/2023**

English/Metric: **ENGLISH**

Eng and Contg	\$0.00
Total	\$346,494.03

Length **0.4480 Miles**

		<u>Construction</u>
Estimated Cost		\$346,494.03
TAU FEDERAL FUNDS	80.93%	\$280,417.62
TAU FARGO CITY FUNDS	19.07%	\$66,076.41

Summary for Project

Length **0.4480 Miles** **CASS** **0.4480 Miles**

Estimated Total Construction Cost: **\$346,494.03**

Estimated Total Eng and Contg: **\$0.00**

	<u>Construction</u>	<u>Total</u>
Estimated Cost	\$346,494.03	\$346,494.03
TAU FEDERAL FUNDS	\$280,417.62	\$280,417.62
TAU FARGO CITY FUNDS	\$66,076.41	\$66,076.41

DOT TO MAKE CONTRACTOR PAYMENTS
NO CONSTRUCTION ENGINEERING REQUESTED
TA FEDERAL FUNDS ARE NOT LIMITED

ND DEPARTMENT OF TRANSPORTATION		SHEET NO 23778		OF 2		ABSTRACT OF BIDS RECEIVED			
PROJECT NO. TAU-8-984(174)	COUNTY & DATE CASS (017)	NOV 17, 2023 09:30AM	NO. 23778	BIDDER ENGINEERS ESTIMATE	BIDDER NORTHERN IMPROVEMENT COMPANY	BIDDER TI-ZACK CONCRETE INC			
LENGTH & TYPE FARGO S OF 35TH AVE S TO HARWOOD DR S	COMPLETION TIME 10/11/24 GRADING AND SHARED USE PATH			FARGO, ND	LE CENTER, MN				
NO.	ITEM DESCRIPTION	UNIT	QUANTITY	BID PRICE	AMOUNT	BID PRICE	AMOUNT		
103	CONTRACT BOND	L	1000	5000000	5000000	920000	920000		
201	CLEARING & GRUBBING	L	1000	5000000	5000000	700000	700000		
202	REMOVAL OF CONCRETE PAVEMENT	SY	85000	35000	2975000	25000	2125000		
202	REMOVAL OF CURB & GUTTER	LF	32000	15000	480000	20000	640000		
203	REMOVAL OF PAVEMENT	TON	2000	20000	40000	19000	39000		
203	COMMON EXCAVATION-TYPE A	TON	206000	10000	2060000	40000	824000		
203	TOPSOIL	CY	1223000	15000	18345000	15000	1834500		
203	BORROW-EXCAVATION	CY	300000	15000	4500000	45000	1350000		
216	WATER	M GAL	20000	50000	1000000	32500	65000		
251	SEEDING CLASS III	ACRE	988	4000000	3952000	3885000	383838		
251	TEMPORARY COVER CROP	ACRE	1976	5000000	9880000	105000	105000		
253	HYDRAULIC MULCH	ACRE	11976	4000000	47904000	3885000	4675000		
261	FIBER ROLLS 12IN	LF	4658000	30000	13974000	4750	767676		
261	REMOVE FIBER ROLLS 12IN	LF	2329000	750	1746750	550	11515		
430	COMMERCIAL GRADE HOT MIX ASPHALT	TON	2000	300000	600000	385000	77000		
702	MOBILIZATION	L UNIT	1000	2000000	2000000	2800000	2800000		
704	TRAFFIC CONTROL SIGNS	EA	259000	2500	647500	3150	81585		
704	DELINEATOR BARRICADE	EA	6000	100000	600000	52500	31500		
704	DELINEATOR DRUMS	EA	6000	30000	180000	21000	12600		
704	TUBULAR MARKERS	EA	6000	7500	45000	5250	3150		
708	INLET PROTECTION-SPECIAL	EA	3000	400000	1200000	210000	63000		
708	REMOVE INLET PROTECTION-SPECIAL	EA	3000	60000	180000	7875	11000		
748	CURB & GUTTER MOUNTABLE-TYPE I	EA	32000	55000	1760000	26250	87500		
750	SIDEWALK CONCRETE 6IN	SY	2614000	1000000	2614000000	750000	240000		
750	SIDEWALK CONCRETE 5IN	SY	32000	120000	3840000	105000	336000		
750	DETECTABLE WARNING PANELS	SF	40000	60000	2400000	60000	240000		
754	REMOVE VEHICLE GATE	EA	1000	500000	500000	1830000	1830000		
754	LAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	EA	8000	600000	4800000	903500	722400		
970	BENCH	EA	2000	3000000	6000000	2785000	557000		
970	REPLANT TREES	EA	4000	1500000	6000000	750000	300000		
TOTAL					369225325	NO LIMIT	34649403	NO LIMIT	41345719

ACTION TAKEN BY DEPARTMENT OF TRANSPORTATION
Deputy Director For Engineering

AMARD TO: 58

NORTHERN IMPROVEMENT COMPANY

WHEN PRELIMINARY ARRANGEMENTS ARE COMPLETED.

DEPARTMENT OF TRANSPORTATION Deputy Director For Engineering

ND DEPARTMENT OF TRANSPORTATION		SHEET NO. 2 OF 2		ABSTRACT OF BIDS RECEIVED					
PROJECT NO. TAU-8-984(174)	CASS (0177)	NOV 17, 2023 09:30AM	NO. 23778	BIDDER KEY CONTRACTING INC	BIDDER OPP CONSTRUCTION LLC				
COUNTY & DATE 0-548	FARGO S OF 35TH AVE S TO HARWOOD DR S			WEST FARGO, ND	GRAND FORKS, ND				
LENGTH & TYPE 10/11/24	GRADING AND SHARED USE PATH			C.C. BOND RANK 03	C.C. BOND RANK 04				
COMPLETION TIME									
103 CONTRACT BOND		L SUM	1000	2000000	4625000				
201 CLEARING & GRUBBING		L SUM	1000	2200000	2200000	2200000			
202 REMOVAL OF CONCRETE PAVEMENT		SY	85000	26000	37000	3145000			
202 REMOVAL OF CURB & GUTTER		LF	32000	4500	22000	70400			
203 REMOVAL OF PAVEMENT		TON	2000	50000	22000	44000			
203 COMMON EXCAVATION-TYPE A		CY	206000	24000	44000	906400			
203 TOPSOIL		CY	1223000	30000	10000	1223000			
203 BORROW-EXCAVATION		CY	300000	45000	44000	132000			
214 WATER		M GAL	20000	200000	44000	88000			
251 SEEDING CLASS III		ACRE	1988	8500000	470000	464360			
251 TEMPORARY COVER CROP		ACRE	1988	4500000	550000	54340			
253 HYDRAULIC MULCH		ACRE	11976	3500000	2330000	460408			
261 FIBER ROLLS 12IN		LF	4658000	30000	3750	1746750			
261 REMOVE FIBER ROLLS 12IN		LF	2329000	1000	2750	640475			
430 COMMERCIAL GRADE HOT MIX ASPHALT		TON	2000	3500000	2250000	450000			
702 MOBILIZATION		L SUM	1000	51000000	85000000	8500000			
704 TRAFFIC CONTROL SIGNS		UNIT	259000	5000	5000	129500			
704 SIDEWALK BARRICADE		EA	6000	72000	60000	36000			
704 DELINEATOR DRUMS		EA	6000	21000	25000	15000			
704 TUBULAR MARKERS		EA	6000	28000	6000	3600			
708 INLET PROTECTION-SPECIAL		EA	3000	250000	225000	67500			
708 REMOVE INLET PROTECTION-SPECIAL		EA	3000	90000	100000	30000			
748 CURB & GUTTER MOUNTABLE-TYPE I		LF	32000	105000	149500	478400			
750 SIDEWALK CONCRETE 6IN		SSY	2614000	120000	142000	3711880			
750 SIDEWALK CONCRETE 5IN		SSY	32000	180000	576000	486400			
750 DETECTABLE WARNING PANELS		SF	400000	78000	312000	256000			
752 REMOVE VEHICLE GATE		EA	1000	90000	2100000	210000			
754 FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING		SF	8000	500000	400000	76000			
970 BENCH		EA	2000	3000000	3400000	680000			
970 REPLANT TREES		EA	4000	6600000	10000000	400000			
TOTAL				48879800	57774433				
ACTION TAKEN BY DEPARTMENT OF TRANSPORTATION		AWARD TO:		NORTHERN IMPROVEMENT COMPANY		WHEN PRELIMINARY ARRANGEMENTS ARE COMPLETED.			
Deputy Director For Engineering:		59		DATE OF AWARD		DEPARTMENT OF TRANSPORTATION Deputy Director For Engineering			

22

December 11, 2023

Honorable Board of
City Commissioners
200 3rd Street N
Fargo, ND 58102

Re: Recommend Award to Low Bidder
I-94, 42nd Street Structure
City of Fargo Project No. QR-24-A1
NDDOT Project No. SU-BRU-8-984(175), PCN 23933

Dear Commissioners:

Bids were opened by the NDDOT on Friday, November 17th 2023, for the 42nd Street Bridge over I-94.

The bids were as follows:

PCI Roads LLC	\$ 536,628.71
Industrial Builders Inc.	\$ 860,698.70
Engineer's Estimate	\$ 603,171.50

There are no Special Assessments associated with this project. Fargo's share of this project is \$174,163.43.

Recommended Motion

Concur with low bid and recommend the NDDOT award the low bid to PCI Roads LLC in the amount of \$ 536,628.71 as the best bid, subject to review of the Contractor's Disadvantaged Business Enterprise Program by the NDDOT.

Sincerely,

Eric Hodgson, PE
Civil Engineer II



Attachments

- NDDOT Notice of Bids

ENGINEER'S STATEMENT OF ESTIMATED COST

Bridge Replacement/Rehab

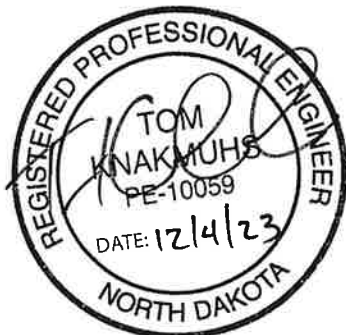
PROJECT NUMBER NO. QR-24-A1
 SU-BRU-8-984(175)
 PCN-23933

I-94, 42nd Street Structure Fargo

Summary of low bid by PCI Roads LLC: \$536,628.71

<u>Construction Cost</u>	\$	536,628.71
<u>Amount Federally Funded</u>	\$	458,376.98
<u>Amount State Funded</u>	\$	45,586.09
<u>Amount Locally Funded</u>	\$	32,665.64
Plus 4% Administration Fee:	\$	1,306.63
Plus 4% Interest Fee:	\$	1,306.63
Plus 3% Legal/Miscellaneous Fee:	\$	979.97
Plus 10% Contingency:	\$	3,266.56
Total Estimated Construction Cost:	\$	39,525.43
<u>Miscellaneous Costs</u>		
Outside Design Engineering:	\$	70,242.00
Outside Construction Engineering (Estimated 12%):	\$	64,396.00
Total Estimated Local Project Cost:	\$	174,163.43
<u>Project Funding Summary</u>		
Federal Funds	67.60%	\$ 458,376.98
State Funds	6.72%	\$ 45,586.09
Infrastructure Sales Tax	25.68%	\$ 174,163.43

We believe this project to be cost effective.




 Thomas Knakmuhs, P.E.
 City Engineer

NORTH
Dakota | Transportation
Be Legendary.™

November 20, 2023

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

PROJECT: SU-BRU-8-984(175), PCN 23933 – I-94, 42ND ST STRUCTURE-FARGO

Dear Mr. Knakmuhs:

Bids for the construction on the above noted project were taken at our bid opening of November 17, 2023. A copy of the Contract Detail Estimate and Abstract of Bids are enclosed.

The low bid for Bridge Deck Crack Sealing, Beam End Repair, Spall Repair, Expansion Joint Modification was submitted by PCI Roads LLC of Saint Michael, MN in the amount of \$536,628.71. According to the agreement with the City of Fargo, the City's share for **SU-BRU-8-984(175)** is estimated to be \$62,423.90. SU Federal Funds for this project is limited to \$300,000.00. BRU Funding splits 80.93.% Federal and 19.07% State. The balance of the project cost is the obligation of the City.

The Department will review the low bidder's proposal to assure that the Disadvantaged Business Enterprise Program requirements have been met. Upon review of the contractor's Disadvantaged Business Enterprise Program, the Department will advise you via email whether this project may be awarded. The City must award the contract before the Department will concur in the award; therefore, the City must notify the Department in writing as soon as possible after the award is made. Contracts cannot be executed prior to the date of the Department's concurrence.

Questions should be addressed to the Construction Services Division at 701-328-2566.

Sincerely,



Phillip Murdoff, PE
Construction Services Engineer

80/pm/jmm
Enclosure

North Dakota **FEDERAL AID**

Bid Opening Date: **11/17/2023**

Project Number: **SU-BRU-8-984(175)**

PCN: **23933**

Job Number: **23933**

English/Metric: **ENGLISH**

Contract with **PCI ROADS LLC SAINT MICHAEL, MN**

Signed Date:

County(s): **CASS**

Location: **I-94, 42ND ST STRUCTURE - FARGO**

Roadway: **URBAN**

NBI #0094-349.089 LRS_ID I94E000M MEASURE 349.0311

Type: **BRIDGE DECK CRACK SEALING, BEAM END REPAIR, SPALL REPAIR, EXPANSION JOINT
 MODIFICATION -SU FUNDS**

Participating: **Y**

Spec	Code	Item Description	Quantity	Unit	Unit Price	Amount
103	0100	CONTRACT BOND	0.540	L SUM	\$2,749.00	\$1,484.46
602	1250	PENETRATING WATER REPELLENT TREATMENT	3,093.000	SY	\$5.50	\$17,011.50
602	1260	BRIDGE DECK CRACK SEALING	4,091.000	LF	\$2.90	\$11,863.90
624	0125	PEDESTRIAN FENCE-REMOVE & REPLACE	1.000	L SUM	\$5,810.00	\$5,810.00
702	0100	MOBILIZATION	0.540	L SUM	\$133,992.00	\$72,355.68
704	1000	TRAFFIC CONTROL SIGNS	1,459.000	UNIT	\$2.50	\$3,647.50
704	1052	TYPE III BARRICADE	12.000	EA	\$85.00	\$1,020.00
704	1054	SIDEWALK BARRICADE	1.000	EA	\$50.00	\$50.00
704	1060	DELINEATOR DRUMS	23.000	EA	\$20.00	\$460.00
704	1087	SEQUENCING ARROW PANEL-TYPE C	1.000	EA	\$650.00	\$650.00
930	8673	EXPANSION JOINT MODIFICATION-STRIP SEAL	142.000	LF	\$1,262.18	\$179,229.56
930	9665	BARRIER REPAIR	4.000	EA	\$1,000.00	\$4,000.00
Subtotal						\$297,582.60
Eng and Contg						\$29,758.26
Total						\$327,340.86

Length **0.0000 Miles**

Estimated Cost		<u>Construction</u>
		\$327,340.86
SU FEDERAL FUNDS	80.93%	\$264,916.96
SU FARGO CITY FUNDS	19.07%	\$62,423.90

North Dakota **FEDERAL AID**

Bid Opening Date: **11/17/2023**

Project Number: **SU-BRU-8-984(175)**

PCN: **23933**

Job Number: **23933**

English/Metric: **ENGLISH**

Roadway: **URBAN**

NBI #0094-349.089 LRS_ID I94E000M MEASURE 349.0311

Type: **BRIDGE DECK CRACK SEALING, BEAM END REPAIR, SPALL REPAIR, EXPANSION JOINT
 MODIFICATION - BRU FUNDS**

Participating: **Y**

Spec Code	Item Description	Quantity	Unit	Unit Price	Amount
103 0100	CONTRACT BOND	0.460	L SUM	\$2,749.00	\$1,264.54
602 1250	PENETRATING WATER REPELLENT TREATMENT	249.000	SY	\$5.50	\$1,369.50
602 7000	SPECIAL SURFACE FINISH	186.000	SF	\$15.25	\$2,836.50
630 8000	OVERCOAT SYSTEM	1.000	L SUM	\$2,645.00	\$2,645.00
702 0100	MOBILIZATION	0.460	L SUM	\$133,992.00	\$61,636.32
704 1000	TRAFFIC CONTROL SIGNS	1,459.000	UNIT	\$2.50	\$3,647.50
704 1052	TYPE III BARRICADE	12.000	EA	\$85.00	\$1,020.00
704 1054	SIDEWALK BARRICADE	1.000	EA	\$50.00	\$50.00
704 1060	DELINEATOR DRUMS	22.000	EA	\$20.00	\$440.00
704 1087	SEQUENCING ARROW PANEL-TYPE C	1.000	EA	\$650.00	\$650.00
930 3015	TEFLON EXPANSION BEARINGS	13.000	EA	\$1,744.15	\$22,673.95
930 3040	BEARINGS (EXPANSION)	20.000	EA	\$4,850.38	\$97,007.60
930 9612	SPALL REPAIR	41.000	SF	\$350.00	\$14,350.00
930 9696	BEAM END REPAIR	3.000	EA	\$1,860.00	\$5,580.00
950 9712	JOINT TREATMENT	144.000	LF	\$165.80	\$23,875.20
Subtotal					\$239,046.11
Eng and Contg					\$23,904.61
Total					\$262,950.72

Length **0.0000 Miles**

Estimated Cost		<u>Construction</u>
		\$262,950.72
BRU FEDERAL FUNDS	80.93%	\$212,806.02
BRU STATE FUNDS	19.07%	\$50,144.70

North Dakota **FEDERAL AID**

Bid Opening Date: **11/17/2023**

Project Number: **SU-BRU-8-984(175)**

PCN: **23933**

Job Number: **23933**

English/Metric: **ENGLISH**

Summary for Project

Length **0.0000 Miles**

Estimated Total Construction Cost: **\$536,628.71**

Estimated Total Eng and Contg: **\$53,662.87**

	<u>Construction</u>	<u>Total</u>
Estimated Cost	\$590,291.58	\$590,291.58
SU FEDERAL FUNDS	\$264,916.96	\$264,916.96
BRU FEDERAL FUNDS	\$212,806.02	\$212,806.02
SU FARGO CITY FUNDS	\$62,423.90	\$62,423.90
BRU STATE FUNDS	\$50,144.70	\$50,144.70

NDDOT TO MAKE CONTRACTOR PAYMENTS. SU FEDERAL FUNDS FOR THIS PROJECT IS LIMITED TO \$ 300,000. ANY COSTS OVER THIS LIMITED AMOUNT WILL BE CITY RESPONSIBILITY. BRU FUNDING SPLITS 80.93% FEDERAL AND 19.07% STATE.

ND DEPARTMENT OF TRANSPORTATION				ABSTRACT OF BIDS RECEIVED					
PROJECT NO. SU-8RU-8-986(175)		SHEET NO 23933		OF 1		BIDDER ENGINEERS ESTIMATE			
COUNTY & DATE CASS (0177)		NOV 17, 2023 09:30AM		BIDDER PCI ROADS LLC		BIDDER INDUSTRIAL BUILDERS INC			
LENGTH & TYPE FARGO 42ND ST BRIDGE OVER I-94		COMPLETION TIME 09/27/24		SAINT MICHAEL, MN		FARGO, ND			
NO.	SPEC.	ITEM DESCRIPTION	UNIT	QUANTITY	BID PRICE	AMOUNT	BID PRICE	AMOUNT	
103	CONTRACT BOND		L SUM	1000	6000000	6000000		6000000	
602	PENETRATING WATER REPELLENT TREATMENT		LY	3342200	13000	4344600	5500	1838100	
602	BRIDGE DECK CRACK SEALING		LF	4091100	6500	2659150	2900	1186390	
602	SPECIAL SURFACE FINISH		SF	1860000	1200000	2232000	152250	2836400	
624	PEDESTRIAN FENCE-REMOVE & REPLACE		L SUM	1000	8000000	8000000	5810000	5810000	
630	OVERCOAT SYSTEM		L SUM	1000	10000000	10000000	2645000	2645000	
702	MOBILIZATION		L UNIT	1000	4500000	4500000	133992000	98500000	
704	TRAFFIC CONTROL SIGNS		EA	2918000	3000	875400	2500	729500	
704	TYPE II BARRICADE		EA	24000	200000	4800000	85000	204000	
704	SIDEWALK BARRICADE		EA	2000	100000	200000	50000	100000	
704	DELINATOR DRUMS		EA	45000	1500000	6750000	20000	90000	
930	TEFLON EXPANSION BEARINGS		EA	2000	1500000	3000000	650000	1300000	
930	BEARINGS (EXPANSION)		EA	13000	2500000	32500000	1744150	2267395	
930	BEARINGS (EXPANSION)		EA	20000	6500000	13000000	4850380	9700760	
930	BEARINGS JOINT MODIFICATION-STRIP SEAL		LF	142000	1400000	19880000	1262180	17922956	
930	BARRIER REPAIR		SF	41000	350000	1435000	350000	1433000	
930	BARRIER REPAIR		EA	4000	3750000	15000000	1000000	4000000	
930	BEAM END REPAIR		EA	3000	2500000	7500000	1860000	5580000	
930	JOINT TREATMENT		LF	144000	140000	2016000	165800	2387520	
	TOTAL					60317150	NO LIMIT	53662871	NO LIMIT
									86069870

ACTION TAKEN BY DEPARTMENT OF TRANSPORTATION
Deputy Director For Engineering: 71

AWARD TO: PCI ROADS LLC

DATE OF AWARD

WHEN PRELIMINARY ARRANGEMENTS ARE COMPLETED.
DEPARTMENT OF TRANSPORTATION Deputy Director For Engineering

23

December 1, 2023

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

**Re: Purchase Agreement & Conflict of Interest Disclosure
Permanent Easement – Improvement District #BN-23-E1**

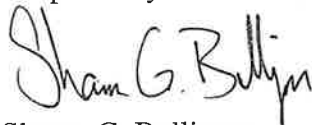
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Purchase Agreement for the acquisition of a permanent easement in association with Improvement District #BN-23-E1. 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 permanent easement from **Wells Fargo Bank, N.A., as Trustee of the Jeffrey Donat Trust U/A dated July 25, 1983** in association with Improvement District #BN-23-E1 and that the Mayor is instructed to execute the Purchase Agreement & Conflict of Interest Disclosure on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Nathan Boerboom
Kasey D. McNary

PURCHASE AGREEMENT

This PURCHASE AGREEMENT is made and entered into by and between the City of Fargo, a North Dakota municipal corporation, 225 2nd Street North, Fargo, North Dakota 58102, as Buyer, and Wells Fargo Bank, N.A., as Trustee of the Jeffrey Donat Trust U/A dated July 25, 1983, whose post office address is P.O. Box 340, Moorhead, MN 56561-0340,, as Seller.

Seller and Buyer hereby agree as follows:

1. Real Estate. Seller hereby agrees to sell, and Buyer hereby agrees to purchase the real estate consisting of approximately 132,674 square feet depicted on Exhibit A for the purchase price and terms hereinafter stated the following described real property located in Cass County, North Dakota (“Property”):

A tract of land in the South Half of the Northeast Quarter of Section 28, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, more particularly described as follows:

The easterly 100.00 feet of the South Half of the Northeast Quarter of said Section 28.

Said tract contains 132,674 square feet, more or less.

2. Purchase Price. Seller and Buyer agree that the purchase price for said Property shall be the sum of Fifty Thousand Dollars and NO/100 (\$50,000.00). The Purchase Price is to be paid to Seller at closing in cash or certified funds and upon delivery of a Trustee’s Deed conveying the Property to Buyer, free and clear of all liens and encumbrances, except all covenants, conditions, restrictions, reservations of mineral rights, easements, and right of ways of record.

3. Closing Date. Closing shall take place as soon as practicable, but not later than March 31, 2024. Buyer shall take possessions of the real estate on the day of Closing.

4. Default. If Buyer defaults under this Agreement, Seller shall have the right to terminate this Agreement by giving written notice thereof to Buyer. If Buyer fails to cure such default within thirty (30) days after notice of cancellation, then this Agreement will terminate, and upon such termination Seller may pursue any damages incurred. If Seller defaults under this Agreement, Buyer shall give Seller written notice of such default, and if Seller fails to cure such default within fifteen (15) days following such notice, Buyer shall have the option to elect to (i) terminate this Agreement, or (ii) pursue an action for specific performance of this Agreement and any damages available at law or in equity.

5. Taxes and Assessments. Real estate taxes and installments of special assessments for 2024 shall be prorated between Buyer and Seller, based on the most current tax information available from the County Treasurer, as of the date of Closing.

6. Abstract. Seller shall furnish Buyer at least 30 days prior to closing, a duly certified abstract of title to the Property. The Buyer shall have the abstract updated and then shall have 10 days after

receiving the updated abstract to examine the abstract of title and within said period of time shall promptly notify Seller of all objections thereto in writing. If the title to the Property is unmarketable, the Seller shall have a period of 30 days within which to correct title thereto to the satisfaction of Buyer. If title of the Property is unmarketable and cannot be made marketable within said period of thirty (30) days or such further time as may be extended by Buyer, Buyer at its option shall be entitled to rescission of this Agreement.

7. Warranties. Seller conveys the real estate, buildings and all personal property, if any, at the time of closing “as is” and “where is”. Buyer also acknowledges that it is taking the Property subject to all building and zoning laws, ordinances, restrictions relating to the use and improvements of premises, utility and drainage easements.

8. Closing Costs. As specifically agreed between the parties:

Seller agrees to pay the following costs and no other costs associated with the closing of this transaction:

- a. Cost of recording any instrument required to clear title including but not limited to satisfaction of prior liens and encumbrances; and
- b. Its own attorney’s fees.

Buyer agrees to pay the following costs and no other costs associated with the closing of this transaction:

- a. Cost of survey, if necessary;
- b. Cost of updating abstract of title;
- c. Cost of recording the Trustee’s Deed;
- d. Cost of preparing this Agreement and the Trustee’s Deed;
- e. Cost of obtaining a Title Opinion;
- f. Its own attorney’s fees; and
- g. Any closing fees.

Any closing cost not specifically enumerated herein shall be the responsibility of the party ordering such item or contracting therefor. In the special event that Buyer requires title insurance, the cost thereof shall be entirely paid by Buyer with the exception of the furnishing of a continued abstract by Seller.

9. Notice. All notices given or required to be given under this Agreement shall be in writing and sent by U.S. Certified Mail, return receipt requested, postage prepaid, or by electronic mail, read receipt requested, to the following addresses: If to Buyer, notices shall be sent to City of Fargo – Engineering Department, Attn: Shawn Bullinger, 225 4th Street North, Fargo, ND 58102, or email to SBullinger@FargoND.gov and, if to Seller, notices shall be sent to Wells Fargo Bank, N.A., Attn: David R. Camrud, P.O. Box 340, Moorhead, MN 56561-0340, or email to David.R.Camrud@wellsfargo.com. Such notices shall be deemed delivered on the day in which they were received.

10. Attorney's Fees. In the event of any litigation or arbitration proceedings between the parties in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable legal fees and expenses, including any fees and expenses incurred in connection with appeals, in connection with any such proceeding.

11. Entire Agreement. This Purchase Agreement shall constitute the entire agreement between Seller and Buyer and supersedes any and all other written or oral agreements between Seller and Buyer. This Purchase Agreement may be modified only in writing signed by Seller and Buyer.

12. Binding Effect. This Purchase Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

13. Governing Law. This Purchase Agreement shall be governed by the laws of the State of North Dakota.

14. Additional Instruments and Further Assurances. The parties agree from time to time, upon written request, to execute and deliver such other instruments of transfer, assignment, and conveyance and to take such other action as either party may reasonably request to more effectively vest ownership of the Property in Buyer and to put Buyer in possession of all the Property. Both parties agree to, from time to time, execute and deliver to the other party such additional instruments and to take such additional actions as either party may reasonably request to evidence the covenants, agreements, and obligations of the parties hereunder.

15. Construction. Each party recognizes that this Agreement is a legally binding contract and acknowledges that it, he or she has had the opportunity to consult with legal counsel of choice. In any construction of the terms of this Agreement, the same shall not be construed against any party on the basis of that party being the drafter of such terms. Each party represents that they are an equal drafter of this Agreement and no ambiguity shall be construed against any party.

16. Counterparts. This Agreement may be executed in counterparts.

17. Time. Time is of the essence of each provision of this Agreement and of all the conditions thereof.


18. Partial Invalidity. If any portion of this Agreement shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement, so long as the transaction contemplated hereby may be consummated in accordance with the surviving provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SELLER:

Jeffrey Donat Trust U/A

Date: 12/1/2023


Wells Fargo Bank, N.A., as Trustee of the Jeffrey Donat Trust U/A dated July 25, 1983.

By:
David R. Camrud
Vice President/Regional Trust Real Estate Manager
Wells Fargo Bank, N.A.

BUYER:

**CITY OF FARGO, NORTH DAKOTA
a municipal corporation**

Date: _____

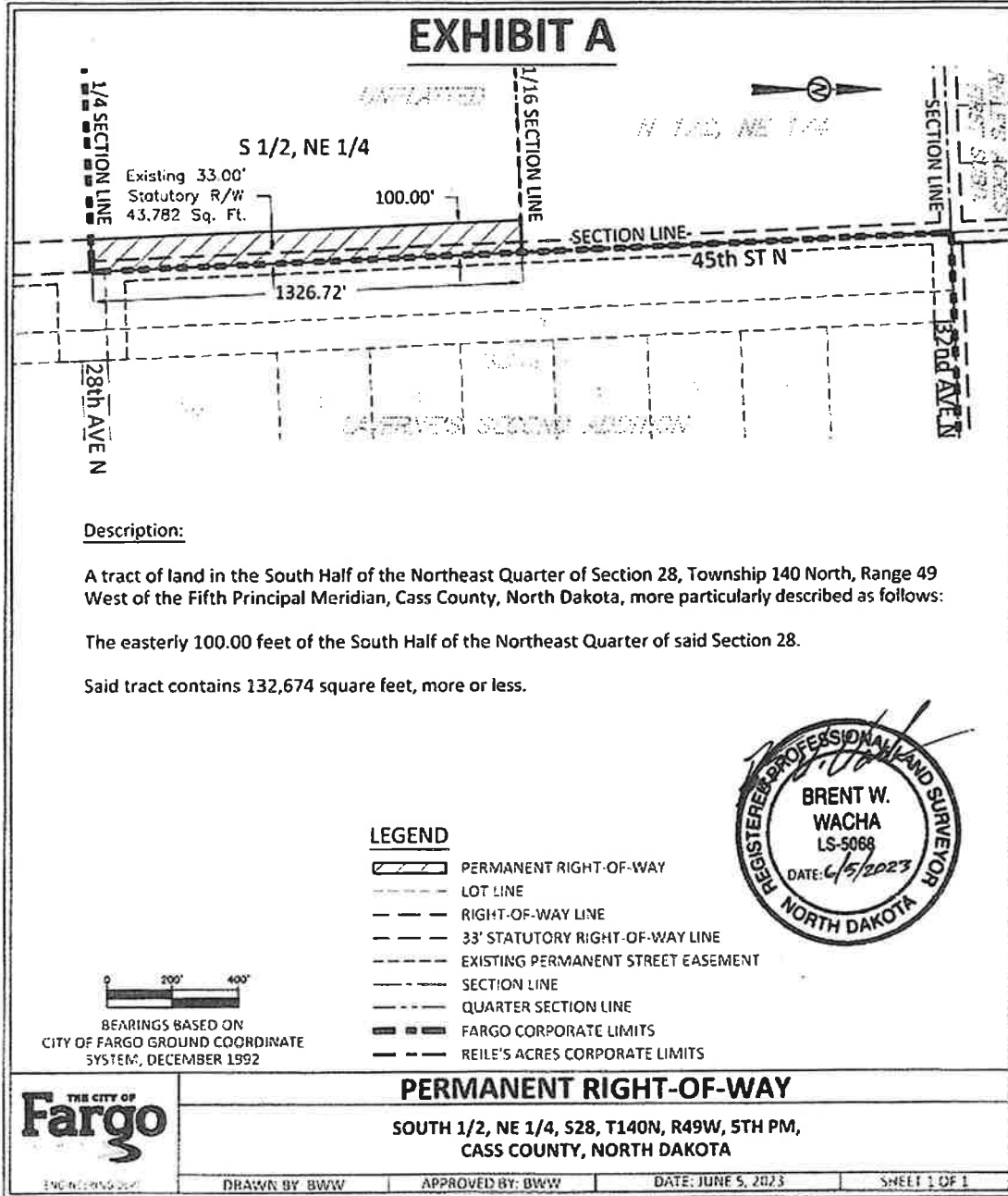
By: Dr. Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

EXHIBIT A

Description of the Property



SALES CONTRACT ADDENDUM

Seller agrees to sell, grant, convey to Buyer and Buyer agrees to buy from Seller the Property in accordance with the terms and conditions stated in this contract:

- 1. Property Condition.** IT IS UNDERSTOOD AND AGREED THAT EXCEPT FOR THE WARRANTY OF TITLE CONTAINED IN THE DEED, (A) THE PROPERTY IS SOLD BY SELLER AND PURCHASED AND ACCEPTED BY BUYER ON AN "AS IS," "WHERE IS," AND "WITH ALL FAULTS" BASIS, SUBJECT TO ANY CONDITION WHICH MAY EXIST, AND WITHOUT THE EXISTENCE OF AND WITHOUT RELIANCE UPON ANY REPRESENTATION, WARRANTY, AGREEMENT, OR STATEMENT BY SELLER, OR ANYONE ACTING ON BEHALF OF SELLER, INCLUDING, WITHOUT LIMITATION, ANY BROKER, ENGINEER, ARCHITECT, ATTORNEY, SURVEYOR, APPRAISER, OR ENVIRONMENTAL CONSULTANT; (B) BUYER HAS THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY BUYER IN ORDER TO ENABLE BUYER TO EVALUATE THE PURCHASE OF THE PROPERTY ON THE FOREGOING BASIS; (C) BUYER IS RELYING SOLELY UPON SUCH INSPECTIONS, EXAMINATIONS, AND EVALUATIONS OF THE PROPERTY BY BUYER IN PURCHASING THE PROPERTY ON AN "AS IS," "WHERE IS," AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATION, WARRANTY, AGREEMENT, OR STATEMENT BY SELLER OR ANYONE ACTING ON BEHALF OF SELLER, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE, OTHER THAN THE WARRANTY OF TITLE CONTAINED IN THE DEED; AND (D) BUYER RELEASES SELLER FROM ANY AND ALL CLAIMS, ACTIONS, DEMANDS, RIGHTS, DAMAGES, COSTS, OR EXPENSES WHICH MIGHT ARISE OUT OF OR IN CONNECTION WITH THE PHYSICAL CONDITION OF THE PROPERTY. THE SALES PRICE AND OTHER TERMS OF THIS CONTRACT ARE BASED, IN PART, ON THE PROVISIONS OF THIS PARAGRAPH 1. THE PROVISIONS OF THE PARAGRAPH 1 SHALL SURVIVE THE CLOSING OR ANY TERMINATION OF THIS CONTRACT.

Buyer Date

Buyer Date

**AGREEMENT ADDENDUM
BUYER'S CONFLICT OF INTEREST DISCLOSURE**

1. **WELLS FARGO BANK, N.A. ("WELLS FARGO") AFFILIATION AND CONTROL PERSON.** *Buyer to initial as applicable:* Buyer and/or Buyer's spouse, or any of their relatives living at the same address, is ____ / is not ____ an employee or "control person" of Wells Fargo or any affiliate, subsidiary or parent of Wells Fargo. A "control person" includes a director, policy-making officer, or 10% stockholder.

2. **WELLS FARGO BANK AFFILIATE BUSINESS ENTITY.** *Buyer to initial as applicable:* Buyer is ____ / is not ____ a business, subsidiary, parent, affiliate, or agent acting on behalf of a business, subsidiary, parent or affiliate of Wells Fargo.

3. **ERISA MATTERS.** *Buyer to initial as applicable:* Buyer is ____ / is not ____ an "employee benefit plan" (a "Plan") as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), an asset of such a Plan, or a person acting for the benefit of such a Plan. Buyer represents, warrants, and covenants that:
 - a. the purchase of the Property will not be prohibited under Section 406 of ERISA, Section 4975 of the Internal Revenue Code of 1986, as amended (the "IRC"), or any other rule, regulation, policy, procedure, judgment or order that is similar to Title I of ERISA or Section 4975 of the IRC;

 - b. to the extent that any assets of the Buyer are treated as an asset of a Plan, (i) any such Plan's interest in the Buyer is managed by a "QPAM" as defined in Section VI(a) of U.S. Department of Labor Prohibited Transaction Class Exemption 84-14 (the "QPAM Exemption"), (ii) neither Wells Fargo nor any its "affiliates" (within the meaning of Section VI(c) of the QPAM Exemption) has the authority to appoint or terminate any such QPAM or negotiate the terms of any management agreement between any such employee benefit plan and any such QPAM, (iii) Wells Fargo is not any such QPAM and is not "related" (within the meaning of Section VI(h) of the QPAM Exemption) to any such QPAM, and (iv) such QPAM is responsible for exercising independent judgment in evaluating the transactions reflected in the Agreement and this Addendum;

 - c. neither Wells Fargo nor any of its affiliates are acting as a fiduciary within the meaning of Section 3(21)(A) of ERISA in respect of any of the assets of Buyer that are involved in the Agreement or this Addendum; and

 - d. neither Wells Fargo nor any of its affiliates have any responsibility for governing or overseeing the conduct of the Buyer or any QPAM and all decisions have been the result of arms' length negotiations between the parties.

Buyer

Date

Buyer

Date

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 improvement district as it will appear in the contract:

Traffic Signal Improvements

24

Improvement
District No.

TN-23-A

Call For Bids	<u>December 11</u>	, <u>2023</u>
Advertise Dates	<u>December 20 & 27</u>	, <u>2023</u>
Bid Opening Date	<u>January 17</u>	, <u>2024</u>
Substantial Completion Date	<u>December 15</u>	, <u>2024</u>
Final Completion Date	<u>June 14</u>	, <u>2025</u>

- N/A PWPEC Report (Part of 2023 CIP)
- X Engineer's Report (Attach Copy)
- X Direct City Auditor to Advertise for Bids
- X Bid Quantities (Attach Copy for Auditor's Office Only)
- X Notice to Property Owners (Dan Eberhardt)
- N/A Supplemental Funding Language Included

Project Engineer Kevin Morlan

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:

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



**ENGINEER'S REPORT
TRAFFIC SIGNAL IMPROVEMENTS
IMPROVEMENT DISTRICT NO. TN-23-A
DEER CREEK PARKWAY / 55 AVE S AND 42 ST S / 47 AVE S**

Nature & Scope

This project calls for the installation of HAWK signals at 2 locations, one on Deer Creek Parkway near 55th Avenue South and the other on 42nd Street South near 47th Avenue South. These HAWK signals will help with pedestrian traffic movements at these locations and improve safety. Initial HAWK signal installations are typically 100% Special Assessed; however, both of these improved crossings have a direct benefit to the adjacent school and a greater benefit to the existing, or planned, regional trail system. Because of this, the costs are being 50% Special Assessed to the adjacent school parcels and 50% City Funded.

Purpose

The projects goal is to increase safety and convenience of the residents and the traveling public.

Special Assessment District

All properties within the Special Assessment District will benefit from the infrastructure improvements and were determined through consideration of the longevity, consistency, and uniformity of benefitting properties within the City of Fargo. Special Assessments will be levied to each property in accordance with the City's Infrastructure Funding Policy and are subject to the approval of the Special Assessment Commission and the City Commission.

Feasibility

The estimated cost of construction is \$444,046.00. The cost breakdown is as follows:

Deer Creek

Construction Cost		\$211,168.50
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Fees

Admin	4%	\$8,446.74
Contingency	5%	\$10,558.43
Engineering	10%	\$21,116.85
Interest	4%	\$8,446.74
Legal	3%	\$6,335.06

Total Estimated Cost		\$266,072.32
-----------------------------	--	---------------------

Funding

Utility Funds - Street Lights - 528	50.00%	\$133,036.16
Special Assessments	50.00%	\$133,036.16

42nd St

Construction Cost		\$232,877.50
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Fees

Admin	4%	\$9,315.10
Contingency	5%	\$11,643.88
Engineering	10%	\$23,287.75
Interest	4%	\$9,315.10
Legal	3%	\$6,986.33

Total Estimated Cost		\$293,425.66
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Funding

Utility Funds - Street Lights - 528	50.00%	\$146,712.83
Special Assessments	50.00%	\$146,712.83

Project Funding Summary

Utility Funds - Street Lights - 528	50.00%	\$279,748.99
Special Assessments	50.00%	\$279,748.99

Total Estimated Project Cost		\$559,497.98
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This project does not have any alternate or optional containers.

We believe this project to be cost effective.





Thomas Knakmuhs, PE
City Engineer



**LOCATION AND COMPRISING
TRAFFIC SIGNAL IMPROVEMENTS
IMPROVEMENT DISTRICT NO. TN-23-A
DEER CREEK PARKWAY / 55 AVE S AND 42 ST S / 47 AVE S**

LOCATION:

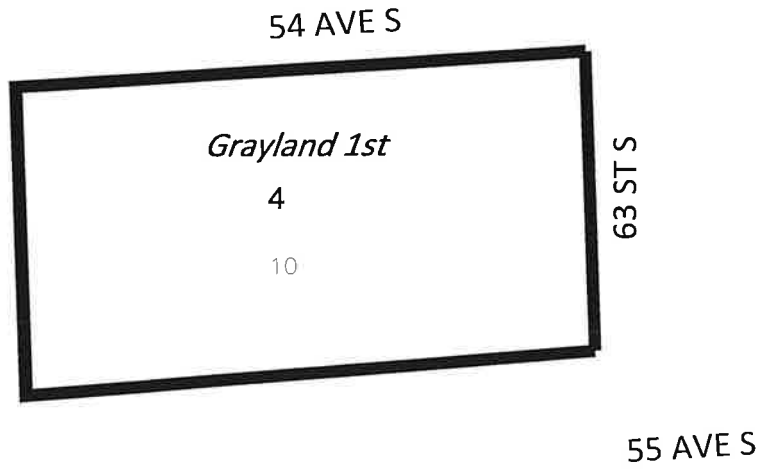
AREA 1 - On 42nd Street South between 44th Avenue South and 47th Avenue South.

AREA 2 - On 63rd Street South between 53rd Avenue South and 55th Avenue South.

COMPRISING:

Lot 1, Block 1, Southwest Elementary First Addition.

Lot 10, Block 4, Grayland First Addition.

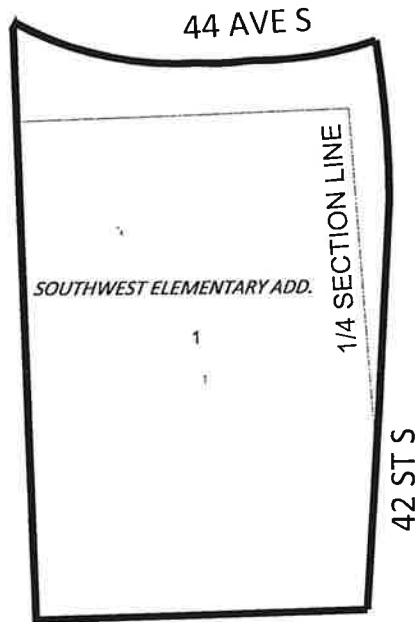


CITY OF FARGO ENGINEERING
DEPARTMENT

LOCATION & ASSESSMENT AREA

TRAFFIC SIGNAL IMPROVEMENTS

IMPROVEMENT DISTRICT NO. TN-23-A2



CITY OF FARGO ENGINEERING
DEPARTMENT

LOCATION & ASSESSMENT AREA

TRAFFIC SIGNAL IMPROVEMENTS

IMPROVEMENT DISTRICT NO. TN-23-A2

25

AMENDED ENGINEER'S REPORT
PAVING AND UTILITY REHAB/RECONSTRUCTION
IMPROVEMENT DISTRICT NO. BR-23-G

Nature & Scope

The project is on 32nd Avenue South from 22nd Street South to 15nd Street South.

This project will upgrade the existing infrastructure by replacing the existing concrete roadway, curb and gutter, intersection crossings improvements, sidewalk and incidentals. Portions of the existing water distribution system, sanitary sewer system, and storm sewer system will be replaced or rehabilitated. A new storm sewer mainline will be added adjacent to the existing system to increase the system's capacity and reduce street flooding.

Purpose

This project is necessary because the existing corridor's infrastructure is deteriorating and/or inadequate for current use. This project will repair, replace, and install necessary infrastructure along the corridor to better serve the operations of the City. The finished product will update portions of the water distribution network, will increase the storm drainage capacity to reduce flooding events, will repair the existing sanitary sewer that has deteriorated to a substandard level, will provide new roadway and pedestrian facilities for continued use, and improve overall safety and functionality of the corridor.

The project will be funded by a combination of Federal Funds, Street Sales Tax Funds, Storm Utility Funds, Waste Water Utility Funds, Water Utility Funds, Traffic Signal/Street Light Utility, and Special Assessments to the benefitting properties. Special Assessments will be applied per City policy.

Special Assessment District

All properties within the special assessment district will benefit from the infrastructure improvements and were determined through consideration of the longevity, consistency, and uniformity of benefitting properties within the City of Fargo. Special Assessments will be levied to each property in accordance with the City's Infrastructure Funding Policy and are subject to the approval of the Special Assessment Commission and the City Commission.

Feasibility

The estimated cost of construction is \$ 18,775,132.10. The cost breakdown is as follows:

Paving:	-	\$ 7,211,715.10
Amount Federally Funded		\$ 5,836,441.03
Amount Locally Funded		\$ 1,375,274.07
Plus 4% Administration Fee:		\$ 55,010.96
Plus 3% Legal Fee:		\$ 41,258.22
Plus 4% Interest Fee:		\$ 55,010.96
Plus 10% Contingency:		\$ 137,527.41
Total Estimated Cost:		\$ 1,664,081.62
Special Assessments		\$ 1,664,081.62
Sales Tax		\$ -

Storm Sewer	-	\$ 5,982,005.00
Amount Federally Funded		\$ 2,871,362.40
Amount Locally Funded		\$ 3,110,642.60
Plus 4% Administration Fee:		\$ 124,425.70
Plus 3% Legal Fee:		\$ 93,319.28
Plus 4% Interest Fee:		\$ 124,425.70
Plus 10% Contingency:		\$ 311,064.26
Total Estimated Cost:		\$ 3,763,877.55
Special Assessments - Capacity Expansion		\$ 910,062.07
Special Assessments - Remaining Paving Cap		\$ 1,159,230.98
Storm Utility		\$ 1,694,584.50

Sanitary Sewer	-	\$ 2,248,807.32
Amount Federally Funded		\$ -
Amount Locally Funded		\$ 2,248,807.32
Plus 4% Administration Fee:		\$ 89,952.29
Plus 3% Legal Fee:		\$ 67,464.22
Plus 4% Interest Fee:		\$ 89,952.29
Plus 10% Contingency:		\$ 224,880.73
Total Estimated Cost:		\$ 2,721,056.86
Special Assessments - Local Cap		\$ 238,977.88
Special Assessments - 30% (Oversized Main)		\$ 744,623.69
Federal		\$ -
Waste Water Utility		\$ 1,737,455.29

Water Main	-	\$ 2,440,917.68
Amount Federally Funded		\$ -
Amount Locally Funded		\$ 2,440,917.68
Plus 4% Administration Fee:		\$ 97,636.71
Plus 3% Legal Fee:		\$ 73,227.53
Plus 4% Interest Fee:		\$ 97,636.71
Plus 10% Contingency:		\$ 244,091.77
Total Estimated Cost:		\$ 2,953,510.39
Special Assessments - Local Cap		\$ 343,918.86
Special Assessments - 30% (Oversized Main)		\$ 782,877.46
Federal		\$ -
Water Utility		\$ 1,826,714.07

Traffic Signals/Street Lights	-	\$ 891,687.00
Amount Federally Funded		\$ 721,642.29
Amount Locally Funded		\$ 170,044.71
Plus 4% Administration Fee:		\$ 6,801.79
Plus 3% Legal Fee:		\$ 5,101.34
Plus 4% Interest Fee:		\$ 6,801.79
Plus 10% Contingency:		\$ 17,004.47
Total Estimated Cost:		\$ 205,754.10
Special Assessments		\$ -
Federal		\$ 721,642.29
Traffic Signal/Street Light Utility		\$ 205,754.10

Miscellaneous Costs		
Right-of-Way and Easements:		\$ 400,000.00
Utility Relocation		\$ 400,000.00
Outside Engineering:		\$ 1,877,513.21
Incentive		\$ 150,000.00
Total Miscellaneous Costs:		\$ 2,827,513.21
Federal		\$ 450,554.28
Special Assessments		\$ 2,226,958.93
Traffic Utility		\$ -
Storm Utility		\$ -
Waste Water Utility		\$ -
Water Utility		\$ -
Sales Tax		\$ 150,000.00

Project Funding Summary		
Federal	41.93%	\$ 9,880,000.00
Special Assessments	34.25%	\$ 8,070,731.49
Traffic Signal/Street Light Utility	0.87%	\$ 205,754.10
Storm Utility	7.19%	\$ 1,694,584.50
Waste Water Utility	7.37%	\$ 1,737,455.29
Water Utility	7.75%	\$ 1,826,714.07
Sales Tax or Prairie Dog	0.64%	\$ 150,000.00
Total Estimated Project Cost		\$ 23,565,239.45

We believe this project to be cost effective.




 Tom Knakmuhs, P.E.
 City Engineer

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

26

Improvement District No. BN-22-C1 Type: Negative Final Balancing Change Order #6

Location: 28th, 30th & 32nd Ave. N., 42nd St. & 43rd St. Date of Hearing: 12/4/2023

<u>Routing</u>	<u>Date</u>
City Commission	12/11/2023
PWPEC File	X
Project File	Jason Leonard

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, regarding Negative Final Balancing Change Order #6 in the amount of \$-504,886.62, 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 #6 in the amount of \$-504,886.62, bringing the total contract amount to \$18,301,948.42.

On a motion by Brenda Derrig, seconded by Steve Dirksen, the Committee voted to recommend approval of Negative Final Balancing Change Order #6 to Dakota Underground.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #6 in the amount of \$-504,886.62, bringing the total contract amount to \$18,301,948.42 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> </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"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input type="checkbox"/>	<input 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: November 30, 2023
Re: Improvement District No. BN-22-C1 – Negative Final Balancing Change Order #6

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.

Attached is a Negative Final Balancing Change Order #6 for Improvement District No. BN-22-C1 in the amount of -\$504,886.62 bringing the total contract amount to \$18,301,948.42. This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

The original contract bid price for this project was \$18,578,544.59 and this Negative FBCO will bring the project final amount to \$18,301,948.42 (1.49% Decrease).

Recommended Motion:

Approve Negative Final Balancing Change Order # 6 in the amount of -\$504,886.62.

JTL/klb
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 6 **Change Order Date** 11/30/2023
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 # 6

Final Balancing Change Order

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Sanitary Sewer	1	F&I 1-1/4" Trench Found Rock 14" thru 24" Dia	LF	5000		5000	-5000	0	\$0.01	-\$50.00
	5	F&I Pipe C900 DR 18 - 8" Dia PVC	LF	165		165	2	167	\$130.00	\$260.00
	6	F&I Restr Joint Pipe C900 DR 18 - 8" Dia PVC	LF	20		20	-5	15	\$270.00	-\$1,350.00
	7	Connect Sewer Service	EA	67		67	-1	66	\$1,000.00	-\$1,000.00
	8	F&I 1-1/4" Trench Found Rock 27" thru 36" Dia	LF	500		500	-500	0	\$0.01	-\$5.00
	9	F&I Manhole GB	EA	25		25	-1	24	\$4,300.00	-\$4,300.00
	14	F&I Pipe SDR 26 - 6" Dia PVC	LF	2110		2110	-30	2080	\$36.00	-\$1,080.00

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 (\$)
	15	F&I Pipe SDR 26 - 8" Dia PVC	LF	1210	1210	1210	-110	1100	\$59.00	-\$6,490.00
	16	F&I Pipe SDR 35 - 36" Dia PVC	LF	2840	2840	2840	-11	2829	\$315.00	-\$3,465.00
	18	F&I Pipe w/GB SDR 26 - 6" Dia PVC	LF	1770	1770	1770	-50	1720	\$65.00	-\$3,250.00
	19	F&I Pipe w/GB SDR 35 - 36" Dia PVC	LF	84	84	84	16.28	100.28	\$420.00	\$6,837.60
	20	F&I Sign Assembly	EA	2	2	2	-2	0	\$160.00	-\$320.00
Signing	21	F&I Sign Assembly & Anchor	EA	9	9	9	2	11	\$175.00	\$350.00
	22	F&I Diamond Grade Cubed	SF	63.2	63.2	63.2	11.8	75	\$25.00	\$295.00
	23	F&I Barricade Type III	EA	3	3	3	-2	1	\$700.00	-\$1,400.00
	27	F&I Rip Rap Rock	CY	25	25	25	25	50	\$250.00	\$6,250.00
Flood Mitigation	29	F&I Box Culvert 6'x6' Wide Reinf Conc	LF	54	54	54	-12.38	41.62	\$1,600.00	-\$19,808.00
	30	F&I Box Culvert 8'x4' Wide Reinf Conc	LF	98	98	98	7.92	105.92	\$1,700.00	\$13,464.00
	31	F&I Pavement 8" Thick Reinf Conc	SY	200	200	200	16	216	\$175.00	\$2,800.00
	32	F&I Woven Geotextile	SY	200	200	200	16	216	\$2.00	\$32.00
	33	F&I Crushed Conc - 9" Thick	SY	200	200	200	16	216	\$20.00	\$320.00
								Sanitary Sewer Sub Total		-\$13,892.40
								Signing Sub Total		-\$1,075.00

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 (\$)
Erosion Control	34	Mulching Type 2 Straw	SY	75000	75000	75000	30224	105224	\$0.15	\$4,533.60
	35	Seeding Type C	SY	75000	75000	75000	30224	105224	\$0.40	\$12,089.60
	37	Temp Construction Entrance	EA	4	4	4	-2	2	\$0.01	-\$0.02
	38	Sediment Control Log 6" to 8" Dia	LF	4500	4500	4500	973	5473	\$2.75	\$2,675.75
Erosion Control	39	Sediment Control Log 10" to 15" Dia	LF	750	750	750	-37	713	\$3.75	-\$138.75
	42	Silt Curtain	LF	85	85	85	15	100	\$30.00	\$450.00
Erosion Control	43	F&I Erosion Control Blanket Type 3	SY	2500	2500	2500	-1500	1000	\$2.50	-\$3,750.00
	44	F&I Decid Tree 2" Dia	EA	15	15	15	-15	0	\$800.00	-\$12,000.00
Change Order 1	46	F&I Fittings C153 Ductile Iron	LB	-703.43000000000001	0	713	-296	417	\$19.00	-\$5,624.00
	55	F&I Pipe C900 DR 18 - 4" Dia PVC	LF	165	165	165	-25	140	\$35.00	-\$875.00
Water Main	57	F&I Pipe w/GB C900 DR 18 - 4" Dia PVC	LF	135	0	206	15	221	\$60.00	\$900.00
	61	Temp Fence - Safety	LF	750	750	750	-27	723	\$8.00	-\$216.00
Change Order 1	62	Salvage & Install Fence	LF	750	750	750	-27	723	\$50.00	-\$1,350.00
	63	F&I Fittings C153 Ductile Iron	LB	10287	0	13177.43	-1770	11407.43	\$11.00	-\$19,470.00
				Flood Mitigation Sub Total						\$3,058.00
				Erosion Control Sub Total						\$15,860.18
				Landscaping Sub Total						-\$12,000.00
				Change Order 1 Sub Total						-\$5,624.00

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 (\$)
	64	F&I Hydrant	EA	32	32	32	-1	31	\$6,000.00	-\$6,000.00
	66	F&I Pipe C900 DR 18 - 6" Dia PVC	LF	550	550	550	-50	500	\$38.00	-\$1,900.00
	67	F&I Pipe C900 DR 18 - 12" Dia PVC	LF	4575	4575	4575	6	4581	\$76.00	\$456.00
	68	F&I Pipe C900 DR 18 - 16" Dia PVC	LF	5182	0	5360	-13	5347	\$125.00	-\$1,625.00
	69	F&I Pipe w/GB C900 DR 18 - 6" Dia PVC	LF	135	0	236	-15	221	\$66.00	-\$990.00
	70	F&I Pipe w/GB C900 DR 18 - 12" Dia PVC	LF	150	150	150	-150	0	\$110.00	-\$16,500.00
	71	F&I Pipe w/GB C900 DR 18 - 16" Dia PVC	LF	150	150	150	-75	75	\$155.00	-\$11,625.00
	72	F&I Gate Valve 6" Dia	EA	33	0	36	-2	34	\$1,800.00	-\$3,600.00
	75	F&I Hydrant Ext. 6" High	EA	5	5	5	-5	0	\$1,330.00	-\$6,650.00
	76	F&I Hydrant Ext. 12" High	EA	5	5	5	-5	0	\$1,500.00	-\$7,500.00
Storm Sewer	78	F&I Manhole GB	EA	8	8	8	-1	7	\$2,000.00	-\$2,000.00
	86	Remove Pipe All Sizes All Types	LF	350	350	350	-10	340	\$0.01	-\$0.10
	101	F&I Pipe 42" Dia	LF	860	860	860	-1	859	\$261.00	-\$261.00
	106	F&I Pipe 24" Dia Reinf Conc	LF	230	230	230	-5	225	\$100.00	-\$500.00
	107	F&I Pipe 27" Dia Reinf Conc	LF	201	201	201	-1	200	\$123.00	-\$123.00
Water Main Sub Total										-\$76,945.00

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 (\$)
	108	F&I Pipe 42" Dia Reinf Conc	LF	245	245	245	-7	238	\$261.00	-\$1,827.00
	110	F&I Pipe 54" Dia Reinf Conc	LF	430	430	430	-20	410	\$380.00	-\$7,600.00
	112	F&I Pipe 72" Dia Reinf Conc	LF	998	998	998	-1	997	\$605.00	-\$605.00
	113	Remove Pipe All Sizes All Types	LF	300	300	300	-150	150	\$0.01	-\$1.50
	116	F&I Pipe w/GB 24" Dia Reinf Conc	LF	50	50	50	5	55	\$125.00	\$625.00
	117	F&I Pipe w/GB 42" Dia Reinf Conc	LF	50	50	50	7	57	\$305.00	\$2,135.00
	119	F&I Pipe w/GB 54" Dia Reinf Conc	LF	50	50	50	20	70	\$395.00	\$7,900.00
	120	F&I Pipe w/GB 66" Dia Reinf Conc	LF	60	60	60	-5	55	\$540.00	-\$2,700.00
	122	F&I Pipe 24" Dia Corr Steel	LF	110	110	110	-110	0	\$85.00	-\$9,350.00
	127	Modify Manhole	EA	2	2	2	5	7	\$1,000.00	\$5,000.00
								Storm Sewer Sub Total		-\$9,307.60
Paving	128	F&I Sidewalk 4" Thick Reinf Conc	SY	313	0	1539	-72	1467	\$60.00	-\$4,320.00
	129	F&I Sidewalk 6" Thick Reinf Conc	SY	194	194	194	23	217	\$70.00	\$1,610.00
	141	Subcut	CY	15000	15000	15000	1390	16390	\$5.00	\$6,950.00
	142	Subgrade Preparation	SY	48500	48500	48500	-2764	45736	\$2.00	-\$5,528.00
	143	F&I Woven Geotextile	SY	48500	48500	48500	-2764	45736	\$1.90	-\$5,251.60

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 (\$)
	144	F&I Class 5 Agg - 6" Thick	SY	2450	2450	2450	-1454	996	\$10.00	-\$14,540.00
	146	F&I Class 5 Agg - 12" Thick	SY	2500	2500	2500	-1299	1201	\$21.00	-\$27,279.00
	147	F&I Edge Drain 4" Dia PVC	LF	19000	19000	19000	409	19409	\$13.00	\$5,317.00
	148	F&I Curb & Gutter Standard (Type II)	LF	19000	19000	19000	409	19409	\$26.00	\$10,634.00
	149	Remove Curb & Gutter	LF	300	300	300	-25	275	\$10.00	-\$250.00
	151	F&I Pavement 10" Thick Doweled Conc	SY	42000	42000	42000	-3182	38818	\$85.00	-\$270,470.00
	152	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	60	60	60	-35	25	\$80.00	-\$2,800.00
	154	F&I Driveway 7" Thick Reinf Conc	SY	670	670	670	-422	248	\$85.00	-\$35,870.00
	155	Casting to Grade - Blvd	EA	77	77	77	-3	74	\$400.00	-\$1,200.00
	156	Casting to Grade - w/Conc	EA	48	48	48	-2	46	\$400.00	-\$800.00
	157	GV Box to Grade - Blvd	EA	48	48	48	-3	45	\$300.00	-\$900.00
	158	Mulching Type 1 Hydro	SY	150000	150000	150000	-75329	74671	\$0.40	-\$30,131.60
	159	Seeding Type C	SY	150000	150000	150000	-75329	74671	\$0.40	-\$30,131.60
								Paving Sub Total		-\$404,960.80

Summary.

Source Of Funding	Special Assessment
Net Amount Change Order # 6 (\$)	-\$504,886.62
Previous Change Orders (\$)	\$228,290.45
Original Contract Amount (\$)	\$18,578,544.59
Total Contract Amount (\$)	\$18,301,948.42

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

APPROVED	Dakota Underground Company	APPROVED DATE
For Contractor	<i>Jared Heller, PE</i>	Department Head
Title	Project Manager	Mayor
		Attest



REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

27

Improvement District No. BN-22-F1 Type: Final Balancing Change Order #3

Location: Tillstone Drive Date of Hearing: 12/4/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>12/11/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Tyler Jacobs</u>

The Committee reviewed the accompanying correspondence from Project Manager, Tyler Jacobs, regarding Final Balancing Change Order #3 in the amount of \$6,509.21, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Final Balancing Change Order #3 in the amount of \$6,509.21, bringing the total contract amount to \$1,753,852.57.

On a motion by Brenda Derrig, seconded by Steve Dirksen, the Committee voted to recommend approval of Final Balancing Change Order #3 to Dirt Dynamics.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Final Balancing Change Order #3 in the amount of \$6,509.21, bringing the total contract amount to \$1,753,852.57 to Dirt Dynamics.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax Funds & 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"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


 Tom Knakmuhs, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Tyler Jacobs, Engineer Tech III
Date: November 30, 2023
Re: Improvement District No. BN-22-F1 – Final Balancing Change Order #3

Background:

Improvement District No. BN-22-F1 is for the new construction of underground utilities, asphalt pavement, streetlights and incidentals on Tillstone Drive and 55th Avenue South in The District of Fargo Fourth Addition.

The attached Final Balancing Change Order #3 in the amount of \$6,509.21 reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

The original contract bid price for this project was \$1,738,419.74 and this FBCO will bring the project final amount to \$1,753,852.57 (0.88% Increase). This Improvement District is funded by Sales Tax Fund (55th Ave. road removal) and Special Assessments.

Recommended Motion:

Approve Final Balancing Change Order #3 in the amount of \$6,509.21 to Dirt Dynamics.

Attachments



**CHANGE ORDER REPORT
NEW UTILITY AND PAVING CONSTRUCTION
IMPROVEMENT DISTRICT NO. BN-22-F1
THE DISTRICT OF FARGO FOURTH ADDITION**

Final Balancing
Change Order

Change Order No 3 **Change Order Date** 11/29/2023
Contractor Dirt Dynamics

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

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 (\$)
Sanitary Sewer		F&I 1-1/4"								
		Trench Found	LF	1566		1566	-1566	0	\$1.00	-\$1,566.00
		Rock 4" thru 12" Dia								
Water Main		F&I Gate	EA	1		1	-1	0	\$1,500.00	-\$1,500.00
		Valve 4" Dia								
Erosion Control		Seeding Type C	SY	-164.5	0	7000	-7000	0	\$0.42	-\$2,940.00
55th Avenue		Mulching Type 2 Straw	SY	12413	0	2450	-2450	0	\$0.14	-\$343.00
	18	Seeding Type B	SY	2450	0	2450	-216.4	2233.6	\$0.43	-\$93.05
Sanitary Sewer Sub Total									-\$1,566.00	
Water Main Sub Total									-\$1,500.00	
Erosion Control Sub Total									-\$2,940.00	
55th Avenue Sub Total									-\$436.05	

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 (\$)
Erosion Control	22	Mulching Type 2 Straw	SY	14000	0	14000	-12413	1587		\$0.08	-\$993.04
	25	Sediment Control Log 6" to 8" Dia Inlet	LF	60	0	60	-40	20		\$4.20	-\$168.00
	26	Protection - New Inlet	EA	12	0	12	-2	10		\$200.00	-\$400.00
						Erosion Control Sub Total					-\$1,561.04
Sanitary Sewer	34	Bore Pipe SDR 26 - 12" Dia PVC	LF	105	0	105	7	112		\$176.00	\$1,232.00
	35	F&I Pipe SDR 26 - 6" Dia PVC	LF	270	0	270	-17	253		\$30.00	-\$510.00
	37	F&I Pipe SDR 35 - 12" Dia PVC	LF	1374	0	1374	-7	1367		\$60.00	-\$420.00
						Sanitary Sewer Sub Total					\$302.00
Water Main	39	F&I Fittings C153 Ductile Iron	LB	1693	0	1693	265	1958		\$8.00	\$2,120.00
	42	F&I Pipe C900 DR 18 - 4" Dia PVC	LF	80	0	80	-20	60		\$30.00	-\$600.00
	43	F&I Pipe C900 DR 18 - 6" Dia PVC	LF	33	0	33	1	34		\$33.00	\$33.00

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 (\$)
	44	F&I Pipe C900 DR 18 - 8" Dia PVC	LF	80	0	80	40	120	\$49.00	\$1,960.00
	45	F&I Pipe C900 DR 18 - 12" Dia PVC	LF	1773	0	1773	10	1783	\$79.00	\$790.00
	47	F&I Gate Valve 8" Dia	EA	1	0	1	2	3	\$2,500.00	\$5,000.00
								Water Main Sub Total		\$9,303.00
Storm Sewer	50	F&I Manhole 5' Dia Reinf Conc	EA	2	0	2	4	6	\$6,210.00	\$24,840.00
	51	F&I Manhole 6' Dia Reinf Conc	EA	8	0	8	-5	3	\$8,100.00	-\$40,500.00
	52	F&I Manhole 7' Dia Reinf Conc	EA	1	0	1	1	2	\$12,700.00	\$12,700.00
	66	F&I Pipe 24" Dia Polypropylene	LF	80	0	80	-10	70	\$107.00	-\$1,070.00
								Storm Sewer Sub Total		-\$4,030.00
Paving	80	F&I Edge Drain 4" Dia PVC	LF	3475	0	3475	99.5	3574.5	\$14.50	\$1,442.75
	82	F&I Curb & Gutter Standard (Type II)	LF	3475	0	3475	25.5	3500.5	\$26.00	\$663.00

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 (\$)
	84	F&I Pavement 7" Thick Reinf Conc	SY	157.00000000000003	0	157.00000000000003	141.22	298.22	\$94.50	\$13,345.29
	86	F&I Sidewalk 4" Thick Reinf Conc	SY	51	0	51	4.5	55.5	\$94.50	\$425.25
	87	F&I Sidewalk 6" Thick Reinf Conc	SY	43	0	43	-1.16	41.84	\$110.00	-\$127.60
	88	F&I Det Warn Panels Cast Iron	SF	32	0	32	8	40	\$52.00	\$416.00
	89	F&I Asphalt Pavement FAA 43 w/ PG58H-34	Ton	2550	0	2550	-94.23	2455.77	\$103.00	-\$9,705.69
	92	GV Box to Grade - Blvd	EA	12	0	12	2	14	\$200.00	\$400.00
	93	Mulching Type 1 Hydro	SY	7400	0	7400	2398.1	9798.1	\$0.50	\$1,199.05
	94	Seeding Type C	SY	7400	0	7400	164.5	7564.5	\$0.43	\$70.74
							Paving Sub Total			\$8,128.78
Signing	95	F&I Sign Assembly	EA	4	0	4	3	7	\$105.00	\$315.00
	96	F&I Sign Assembly & Anchor	EA	4	0	4	1	5	\$105.00	\$105.00
	97	F&I Diamond Grade Cubed	SF	30.099999999999998	0	30.099999999999998	12.91	43.01	\$23.10	\$298.22

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 (\$)
	98	F&I High Intensity Prismatic	SF	11.5	0	11.5	2	13.5	\$19.95	\$39.90
								Signing Sub Total		\$758.12
Street Lights	101	F&I Conductor #6 USE Cu	LF	5265	0	5265	12	5277	\$2.10	\$25.20
	102	F&I Innerduct 1.5" Dia	LF	1694	0	1694	4	1698	\$6.30	\$25.20
								Street Lights Sub Total		\$50.40

Summary

Source Of Funding	Special Assessments/City Funds
Net Amount Change Order # 3 (\$)	\$6,509.21
Previous Change Orders (\$)	\$8,923.62
Original Contract Amount (\$)	\$1,738,419.74
Total Contract Amount (\$)	\$1,753,852.57

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

CONTRACT DATES

Current Substantial Completion Date	8/1/2023	Current Final Completion Date	9/1/2023
Additional Days Substantial Completion	0	Additional Days Final Completion	0
New Substantial Completion Date	8/1/2023	New Final Completion Date	9/1/2023

Interim Completion Dates

APPROVED

For Contractor

Title

[Handwritten signature]
estimator

APPROVED DATE

Department Head

Mayor

Attest

[Handwritten signature]



BN-22-F1
 Pmt #13
 Pmt \$26,372.91
 Bal \$0.00
 Not Yet Approved

PAY ESTIMATE SHEET
NEW UTILITY AND PAVING CONSTRUCTION
IMPROVEMENT DISTRICT NO. BN-22-F1
THE DISTRICT OF FARGO FOURTH ADDITION

Project No. BN-22-F1
Project Name New Utility and Paving Construction
Type Utilities and Paving New
Description The District of Fargo Fourth Addition
Pay Estimate Number 13
From Date 11/9/2023
To Date 11/29/2023

The Honorable Board of City Commissioners
 Dear Commissioners,

Be advised that Dirt Dynamics has performed the work to date shown on this statement

1. Contract Work

	Contract			Previous		Current		To Date			
	Unit	Quantity	Price	Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)		
									% Comp.		
55th Avenue											
1	F&I Fittings C153 Ductile Iron	LB	58	\$8.60	58	\$498.80	0	\$0.00	58	\$498.80	100%
2	F&I Hydrant	EA	1	\$5,600.00	1	\$5,600.00	0	\$0.00	1	\$5,600.00	100%
3	Salvage Hydrant	EA	1	\$600.00	1	\$600.00	0	\$0.00	1	\$600.00	100%
4	Plug Pipe 12" Dia	EA	1	\$1,100.00	1	\$1,100.00	0	\$0.00	1	\$1,100.00	100%
5	F&I Pipe C900 DR 18 - 6" Dia PVC	LF	5	\$34.00	5	\$170.00	0	\$0.00	5	\$170.00	100%
6	F&I Gate Valve 6" Dia	EA	1	\$1,900.00	1	\$1,900.00	0	\$0.00	1	\$1,900.00	100%
7	F&I Inlet - Manhole (MHI) 4' Dia Reinf Conc	EA	1	\$3,300.00	1	\$3,300.00	0	\$0.00	1	\$3,300.00	100%
8	F&I Inlet - Single Box (SBI) Reinf Conc	EA	2	\$3,100.00	2	\$6,200.00	0	\$0.00	2	\$6,200.00	100%
9	Remove Inlet	EA	1	\$350.00	1	\$350.00	0	\$0.00	1	\$350.00	100%

1. Contract Work

	Contract		Previous		Current		To Date				
	Unit	Quantity	Price	Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	% Comp.	
10	EA	1	\$850.00	1	\$850.00	0	\$0.00	1	\$850.00	100%	
	Connect Pipe to Exist Structure										
11	LF	101	\$59.00	101	\$5,959.00	0	\$0.00	101	\$5,959.00	100%	
12	CY	600	\$12.00	600	\$7,200.00	0	\$0.00	600	\$7,200.00	100%	
13	SY	1402	\$2.00	1402	\$2,804.00	0	\$0.00	1402	\$2,804.00	100%	
	Site Grading										
14	LF	82	\$68.00	82	\$5,576.00	0	\$0.00	82	\$5,576.00	100%	
	F&I Curb & Gutter Standard (Type II)										
15	SY	1282	\$12.00	1282	\$15,384.00	0	\$0.00	1282	\$15,384.00	100%	
	Remove Pavement 10" Thick Conc										
16	SY	120	\$9.00	120	\$1,080.00	0	\$0.00	120	\$1,080.00	100%	
	Remove Sidewalk All Thicknesses All Types										
17	EA	2	\$570.00	2	\$1,140.00	0	\$0.00	2	\$1,140.00	100%	
18	SY	2233.6	\$0.43	2233.6	\$960.45	0	\$0.00	2233.6	\$960.45	100%	
	Seeding Type B - CO3										
19	EA	2	\$200.00	2	\$400.00	0	\$0.00	2	\$400.00	100%	
	Inlet Protection - New Inlet										
20	EA	2	\$750.00	2	\$1,500.00	0	\$0.00	2	\$1,500.00	100%	
	Remove Street Light										
21	EA	2	\$500.00	2	\$1,000.00	0	\$0.00	2	\$1,000.00	100%	
	Remove Base										
					55th Avenue Sub Total	\$63,572.25		\$0.00		\$63,572.25	
	Sanitary Sewer										
22	EA	12	\$4,500.00	12	\$54,000.00	0	\$0.00	12	\$54,000.00	100%	
	F&I Manhole GB										
23	EA	12	\$6,400.00	12	\$76,800.00	0	\$0.00	12	\$76,800.00	100%	
	F&I Manhole 4' Dia Reinf Conc										
24	EA	2	\$3,000.00	2	\$6,000.00	0	\$0.00	2	\$6,000.00	100%	
	Connect Pipe to Exist Structure										
25	LF	112	\$176.00	112	\$19,712.00	0	\$0.00	112	\$19,712.00	100%	
	Bore Pipe SDR 26 - 12" Dia PVC - CO3										
26	LF	253	\$30.00	253	\$7,590.00	0	\$0.00	253	\$7,590.00	100%	
	F&I Pipe SDR 26 - 6" Dia PVC - CO3										
27	LF	250	\$46.00	250	\$11,500.00	0	\$0.00	250	\$11,500.00	100%	
	F&I Pipe SDR 26 - 8" Dia PVC										

1. Contract Work

	Contract		Previous		Current		To Date			
	Unit	Quantity	Price	Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	% Comp.
28	LF	1367	\$60.00	1367	\$82,020.00	0	\$0.00	1367	\$82,020.00	100%
	F&I Pipe SDR 35 - 12" Dia PVC - CO3									
29	EA	5	\$620.00	5	\$3,100.00	0	\$0.00	5	\$3,100.00	100%
	Connect Sewer Service									
30	LF	332	\$51.00	332	\$16,932.00	0	\$0.00	332	\$16,932.00	100%
	F&I Pipe SDR 35 - 10" Dia PVC									
31	LF	45	\$130.00	45	\$5,850.00	0	\$0.00	45	\$5,850.00	100%
	F&I Pipe w/GB SDR 35 - 10" Dia PVC									
					Sanitary Sewer Sub Total	\$283,504.00	\$0.00		\$283,504.00	
	Water Main									
32	LB	1958	\$8.00	1958	\$15,664.00	0	\$0.00	1958	\$15,664.00	100%
	F&I Fittings C153 Ductile Iron - CO3									
33	EA	5	\$5,650.00	5	\$28,250.00	0	\$0.00	5	\$28,250.00	100%
	F&I Hydrant									
34	EA	2	\$3,050.00	2	\$6,100.00	0	\$0.00	2	\$6,100.00	100%
	Connect Pipe to Exist Pipe									
35	LF	60	\$30.00	60	\$1,800.00	0	\$0.00	60	\$1,800.00	100%
	F&I Pipe C900 DR 18 - 4" Dia PVC - CO3									
36	LF	34	\$33.00	34	\$1,122.00	0	\$0.00	34	\$1,122.00	100%
	F&I Pipe C900 DR 18 - 6" Dia PVC - CO3									
37	LF	120	\$49.00	120	\$5,880.00	0	\$0.00	120	\$5,880.00	100%
	F&I Pipe C900 DR 18 - 8" Dia PVC - CO3									
38	LF	1783	\$79.00	1783	\$140,857.00	0	\$0.00	1783	\$140,857.00	100%
	F&I Pipe C900 DR 18 - 12" Dia PVC - CO3									
39	EA	5	\$1,900.00	5	\$9,500.00	0	\$0.00	5	\$9,500.00	100%
	F&I Gate Valve 6" Dia									
40	EA	3	\$2,500.00	3	\$7,500.00	0	\$0.00	3	\$7,500.00	100%
	F&I Gate Valve 8" Dia - CO3									
41	EA	4	\$4,300.00	4	\$17,200.00	0	\$0.00	4	\$17,200.00	100%
	F&I Gate Valve 12" Dia									
					Water Main Sub Total	\$233,873.00	\$0.00		\$233,873.00	
	Storm Sewer									
42	LS	1	\$2,500.00	1	\$2,500.00	0	\$0.00	1	\$2,500.00	100%
	Temp Pumping									

1. Contract Work

	Contract			Previous		Current		To Date			
	Unit	Quantity	Price	Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)		
									% Comp.		
43	F&I Manhole 5' Dia Reinf Conc - CO3	EA	6	\$6,210.00	6	\$37,260.00	0	\$0.00	6	\$37,260.00	100%
44	F&I Manhole 6' Dia Reinf Conc - CO3	EA	3	\$8,100.00	3	\$24,300.00	0	\$0.00	3	\$24,300.00	100%
45	F&I Manhole 7' Dia Reinf Conc - CO3	EA	2	\$12,700.00	2	\$25,400.00	0	\$0.00	2	\$25,400.00	100%
46	F&I Manhole Type E Reinf Conc	EA	1	\$22,240.00	1	\$22,240.00	0	\$0.00	1	\$22,240.00	100%
47	F&I Inlet - Manhole (MHI) 4' Dia Reinf Conc	EA	8	\$4,100.00	8	\$32,800.00	0	\$0.00	8	\$32,800.00	100%
48	F&I Inlet - Single Box (SBI) Reinf Conc	EA	2	\$3,310.00	2	\$6,620.00	0	\$0.00	2	\$6,620.00	100%
49	F&I Pipe 18" Dia	LF	109	\$66.00	109	\$7,194.00	0	\$0.00	109	\$7,194.00	100%
50	F&I Pipe 21" Dia	LF	262	\$80.00	262	\$20,960.00	0	\$0.00	262	\$20,960.00	100%
51	F&I Pipe 24" Dia	LF	17	\$89.00	17	\$1,513.00	0	\$0.00	17	\$1,513.00	100%
52	F&I Pipe 27" Dia	LF	267	\$116.00	267	\$30,972.00	0	\$0.00	267	\$30,972.00	100%
53	F&I Pipe 36" Dia	LF	378	\$175.00	378	\$66,150.00	0	\$0.00	378	\$66,150.00	100%
54	F&I Pipe 42" Dia	LF	289	\$247.00	289	\$71,383.00	0	\$0.00	289	\$71,383.00	100%
55	F&I Pipe 42" Dia Reinf Conc	LF	173	\$247.00	173	\$42,731.00	0	\$0.00	173	\$42,731.00	100%
56	F&I Pipe 12" Dia Polypropylene	LF	80	\$47.00	80	\$3,760.00	0	\$0.00	80	\$3,760.00	100%
57	F&I Pipe 15" Dia Polypropylene	LF	40	\$60.00	40	\$2,400.00	0	\$0.00	40	\$2,400.00	100%
58	F&I Pipe 18" Dia Polypropylene	LF	80	\$72.00	80	\$5,760.00	0	\$0.00	80	\$5,760.00	100%
59	F&I Pipe 24" Dia Polypropylene - CO3	LF	70	\$107.00	70	\$7,490.00	0	\$0.00	70	\$7,490.00	100%
60	F&I Pipe w/GB 18" Dia Reinf Conc	LF	31	\$87.00	31	\$2,697.00	0	\$0.00	31	\$2,697.00	100%

1. Contract Work

	Contract		Previous		Current		To Date			
	Unit	Quantity	Price	Quantity	Amount (\$)	Quantity	Amount (\$)	% Comp.		
61	LF	62	\$101.00	62	\$6,262.00	0	\$0.00	62	\$6,262.00	100%
	F&I Pipe w/GB 21" Dia Reinf Conc									
62	LF	62	\$115.00	62	\$7,130.00	0	\$0.00	62	\$7,130.00	100%
	F&I Pipe w/GB 24" Dia Reinf Conc									
63	CY	30	\$79.00	30	\$2,370.00	0	\$0.00	30	\$2,370.00	100%
	F&I Rip Rap Rock									
64	EA	1	\$5,688.00	1	\$5,688.00	0	\$0.00	1	\$5,688.00	100%
	F&I Flared End Section 42" Dia Reinf Conc									
					Storm Sewer Sub Total	\$435,580.00	\$0.00		\$435,580.00	
Paving										
65	CY	6322	\$4.00	6322	\$25,288.00	0	\$0.00	6322	\$25,288.00	100%
	Topsoil - Strip									
66	CY	4242	\$4.00	4242	\$16,968.00	0	\$0.00	4242	\$16,968.00	100%
	Excavation									
67	CY	2245	\$2.50	2245	\$5,612.50	0	\$0.00	2245	\$5,612.50	100%
	Subcut									
68	SY	6735	\$2.00	6735	\$13,470.00	0	\$0.00	6735	\$13,470.00	100%
	Subgrade Preparation									
69	SY	6735	\$2.00	6735	\$13,470.00	0	\$0.00	6735	\$13,470.00	100%
	F&I Woven Geotextile									
70	SY	6735	\$11.00	6735	\$74,085.00	0	\$0.00	6735	\$74,085.00	100%
	F&I Class 5 Agg - 8" Thick									
71	LF	3574.5	\$14.50	3574.5	\$51,830.25	0	\$0.00	3574.5	\$51,830.25	100%
	F&I Edge Drain 4" Dia PVC - CO3									
72	LF	75	\$8.00	75	\$600.00	0	\$0.00	75	\$600.00	100%
	Remove Integral Curb & Gutter									
73	LF	3500.5	\$26.00	3500.5	\$91,013.00	0	\$0.00	3500.5	\$91,013.00	100%
	F&I Curb & Gutter Standard (Type II) - CO3									
74	LF	15	\$71.00	15	\$1,065.00	0	\$0.00	15	\$1,065.00	100%
	Rem & Repl Curb & Gutter									
75	SY	298.22	\$94.50	298.22	\$28,181.79	0	\$0.00	298.22	\$28,181.79	100%
	F&I Pavement 7" Thick Reinf Conc - CO3									
76	SY	84	\$147.00	84	\$12,348.00	0	\$0.00	84	\$12,348.00	100%
	F&I Pavement 9" Thick Reinf Conc									
77	SY	55.5	\$94.50	55.5	\$5,244.75	0	\$0.00	55.5	\$5,244.75	100%
	F&I Sidewalk 4" Thick Reinf Conc - CO3									

1. Contract Work

	Contract		Previous		Current		To Date				
	Unit	Quantity	Price	Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	% Comp.	
78	F&I Sidewalk 6" Thick Reinf Conc - CO3	SY	41.84	\$110.00	41.84	\$4,602.40	0	\$0.00	41.84	\$4,602.40	100%
79	F&I Det Warn Panels Cast Iron - CO3	SF	40	\$52.00	40	\$2,080.00	0	\$0.00	40	\$2,080.00	100%
80	F&I Asphalt Pavement FAA 43 w/ PG58H-34 - CO3	Ton	2455.77	\$103.00	2455.77	\$252,944.31	0	\$0.00	2455.77	\$252,944.31	100%
81	Casting to Grade - Blvd	EA	12	\$250.00	12	\$3,000.00	0	\$0.00	12	\$3,000.00	100%
82	Casting to Grade - no Conc	EA	25	\$400.00	25	\$10,000.00	0	\$0.00	25	\$10,000.00	100%
83	GV Box to Grade - Blvd - CO3	EA	14	\$200.00	14	\$2,800.00	0	\$0.00	14	\$2,800.00	100%
84	Mulching Type 1 Hydro - CO3	SY	9798.1	\$0.50	9798.1	\$4,899.05	0	\$0.00	9798.1	\$4,899.05	100%
85	Seeding Type C - CO3	SY	7564.5	\$0.43	7564.5	\$3,252.74	0	\$0.00	7564.5	\$3,252.74	100%
86	Rem & Repl Pavement 10" Thick Reinf Conc	SY	85	\$193.00	85	\$16,405.00	0	\$0.00	85	\$16,405.00	100%
87	Traffic Control - Type 1	LS	1	\$2,872.00	1	\$2,872.00	0	\$0.00	1	\$2,872.00	100%
					Paving Sub Total	\$642,031.79		\$0.00		\$642,031.79	
Signing											
88	F&I Sign Assembly - CO3	EA	7	\$105.00	7	\$735.00	0	\$0.00	7	\$735.00	100%
89	F&I Sign Assembly & Anchor - CO3	EA	5	\$105.00	5	\$525.00	0	\$0.00	5	\$525.00	100%
90	F&I Diamond Grade Cubed - CO3	SF	43.01	\$23.10	43.01	\$993.53	0	\$0.00	43.01	\$993.53	100%
91	F&I High Intensity Prismatic - CO3	SF	13.5	\$19.95	13.5	\$269.33	0	\$0.00	13.5	\$269.33	100%
					Signing Sub Total	\$2,522.86		\$0.00		\$2,522.86	
Street Lights											
92	F&I Base 5' Deep Reinf Conc	EA	3	\$788.00	3	\$2,364.00	0	\$0.00	3	\$2,364.00	100%

1. Contract Work

	Contract			Previous		Current		To Date			
	Unit	Quantity	Price	Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)		
									% Comp.		
93	F&I Base 6' Deep Reinf Conc	EA	8	\$840.00	8	\$6,720.00	0	\$0.00	8	\$6,720.00	100%
94	F&I Conductor #6 USE Cu - CO3	LF	5277	\$2.10	5277	\$11,081.70	0	\$0.00	5277	\$11,081.70	100%
95	F&I Innerduct 1.5" Dia - CO3	LF	1698	\$6.30	1698	\$10,697.40	0	\$0.00	1698	\$10,697.40	100%
96	F&I Luminaire Type A	EA	8	\$435.00	8	\$3,480.00	0	\$0.00	8	\$3,480.00	100%
97	F&I Luminaire Type B	EA	3	\$315.00	3	\$945.00	0	\$0.00	3	\$945.00	100%
98	F&I Light Standard Type A	EA	8	\$3,869.00	8	\$30,952.00	0	\$0.00	8	\$30,952.00	100%
99	F&I Light Standard Type B	EA	3	\$2,898.00	3	\$8,694.00	0	\$0.00	3	\$8,694.00	100%
					Street Lights Sub Total	\$74,934.10		\$0.00		\$74,934.10	
Erosion Control											
100	Mulching Type 2 Straw - CO3	SY	1587	\$0.08	1587	\$126.96	0	\$0.00	1587	\$126.96	100%
101	Stormwater Management	LS	1	\$2,000.00	1	\$2,000.00	0	\$0.00	1	\$2,000.00	100%
102	Temp Construction Entrance	EA	2	\$1,550.00	2	\$3,100.00	0	\$0.00	2	\$3,100.00	100%
103	Sediment Control Log 6" to 8" Dia - CO3	LF	20	\$4.20	20	\$84.00	0	\$0.00	20	\$84.00	100%
104	Inlet Protection - New Inlet - CO3	EA	10	\$200.00	10	\$2,000.00	0	\$0.00	10	\$2,000.00	100%
105	Inlet Protection - Existing Inlet	EA	8	\$200.00	8	\$1,600.00	0	\$0.00	8	\$1,600.00	100%
					Erosion Control Sub Total	\$8,910.96		\$0.00		\$8,910.96	
					A. All Contract Work Container Subtotal	\$1,744,928.95		\$0.00		\$1,744,928.95	

2. Change Orders

Change Order Item & Quantity Summary				Change Order Item Payment Summary					
CO# & Category	Line No	Description	Previous Contract Totals		New Contract Totals		To Date		
			Unit Qty	Price	Unit Qty	Price		Quantity	Amount (\$)
Change Order #1			Net Contract Change: \$NaN						
Change Order #2			Net Contract Change: \$8,923.62						
New	C2	F&I Tapping Sleeve & Valve 12"x4"	EA	0	\$8,923.62	EA	1	\$8,923.62	100%
Change Order #3			Net Contract Change: \$6,509.21						
Change Order #1 Subtotals					\$0.00			\$0.00	
Change Order #2 Subtotals					\$0.00			\$8,923.62	
Change Order #3 Subtotals					\$0.00			\$0.00	
B. All Change Order Work Paid Subtotal					\$0.00			\$8,923.62	
C. All Contract Work Container Subtotal					\$1,744,928.95			\$1,744,928.95	
D. Total Contract Work Completed To Date								\$1,753,852.57	
E. Total Contract Work Completed This Pay Estimate								\$8,923.62	

* Please Note That Change Order Payment Totals On This Page Will Not Reflect The Total Change Order Value If The Change Order Contains Quantity Change Items

3. Payment Adjustments

Category	Line No	Description	Contract		Previous		Current		To Date	
			Unit Qty	Price	Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)
Material On Hand										
MOH1	P1	MOH Payment F&I Manhole 6' Dia Reinf Conc	LS 1	\$6,087.19	\$0.00	\$0.00	\$0.00	1	\$6,087.19	
	P2	MOH Payment F&I Inlet - Manhole (MHI) 4' Dia Reinf Conc	LS 1	\$24,193.83	\$0.00	\$0.00	\$0.00	1	\$24,193.83	
	P3	MOH Payment F&I Manhole 5' Dia Reinf Conc	LS 1	\$31,239.71	\$0.00	\$0.00	\$0.00	1	\$31,239.71	
	P4	MOH Payment F&I Manhole Type E Reinf Conc	LS 1	\$19,860.63	\$0.00	\$0.00	\$0.00	1	\$19,860.63	
	P5	MOH Payment F&I Manhole 7' Dia Reinf Conc	LS 1	\$1,840.94	\$0.00	\$0.00	\$0.00	1	\$1,840.94	
	P6	MOH Payment F&I Manhole 4' Dia Reinf Conc	LS 1	\$44,132.84	\$0.00	\$0.00	\$0.00	1	\$44,132.84	
	P7	MOH Payment F&I Pipe 42" Dia	LS 1	\$23,718.25	\$0.00	\$0.00	\$0.00	1	\$23,718.25	
	P8	MOH Payment F&I Inlet - Single Box (SBI) Reinf Conc	LS 1	\$3,774.60	\$0.00	\$0.00	\$0.00	1	\$3,774.60	
	P9	MOH Payment F&I Pipe 36" Dia	LS 1	\$8,123.24	\$0.00	\$0.00	\$0.00	1	\$8,123.24	
	P10	MOH Payment F&I Pipe 42" Dia Reinf Conc	LS 1	\$23,712.00	\$0.00	\$0.00	\$0.00	1	\$23,712.00	
	R1	MOH Recovery F&I Manhole 4' Dia Reinf Conc	EA 1	\$44,132.84	\$0.00	\$0.00	\$0.00	1	-\$44,132.84	100%
	R2	MOH Recovery F&I Manhole Type E Reinf Conc	EA 1	\$19,860.63	\$0.00	\$0.00	\$0.00	1	-\$19,860.63	100%
	R3	MOH Recovery F&I Pipe 42" Dia	LF 1	\$23,718.25	\$0.00	\$0.00	\$0.00	1	-\$23,718.25	100%
	R4	MOH Recovery F&I Pipe 42" Dia Reinf Conc	LF 1	\$23,712.00	\$0.00	\$0.00	\$0.00	1	-\$23,712.00	100%

3. Payment Adjustments

Category	Line No	Description	Contract		Previous		Current		To Date		
			Unit Qty	Price	Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	% Complete
	R5	MOH Recovery F&I Manhole 5' Dia Reinf Conc	EA 1	\$31,239.71		\$0.00		\$0.00	1	-\$31,239.71	100%
	R6	MOH Recovery F&I Manhole 6' Dia Reinf Conc	EA 1	\$6,087.19		\$0.00		\$0.00	1	-\$6,087.19	100%
	R7	MOH Recovery F&I Manhole 7' Dia Reinf Conc	EA 1	\$1,840.94		\$0.00		\$0.00	1	-\$1,840.94	100%
	R8	MOH Recovery F&I Inlet - Manhole (MHI) 4' Dia Reinf Conc	EA 1	\$24,193.83		\$0.00		\$0.00	1	-\$24,193.83	100%
	R9	MOH Recovery F&I Inlet - Single Box (SBI) Reinf Conc	EA 1	\$3,774.60		\$0.00		\$0.00	1	-\$3,774.60	100%
	R10	MOH Recovery F&I Pipe 36" Dia	LF 1	\$8,123.24		\$0.00		\$0.00	1	-\$8,123.24	100%
			Material On Hand Subtotals			\$0.00		\$0.00		\$0.00	
			F. All Payment Adjustment Category Subtotals This Pay Estimate			\$0.00		\$0.00		\$0.00	
			G. All Payment Adjustment Category Subtotals To Date							\$0.00	

Contract Summary		
1. Original Contract Amount	Original contract amount	\$1,738,419.74
2. Net Contract Change by Change Order	Sum of all net change order values	\$15,432.83
3. Current Contract Amount	Sum of original contract amount and all change orders	\$1,753,852.57
Total Work Completed To Date		
4. Total Contract Work Completed to Date	Section 2 of This Estimate, Line D	\$1,753,852.57
5. Total Contract Work Completed This Pay Estimate	Section 2 of This Estimate, Line E	\$8,923.62
Payment Adjustments		
6. Total Retainage Withheld @ 0% of Total Contract Work Completed to Date	Line 4 x 0%	-\$0.00
7. Retainage Release This Pay Estimate	(If Retainage is to be released) = Previous Total Retainage Withheld minus Line 6	\$17,449.29
8. Total Payment Adjustments This Pay Estimate	Section 3 of This Estimate, Line F	\$0.00
Payment Due Summary		
9. Total Due to Date	Line 4 + Line 6 + Total Payment Adjustments To Date (Line G, Section Three)	\$1,753,852.57
10. Previous Payments	Sum of all previous Payments to Contractor	\$1,727,479.66
11. Payment Due This Estimate	Line 9 - Line 10	\$26,372.91

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-23-C1 Type: Final Balancing Change Order #3

Location: 6th Ave N, 10th St – Robert’s St; 7th St, RR – 7th Ave N; 8th St N, 6th Ave – 7th Ave Date of Hearing: 12/4/2023

<u>Routing</u>	<u>Date</u>
City Commission	12/11/2023
PWPEC File	X
Project File	Aaron Edgar

The Committee reviewed the accompanying correspondence from Project Manager, Aaron Edgar, related to Final Balancing Change Order #3 in the amount of \$43,496.90, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Final Balancing Change Order #3 in the amount of \$43,496.90, bringing the total contract amount to \$3,560,187.31.

On a motion by Brenda Derrig, seconded by Steve Dirksen, the Committee voted to recommend approval of Final Balancing Change Order #3 to Dakota Underground.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Final Balancing Change Order #3 in the amount of \$43,496.90, bringing the total contract amount to \$3,560,187.31 to Dakota Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: WW, Water, Storm, Traffic, Sales Tax & 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>
				<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"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, Assistant City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


Tom Knakmuhs, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Aaron Edgar, Project Manager
Date: November 29, 2023
Re: Improvement District No. BR-23-C1 – Final Balancing Change Order #3

Background:

Improvement District No. BR-23-C1 on 6th Avenue North from 10th Street to Roberts Street; 8th Street North from 6th Avenue to 7th Avenue; 7th Street North from BNSF to 7th Avenue.

Dakota Underground is the Prime Contractor on this project.

Attached is the Final Balancing Change Order #3 in the amount of \$43,496.90. The Contractor met the requirements of the contract and it has been accepted by the City. This FBCO reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Original Contract:	\$ 3,492,318.62
Change Order #1	\$ 21,496.39
Change Order #2	\$ 2,875.40
FBCO #3	\$ 43,496.90
Total Contract:	\$ 3,560,187.31

Recommended Motion:

Approve Final Balancing Change Order #3 in the amount of \$43,496.90 to Dakota Underground for Improvement District No. BR-23-C1.

ADE/klb
Attachment



CHANGE ORDER REPORT

Final Balancing
Change Order

**PAVING AND UTILITY REHAB/RECONSTRUCTION
IMPROVEMENT DISTRICT NO. BR-23-C1**

**ON 6TH AVE N FROM 10TH ST N TO ROBERT'S ST N. ON 7TH ST N FROM THE BNSF
RAIL ROAD TRACKS TO 7TH AVE N. ON 8TH ST N FROM 6TH AVE N TO 7TH AVE N.**

Change Order No 3 **Change Order Date** 11/30/2023
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

Final Balancing Change Order.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev		Curr		Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
					C/O Qty	Qty	C/O Qty	Qty			
Paving		Construction Signing	SF	30			30	-30	0	\$20.00	-\$600.00
										Paving Sub Total	-\$600.00
Change Order 2		Repair Street Light Miscellaneous	EA	1			1	-1	0	\$1,755.60	-\$1,755.60
										Change Order 2 Sub Total	-\$1,755.60
Sanitary Sewer		Clean Pipe All Sizes All Types	LF	659			659	-659	0	\$5.00	-\$3,295.00
										Sanitary Sewer Sub Total	-\$3,295.00
Paving		F&I Casting - Floating Manhole Weed Control Type B	EA SY	1 5167			1 5167	-1 -5167	0 0	\$1,300.00 \$0.10	-\$1,300.00 -\$516.70
										Paving Sub Total	-\$1,816.70

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 (\$)
Sanitary Sewer	1	Remove Manhole	EA	3	0	3	1	4	\$2,000.00	\$2,000.00
	2	Remove Pipe All Sizes All Types	LF	841	0	841	-171	670	\$25.00	-\$4,275.00
	3	F&I Manhole 4' Dia Reinf Conc	EA	4	0	4	1	5	\$9,800.00	\$9,800.00
	4	F&I Pipe w/GB SDR 26 - 12" Dia PVC	LF	841	0	841	1	842	\$240.00	\$240.00
	5	F&I Pipe w/GB SDR 26 - 6" Dia PVC	LF	654	0	654	-44.5	609.5	\$106.00	-\$4,717.00
	6	Connect Sewer Service	EA	26	0	26	-1	25	\$1,000.00	-\$1,000.00
	7	Connect Pipe to Exist Pipe	EA	2	0	2	2	4	\$2,000.00	\$4,000.00
Sanitary Sewer Sub Total									\$6,048.00	
Water Main	14	Remove Pipe All Sizes All Types	LF	1419	0	1419	361	1780	\$20.00	\$7,220.00
	15	F&I Fittings C153 Ductile Iron	LB	2140	0	2140	238	2378	\$13.00	\$3,094.00
	16	F&I Hydrant	EA	4	0	4	1	5	\$6,950.00	\$6,950.00
	17	F&I Pipe w/GB C900 DR 18 - 4" Dia PVC	LF	85	0	85	17.5	102.5	\$105.00	\$1,837.50
	18	F&I Pipe w/GB C900 DR 18 - 6" Dia PVC	LF	156	0	156	11.5	167.5	\$115.00	\$1,322.50

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 (\$)
	20	F&I Pipe w/GB C900 DR 18 - 10" Dia PVC	LF	466	0	466	-4	462	\$140.00	-\$560.00
	21	F&I Pipe w/GB C900 DR 18 - 12" Dia PVC	LF	1382	0	1382	-5	1377	\$151.00	-\$755.00
	23	F&I Gate Valve 6" Dia	EA	7	0	7	1	8	\$2,200.00	\$2,200.00
	26	F&I Gate Valve 12" Dia	EA	5	0	5	1	6	\$5,500.00	\$5,500.00
	27	Furnish Temp Water Svc	EA	20	0	20	8	28	\$1,000.00	\$8,000.00
	28	F&I Pipe w/GB 1" Dia Water Service	LF	311	0	311	8	319	\$102.00	\$816.00
	29	F&I Pipe w/GB 1.5" Dia Water Service	LF	102	0	102	36.5	138.5	\$107.00	\$3,905.50
	30	Bore Pipe 1" Dia Water Service	LF	40	0	40	-20	20	\$102.00	-\$2,040.00
	32	Rem & Repl CS & Box 1" Dia	EA	15	0	15	-1	14	\$800.00	-\$800.00
								Water Main Sub Total		\$36,690.50
Storm Sewer	43	F&I Pipe w/GB SDR 26 - 10" Dia PVC	LF	29	0	29	1	30	\$132.00	\$132.00
	45	F&I Pipe w/GB 18" Dia Reinf Conc	LF	337	0	337	1	338	\$136.00	\$136.00
	49	F&I Controlled Density Fill	CY	11	0	11	4.5	15.5	\$250.00	\$1,125.00

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 (\$)
Paving	53	Salvage & Install Fence	LF	80	0	80	-32	48	\$105.00	-\$3,360.00
		Remove Pavement All Thicknesses All Types	SY	7574	0	7574	-112	7462	\$18.00	-\$2,016.00
	55	Remove Curb & Gutter	LF	4384	0	4384	132	4516	\$10.00	\$1,320.00
	56	Remove Driveway All Thicknesses All Types	SY	1255	0	1255	-23	1232	\$15.00	-\$345.00
	57	Remove Sidewalk All Thicknesses All Types	SY	1578	0	1578	112	1690	\$15.00	\$1,680.00
	58	Subgrade Preparation	SY	8771	0	8771	227	8998	\$5.00	\$1,135.00
	59	F&I Woven Geotextile	SY	8771	0	8771	227	8998	\$2.00	\$454.00
	60	F&I Class 5 Agg - 12" Thick	SY	8771	0	8771	227	8998	\$24.00	\$5,448.00
	62	F&I Pavement 9" Thick Doweled Conc	SY	7289	0	7289	-15	7274	\$125.00	-\$1,875.00
	63	F&I Curb & Gutter Standard (Type II)	LF	4440	0	4440	-5	4435	\$30.00	-\$150.00
	64	F&I Asphalt Pavement FAA 43 w/ PG58H-34	Ton	45	0	45	-33.87	11.13	\$450.00	-\$15,241.50
Storm Sewer Sub Total										\$1,393.00

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Curr Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
	65	F&I Sidewalk 4" Thick Reinf Conc	SY	1894	0	1894	70	1964	\$70.00	\$4,900.00
	66	F&I Sidewalk 6" Thick Reinf Conc	SY	81	0	81	51	132	\$80.00	\$4,080.00
	67	F&I Det Warn Panels Cast Iron	SF	180	0	180	52	232	\$50.00	\$2,600.00
	68	F&I Impressed 4" Thick Reinf Conc	SY	104	0	104	-11	93	\$150.00	-\$1,650.00
	69	F&I Driveway 6" Thick Reinf Conc	SY	1350	0	1350	166.2	1516.2	\$80.00	\$13,296.00
	70	F&I Casting Water Service	EA	1	0	1	1	2	\$300.00	\$300.00
	73	GV Box to Grade - w/Conc	EA	15	0	15	2	17	\$500.00	\$1,000.00
	74	GV Box to Grade - Blvd	EA	6	0	6	1	7	\$300.00	\$300.00
	75	Boulevard Grading	SY	5167	0	5167	26	5193	\$8.00	\$208.00
	76	Seeding Type C	SY	5167	0	5167	26	5193	\$4.40	\$114.40
	77	Mulching Type 1 Hydro	SY	5167	0	5167	26	5193	\$0.80	\$20.80
	82	Remove Tree	EA	7	0	7	-1	6	\$5,000.00	-\$5,000.00
								Paving Sub Total		\$7,218.70
Street Lights	89	F&I Conductor #6 USE Cu	LF	411	0	411	-15	396	\$2.50	-\$37.50
								Street Lights Sub Total		-\$37.50
Signing	91	F&I Sign Assembly	EA	12	0	12	1	13	\$100.00	\$100.00

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 (\$)
	92	F&I Sign Assembly & Anchor	EA	32	0	32	-3	29	\$105.00	-\$315.00
	93	F&I Diamond Grade Cubed	SF	94.19999999999999	0	94.19999999999999	13.18	107.38	\$25.00	\$329.50
	94	F&I High Intensity Prismatic	SF	99.4	0	99.4	-5.15	94.25	\$20.00	-\$103.00
								Signing Sub Total		\$11.50
Pavement Marking	97	F&I Grooved Plastic Film 24" Wide	LF	118	0	118	-6	112	\$60.00	-\$360.00
								Pavement Marking Sub Total		-\$360.00

Summary.

Source Of Funding

Waste Water Utility Funds, Water Utility Funds, Storm Utility Funds, Traffic/Street Light Utility Funds, Street Sales	
Tax Funds, Special Assessments	\$43,496.90
	\$24,371.79
	\$3,492,318.62
	\$3,560,187.31

Net Amount Change Order # 3 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

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

APPROVED 11/30/2023 Bob Johnson
 For Contractor Dakota Underground Company
 Title Project Manager

APPROVED DATE T-CC
 Department Head
 Mayor
 Attest

29

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. UN-23-A1 Type: Negative Final Balancing Change Order #2

Location: North City Limits, 45th – 25th Street Date of Hearing: 12/4/2023

Routing Date
City Commission 12/11/2023
PWPEC File X
Project File Jason Satterlund

The Committee reviewed the accompanying correspondence from Project Manager, Jason Satterlund, regarding Negative Final Balancing Change Order #2 in the amount of \$-167,152.75, 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 \$-167,152.75, bringing the total contract amount to \$3,631,930.75.

On a motion by Brenda Derrig, seconded by Steve Dirksen, the Committee voted to recommend approval of Negative Final Balancing Change Order #2 to Ryan Contracting.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #2 in the amount of \$-167,152.75, bringing the total contract amount to \$3,631,930.75 to Ryan Contracting.

PROJECT FINANCING INFORMATION:

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

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 4 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

Memorandum

To: Members of PWPEC
From: Jason Satterlund, Project Manager
Date: November 28, 2023
Re: Improvement District No. UN-23-A1 – Negative Final Balancing Change Order #2

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.

Negative Final Balancing Change Order #2 reconciles the estimated quantities used in the contract with the final quantities as measured in the field, including the following extra work performed by Ryan Contracting as a result of ongoing field design changes and unexpected conditions.

Change Order #2:

- 1a.) The Contractor encountered unexpected ground water from Amazon's existing infrastructure being in rock not Class 3 gravel as anticipated when cutting in the 12" gate valve as part of Change Order #1. This resulted in a one-hour delay to pump water. The total contract price adjustment for this work is \$1,372.00 to be paid as Temp Pumping.
- 1b, 1c, 1d.) As the work in Change Order #1 proceeded, it became necessary to remove asphalt on 37th Street to keep the excavation OSHA compliant. The total contract price adjustment to remove, dispose of, and replace the asphalt is \$6,658.96 to be paid as Rem & Repl Pavement 10" Thick Asph.
2. & 4.) The location and size of the existing water service to NDSU Ag property was improperly shown on the plan.
 - 2.) The Contractor spent 2 hours of time to locate the existing line. This crew time was added to the bid price of F&I CS & Box 1.5" Dia to create a new item F&I CS & Box 2" Dia. These combined resulted in a net increase of \$1,013.00.
 - 4.) The additional cost of the 2" saddle, 2" corporation, 2" Municipex pipe, and 2" fittings to connect to existing in comparison to 1.5" fittings as well as 2" being more labor intensive to work than 1.5" was added to the bid price of F&I Pipe 1.5" Dia Water Service to create a new item F&I Pipe 2" Dia Water Service. These combined resulted in a net increase of \$1,105.33.

- 3.) In order to get the 2" NDSU water service reconnected in the revised location, a section of existing 10" field drain tile needed to be removed and replaced. The total contract price adjustment for this work is \$455.28 to be paid under item F&I Pipe 10" Dia.
- 5.) Due to a field change in elevations, a 24" hydrant extension was needed to match existing grades north of County Road 20. The total contract price adjustment for this work is \$1,965.40 to be paid as F&I Hydrant Ext. 24" High.
- 6.) The plans did not account for removal and replacement of 29 LF existing steel drainage pipe located east of Hwy 81. The Contractor salvaged then installed the steel pipe after the water main installation passed. The total contract price adjustment for this work is \$672.00 to be paid as Salvage Pipe All Sizes Corr Steel and Install Salvaged Pipe All Sizes Corr Steel.
- 7.) To give the businesses a driveway equal to what was there prior to installation of the water main, the Contractor top-dressed the existing approach with a load of crushed concrete. The total contract price adjustment for this work is \$674.38 to be paid as F&I Crushed Conc-4" Thick.
- 8.) There was no gravel to salvage from the existing gravel road where the new 16" water line crossed 37th street near 52nd Avenue North. The Contractor provided a load of gravel. The total contract price adjustment for this work is \$744.08 to be paid F&I Traffic Surface Gravel.
- 9.) While setting up for the bore under BNSF railroad, the boring company brought to my attention that the plan elevations did not provide enough clearance from the bottom of the BNSF rail to the top of the 30" casing. The bore was lowered to provide the necessary clearance, which created additional excavation and gravel backfill on the east side of BNSF tracks, and ensuing bore under Highway 81. The excess excavation needed to be removed from the site to offset the additional gravel backfill under the driveways. The total contract price adjustment for this work is \$22,658.00 to be paid under items Excavate & Haul - Excess Material and F&I Class 5 Agg - 12" Thick.
- 10.) The plans did not account for removal and replacement of a 40 LF existing CMP and a 52 LF existing CMP located in the east ditch of 37th Street. The Contractor salvaged then installed them after the water main pipe laying process passed. The total contract price adjustment for this work is \$2,751.00 to be paid with items Salvage Pipe All Sizes Corr Steel and Install Salvaged Pipe All Sizes Corr Steel.
- 11.) The Contractor extended an existing CMP at City of Fargo's request. There were no bid items for 30 CMP or 30" CMP FES. The total contract price adjustment for this work is \$1,539.50 to be paid with items F&I Pipe 30" Dia Corr Steel and F&I Flared End Section 30" Dia Corr Steel.

Items 1 thru 11 result in a net increase of \$48,278.76 to the contract.

Original Contract:	\$ 3,631,788.50
Change Order #1:	\$ 167,295.00
Negative FBCO #2:	\$ (167,152.75)
Final Contract:	\$ 3,631,930.75

Recommended Motion:

Approve Negative Final Balancing Change Order #2 in the amount of -\$167,152.75.

JTS/klb
Attachments

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 2 Change Order Date 11/20/2023
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 # 2

Final Balancing Change Order #2 reconciles the estimated quantities used in the contract with the final quantities as measured in the field, including the following extra work performed by Ryan Contracting as a result of ongoing field design changes and unexpected conditions.

- 1a.) The Contractor encountered unexpected ground water from Amazon's existing infrastructure being in rock not Class 3 gravel as anticipated when cutting in the 12" gate valve as part of Change Order #1. This resulted in a one-hour delay to pump water. The total contract price adjustment for this work is \$1372.00 to be paid as Temp Pumping.
- 1b, 1c, 1d.) As the work in Change Order #1 proceeded it became necessary to remove asphalt on 37th Street to keep the excavation OSHA compliant. The total contract price adjustment to remove, dispose of, and replace the asphalt is \$6658.96 to be paid as Rem & Repl Pavement 10" Thick Asph.
- 2, 4.) The location and size of the existing water service to NDSU Ag property was improperly shown on the plan. The Contractor spent 2 hours of time to locate the existing line. This crew time was added to the bid price of F&I CS & Box 1.5" Dia to create a new item F&I CS & Box 2" Dia. The resulted in a net increase of \$1013.00. The additional cost of the 2" saddle, 2" corporation, 2" Municipex pipe, and 2" fittings to connect to existing in comparison to 1.5" fittings as well as 2" being more labor intensive to work than 1.5" was added to the bid price of F&I Pipe 1.5" Dia Water Service to create a new item F&I Pipe 2" Dia Water Service. This resulted in a net increase of \$1105.33.
- 3.) In order to get the 2" NDSU water service reconnected in the revised location, a section of existing 10" field drain tile needed to be removed and replaced. The total contract price adjustment for this work is \$455.28 to be paid under item F&I Pipe 10" Dia.
- 5.) Due to a field change in elevations, a 24" hydrant extension was needed to match existing grades north of County Road 20. The total contract price adjustment for this work is \$1965.40 to be paid as F&I Hydrant Ext. 24" High.
- 6.) The plans did not account for removal and replacement of 29 LF existing steel drainage pipe located east of Hwy 81. The Contractor salvaged then installed the steel pipe after the water main installation passed. The total contract price adjustment for this work is \$672.00 to be paid as Salvage Pipe All Sizes Corr Steel and Install Salvaged Pipe All Sizes Corr Steel.
- 7.) To give the businesses a driveway equal to what was there prior to installation of the water main, the Contractor top dressed the existing approach with a load of crushed concrete. The total contract price adjustment for this work is \$674.38 to be paid as F&I Crushed Conc-4" Thick.
- 8.) There was no gravel to salvage from the existing gravel road where the new 16" water line crossed 37th street near 52nd Avenue North. The

Contractor provided a load of gravel. The total contract price adjustment for this work is \$744.08 to be paid F&I Traffic Surface Gravel.
 9.) While setting up for the bore under BNSF railroad, the boring company brought to my attention that the plan elevations did not provide enough clearance from the bottom of the BNSF rail to the top of the 30" casing. The bore was lowered to provide the necessary clearance which created additional excavation and gravel backfill on the east side of BNSF tracks and ensuing bore under Highway 81. The excess excavation needed to be removed from the site to offset the additional gravel backfill under the driveways. The total contract price adjustment for this work is \$22,658.00 to be paid under items Excavate & Haul - Excess Material and F&I Class 5 Agg - 12" Thick.
 10.) The plans did not account for removal and replacement of a 40 LF existing CMP and a 52 LF existing CMP located in the east ditch of 37th Street. The Contractor salvaged then installed them after the water main pipe laying process passed. The total contract price adjustment for this work is \$2751.00 to be paid with items Salvage Pipe All Sizes Corr Steel and Install Salvaged Pipe All Sizes Corr Steel.

11.) The Contractor extended an existing CMP at City of Fargo's request. There were no bid items for 30 CMP or 30" CMP FES. The total contract price adjustment for this work is \$1539.50 to be paid with items F&I Pipe 30" Dia Corr Steel and F&I Flared End Section 30" Dia Corr Steel.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev		Curr		Tot		Unit Price (\$)	C/O Ext Price (\$)
					C/O Qty	Cont Qty	C/O Qty	Cont Qty	C/O Qty	Cont Qty		
Water Main (West)		F&I Pipe 1.5" Dia	LF	20	20	0	-20	0	0	0	\$100.00	-\$2,000.00
		Water Service										
Miscellaneous (West)	2	Mulching Type 1 Hydro	SY	20700	20700	0	-1208	19492	0	0	\$0.36	-\$434.88
	3	Mulching Type 2 Straw	SY	17300	17300	0	2411	19711	0	0	\$0.15	\$361.65
	4	Seeding Type A	SY	17300	17300	0	21903	39203	0	0	\$0.18	\$3,942.54
	5	Seeding Type B	SY	20700	20700	0	-20700	0	0	0	\$0.35	-\$7,245.00
	8	Silt Fence - Standard	LF	6500	6500	0	-619	5881	0	0	\$2.50	-\$1,547.50
	9	Sediment Control Log 6" to 8" Dia	LF	1850	1850	0	-1662	188	0	0	\$2.15	-\$3,573.30
				Water Main (West) Sub Total								-\$2,000.00
				Miscellaneous (West) Sub Total								-\$8,496.49
Change Order 1	11	Mobilization	LS	-0.25	1	1	-0.25	0.75	0	0	\$28,680.00	-\$7,170.00
Change Order 2	14	Temp Pumping	LS	0	0	1	0	1	1	1	\$1,372.00	\$1,372.00
				Change Order 1 Sub Total								-\$7,170.00

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev		Curr		Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
					C/O Qty	Cont Qty	C/O Qty	Cont Qty			
	15	F&I Hydrant Ext. 24" High	EA	0	0	0	1	1	1	\$1,965.40	\$1,965.40
	16	F&I Pipe 2" Dia Water Service	LF	0	0	0	46.4	46.4	46.4	\$123.82	\$5,745.25
	17	F&I CS & Box 2" Dia	EA	0	0	0	1	1	1	\$3,013.00	\$3,013.00
	18	Install Salvaged Pipe All Sizes Corr Steel	LF	0	0	0	92	92	92	\$19.93	\$1,833.56
	19	Install Salvaged Pipe All Sizes Corr Steel	LF	0	0	0	29	29	29	\$15.46	\$448.34
	20	F&I Pipe 10" Dia	LF	0	0	0	17	17	17	\$26.78	\$455.26
	21	F&I Pipe 30" Dia Corr Steel	LF	0	0	0	10	10	10	\$90.00	\$900.00
	22	Salvage Pipe All Sizes Corr Steel	LF	0	0	0	29	29	29	\$7.72	\$223.88
	23	Salvage Pipe All Sizes Corr Steel	LF	0	0	0	92	92	92	\$9.97	\$917.24
	24	F&I Flared End Section 30" Dia Corr Steel	EA	0	0	0	1	1	1	\$639.50	\$639.50
	25	Excavate & Haul - Excess Material	CY	0	0	0	500	500	500	\$24.69	\$12,345.00
	26	F&I Class 5 Agg - 12" Thick	SY	0	0	0	750	750	750	\$13.75	\$10,312.50
	27	F&I Crushed Conc - 4" Thick	SY	0	0	0	205.68	205.68	205.68	\$3.28	\$674.63
	28	Rem & Repl Pavement 10" Thick Asph	SY	0	0	0	17.6	17.6	17.6	\$378.35	\$6,658.96

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev		Curr		Tot Cont	Unit Price (\$)	C/O Ext Price (\$)
					C/O Qty	Cont Qty	C/O Qty	Cont Qty			
	29	F&I Traffic Surface Gravel	Ton	0	0	0	24	24	24	\$32.26	\$774.24
	Change Order 2 Sub Total \$48,278.76										
Miscellaneous (East)	32	Mulching Type 2 Straw	SY	69000	69000	-39274	-39274	29726	29726	\$0.15	-\$5,891.10
	33	Seeding Type A	SY	69000	69000	-39274	-39274	29726	29726	\$0.18	-\$7,069.32
	35	Temp Construction Entrance	EA	6	6	-5	-5	1	1	\$500.00	-\$2,500.00
	36	Silt Fence - Standard	LF	1000	1000	-1000	-1000	0	0	\$2.50	-\$2,500.00
	37	Sediment Control Log 6" to 8" Dia	LF	900	900	-794	-794	106	106	\$2.15	-\$1,707.10
	Miscellaneous (East) Sub Total -\$19,667.52										
Water Main (West)	39	Bore Pipe 30" Dia Steel	LF	380	380	20	20	400	400	\$1,100.00	\$22,000.00
	41	F&I Fittings C153 Ductile Iron	LB	2030	2397	25	25	2422	2422	\$10.00	\$250.00
	43	F&I Insulation 4" Thick	SY	-973.7	1150	10	36.3	46.3	46.3	\$70.00	\$2,541.00
	44	F&I Water Main - Locator Pedestal	EA	6	6	-1	-1	5	5	\$250.00	-\$250.00
	46	Bore Pipe C900 DR 18 - 16" Dia PVC	LF	200	200	-3.75	-3.75	196.25	196.25	\$300.00	-\$1,125.00
	47	F&I Pipe C900 DR 18 - 6" Dia PVC	LF	0.30000000000000007	52	20	-7.7	12.3	12.3	\$95.00	-\$731.50
	48	F&I Pipe C900 DR 18 - 12" Dia PVC	LF	129.6	2693	165	7.6	172.6	172.6	\$120.00	\$912.00
	49	F&I Pipe C900 DR 18 - 16" Dia PVC	LF	6890	6890	-20	-20	6870	6870	\$115.00	-\$2,300.00
	50	Remove Pipe All Sizes All Types	LF	800	800	-700	-700	100	100	\$20.00	-\$14,000.00

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev		Curr		Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
					C/O Qty	Cont Qty	C/O Qty	Cont Qty			
	51	F&I Pipe w/GB C900 DR 18 - 16" Dia PVC	LF	20	20	-10	10	\$200.00	-\$2,000.00		
	54	F&I Gate Valve 16" Dia	EA	6	6	-2	4	\$18,000.00	-\$36,000.00		
	55	F&I Pipe 1.5" Dia Water Service	LF	20	20	-20	0	\$100.00	-\$2,000.00		
	57	Connect Water Service	EA	1	1	1	2	\$1,500.00	\$1,500.00		
	60	F&I Pipe 15" Dia Corr Steel	LF	40	40	-16	24	\$55.00	-\$880.00		
	61	F&I Pipe 18" Dia Corr Steel	LF	50	50	-50	0	\$60.00	-\$3,000.00		
	62	F&I Pipe 24" Dia Corr Steel	LF	10	10	-10	0	\$75.00	-\$750.00		
	63	F&I Pipe w/GB 24" Dia Corr Steel	LF	80	80	-80	0	\$100.00	-\$8,000.00		
	64	F&I Flared End Section 15" Dia Corr Steel	EA	4	4	-3	1	\$300.00	-\$900.00		
	65	F&I Flared End Section 18" Dia Corr Steel	EA	5	5	-5	0	\$400.00	-\$2,000.00		
	66	F&I Flared End Section 24" Dia Corr Steel	EA	3	3	-3	0	\$450.00	-\$1,350.00		
Water Main (East)	67	F&I Fittings C153 Ductile Iron	LB	4757	5090	59	5149	\$10.00	\$590.00		
	69	F&I Hydrant - Restrained Joint	EA	3	6	6	5	\$7,500.00	-\$7,500.00		
Water Main (West) Sub Total											
-\$48,083.50											

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev		Curr		Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
					C/O Qty	Cont Qty	C/O Qty	Cont Qty			
	70	F&I Insulation 4" Thick	SY	69.799999999999995	1150	1150	-60.2	1089.8	\$70.00	-\$4,214.00	
	71	F&I Water Main - Locator Pedestal	EA	6	6	6	-2	4	\$250.00	-\$500.00	
	73	Bore Pipe C900 DR 18 - 16" Dia PVC	LF	65	65	65	-1	64	\$300.00	-\$300.00	
	74	F&I Pipe C900 DR 18 - 6" Dia PVC	LF	43.5	52	52	3.5	55.5	\$95.00	\$332.50	
	75	F&I Pipe C900 DR 18 - 12" Dia PVC	LF	2618.8	2693	2693	-31.2	2661.8	\$85.00	-\$2,652.00	
	76	F&I Pipe C900 DR 18 - 16" Dia PVC	LF	10520	10520	10520	-866.7	9653.3	\$115.00	-\$99,670.50	
	77	F&I Pipe w/GB C900 DR 18 - 16" Dia PVC	LF	100	100	100	-25	75	\$150.00	-\$3,750.00	
	78	F&I Gate Valve 6" Dia	EA	5	8	8	-1	7	\$3,500.00	-\$3,500.00	
	81	F&I Pipe 24" Dia Corr Steel	LF	20	20	20	-20	0	\$75.00	-\$1,500.00	
	82	F&I Pipe w/GB 24" Dia Corr Steel	LF	80	80	80	-60	20	\$100.00	-\$6,000.00	
	83	F&I Flared End Section 24" Dia Corr Steel	EA	4	4	4	-3	1	\$450.00	-\$1,350.00	
Water Main (East) Sub Total										-\$130,014.00	

Summary.

Source Of Funding

Special Assessments, Water Utility Funds, Department of Water Resources Cost-Share grant

Net Amount Change Order # 2 (\$)

-\$167,152.75

Previous Change Orders (\$)

\$167,295.00

Original Contract Amount (\$)

\$3,631,788.50

Total Contract Amount (\$)

\$3,631,930.75

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

APPROVED

APPROVED DATE

For Contractor

Department Head

Beth Tatge



Title

Mayor

CFO/Sec

Attest



Quote: 1142-23-1

- 1a Amazon watermain was completely embedded in trench rock. Once we started removing the trench rock the trench filled with water.

Description	Unit	Rate	Units	Extension
Foreman	HR	\$ 140.00	1	\$ 140.00
Laborer - 3 each @ 1 hour	HR	\$ 107.00	3	\$ 321.00
Operator - 2 each @ 1 hour	HR	\$ 113.00	2	\$ 226.00
Excavator	HR	\$ 312.00	1	\$ 312.00
Loader	HR	\$ 118.00	1	\$ 118.00
Dozer	HR	\$ 128.00	1	\$ 128.00
Compactor	HR	\$ 92.00	1	\$ 92.00
Work Truck	HR	\$ 35.00	1	\$ 35.00
Total				\$ 1,372.00

- 1b Sawcutting

Description	Unit	Rate	Units	Extension
Laborer	HR	\$ 107.00	1	\$ 107.00
Saw w/blade	HR	\$ 150.00	1	\$ 150.00
Total				\$ 257.00

- 1c Loader time to pick up blacktop chucks and haul to disposal site.

Description	Unit	Rate	Units	Extension
Operator	HR	\$ 113.00	2	\$ 226.00
Loader	HR	\$ 118.00	2	\$ 236.00
Total				\$ 462.00

- 1d Blacktop Quote

Description	Unit	Rate	Units	Extension
Oye Asphalt Paving	LS	\$ 5,400.00	1	\$ 5,400.00
10% Markup	LS	\$ 540.00	1	\$ 540.00
Total				\$ 5,940.00

Grand Total \$ 8,031.00

1d



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- Driveways & Roads • Lot Striping • Choice Black Dirt • Crushed Concrete Base

Date: 7/25/2023
Proposal Submitted
Ryan Contracting

Project Location:
37th Street North
Fargo, ND.58102

Phone: 612.282.4345 Contact: Orry
Excavate area to proper grade.
Install 9" of asphalt pavement.

Price \$5,400.00

Note: 4'x27'x9" & 10'x10' Radius.
Leave gravel base for shoulder.

*Thank you,
 Denis Oye
 Hubert Oye & Son's Inc.*

Proposal Includes:

All material guaranteed as specified and the above work performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of:

\$ _____
 BID VALID UNTIL: 8/1/2023
 Payment to be made as follows:

On receipt of Invoice

Acceptance of Proposal:

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to complete this contract as specified. Payment will be made as outlined.

Sign and return to Hubert Oye & Sons Inc by Email.
 Date of Acceptance: _____

Signature: _____

If any utilities need to be moved or lowered as a result of this project, it will be the responsibility of the property owner.

Time & Material Cost Report

INVOICE

1142-23-2R



Billing Date

11/10/2023

PO Box 246; 26350 France Ave., Elko, MN 55020 (952)894-3200

Project # & Name: UN-23-A1
Project Owner: City of Fargo
Bill To: City of Fargo

Description of Work: Spent 2 hours looking for Cass Rural Waterline in NDSU field. Minimum of 15' off flags and no one from Cass Rural Water seemed to care to help. Also had to abandon west of 45th St N - Not on Plan.

Due Upon Receipt; 1.5% per month

Date of work Performed: August 24, 2023
Worksheet # 10126.00

Description	Unit	Rate	Units	Extension
LABOR				
Supt.	HR	\$145.00	0.00	\$0.00
Foreman	HR	\$140.00	1.00	\$140.00
Foreman OT	HR	\$210.00	0.00	\$0.00
Laborer	HR	\$107.00	2.00	\$214.00
Laborer OT	HR	\$160.50	0.00	\$0.00
Operator	HR	\$113.00	0.00	\$0.00
Operator OT	HR	\$169.50	0.00	\$0.00
EQUIPMENT				
Excavator - 490	HR	\$312.00	2.00	\$624.00
Loader	HR	\$118.00	0.00	\$0.00
JD 650 Dozer	HR	\$128.00	0.00	\$0.00
Compactor	HR	\$92.00	0.00	\$0.00
Bobcat	HR	\$110.00	0.00	\$0.00
Work Truck	HR	\$35.00	1.00	\$35.00
Kobota Exc	HR	\$82.00	0.00	\$0.00
Saw w/ blade	LS	\$150.00	0.00	\$0.00
Quad Dump Truck	HR	\$161.00	0.00	\$0.00
SUBTOTAL L & E				\$1,013.00
MATERIALS & MISC.				
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
SUBTOTAL MISC.				\$0.00

Subtotal		\$1,013.00
	0.00%	\$0.00
Subtotal		\$1,013.00
Total Amount Due		\$1,013.00

After you have had a chance to review this request please call with any questions or concerns. Otherwise, we would greatly appreciate payment for the amount requested as soon as possible or added to our current pay estimate.

Respectfully submitted,
 Ryan Contracting Co.

Beth R. Tatge
 CFO

Time & Material Cost Report

INVOICE

1142-23(3)



Billing Date 11/10/2023

PO Box 246; 26350 France Ave., Elko, MN 55020 (952)894-3200

Project # & Name: UN-23-A1
Project Owner: City of Fargo
Bill To: City of Fargo

Description of Work: Install 17' of HDPE draintile and two interal snap connections to repair damage during connecting the water service at NDSU.

Due Upon Receipt; 1.5% per month

Date of work Performed: _____
Worksheet # _____

Description	Unit	Rate	Units	Extension
LABOR				
Supt.	HR	\$145.00	0.00	\$0.00
Foreman	HR	\$140.00	0.00	\$0.00
Foreman OT	HR	\$210.00	0.00	\$0.00
Laborer	HR	\$107.00	2.00	\$214.00
Laborer OT	HR	\$160.50	0.00	\$0.00
Operator	HR	\$113.00	0.00	\$0.00
Operator OT	HR	\$169.50	0.00	\$0.00
EQUIPMENT				
Excavator - 490	HR	\$312.00	0.00	\$0.00
Loader	HR	\$118.00	0.00	\$0.00
JD 650 Dozer	HR	\$128.00	0.00	\$0.00
Compactor	HR	\$92.00	0.00	\$0.00
Bobcat	HR	\$110.00	0.00	\$0.00
Work Truck	HR	\$35.00	0.00	\$0.00
Kobota Exc	HR	\$82.00	0.00	\$0.00
Saw w/ blade	LS	\$150.00	0.00	\$0.00
Quad Dump Truck	HR	\$161.00	0.00	\$0.00
SUBTOTAL L & E				\$214.00
MATERIALS & MISC.				
10" HDPE	LF	\$13.06	17.00	\$222.02
Connections	EA	\$9.63	2.00	\$19.26
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
SUBTOTAL MISC.				\$241.28

Subtotal		\$455.28
	0.00%	\$0.00
Subtotal		\$455.28
Total Amount Due		\$455.28

After you have had a chance to review this request please call with any questions or concerns. Otherwise, we would greatly appreciate payment for the amount requested as soon as possible or added to our current pay estimate.

Respectfully submitted,
 Ryan Contracting Co.

Beth R. Tatge
 CFO

Time & Material Cost Report

INVOICE

4
1142-23-4R



Billing Date 11/10/2023

PO Box 246; 26350 France Ave., Elko, MN 55020 (952)894-3200

Project # & Name: UN-23-A1
Project Owner: City of Fargo
Bill To: City of Fargo

Description of Work: NDSU water service was 2" not 1.5" as per plans. Below is the cost difference in materials and labor for the 2" vs 1.5".

Due Upon Receipt; 1.5% per month

Date of work Performed: _____
Worksheet # _____

Description	Unit	Rate	Units	Extension
LABOR				
Supt.	HR	\$145.00	0.00	\$0.00
Foreman	HR	\$140.00	1.00	\$140.00
Foreman OT	HR	\$210.00	0.00	\$0.00
Laborer	HR	\$107.00	2.00	\$214.00
Laborer OT	HR	\$160.50	0.00	\$0.00
Operator	HR	\$113.00	0.00	\$0.00
Operator OT	HR	\$169.50	0.00	\$0.00
EQUIPMENT				
Excavator - 490	HR	\$312.00	0.00	\$0.00
Loader	HR	\$118.00	0.00	\$0.00
JD 650 Dozer	HR	\$128.00	0.00	\$0.00
Compactor	HR	\$92.00	0.00	\$0.00
Bobcat	HR	\$110.00	0.00	\$0.00
Work Truck	HR	\$35.00	0.00	\$0.00
Kobota Exc	HR	\$82.00	0.00	\$0.00
Saw w/ blade	LS	\$150.00	0.00	\$0.00
Quad Dump Truck	HR	\$161.00	0.00	\$0.00
SUBTOTAL L & E				\$354.00
MATERIALS & MISC.				
Additional material Cost	LS	\$751.33	1.00	\$751.33
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
SUBTOTAL MISC.				\$751.33

Subtotal		\$1,105.33
	0.00%	\$0.00
Subtotal		\$1,105.33
Total Amount Due		\$1,105.33

After you have had a chance to review this request please call with any questions or concerns. Otherwise, we would greatly appreciate payment for the amount requested as soon as possible or added to our current pay estimate.

Respectfully submitted,
 Ryan Contracting Co.

Beth R. Tatge
 CFO

Time & Material Cost Report

INVOICE

1142-23(5)



Billing Date 11/10/2023

PO Box 246; 26350 France Ave., Elko, MN 55020 (952)894-3200

Project # & Name: UN-23-A1
Project Owner: City of Fargo
Bill To: City of Fargo

Description of Work: 24" hydrant extension north of County Road 20 due to elimination of vertical bends .

Due Upon Receipt; 1.5% per month

Date of work Performed: _____
Worksheet # _____

Description	Unit	Rate	Units	Extension
LABOR				
Supt.	HR	\$145.00	0.00	\$0.00
Foreman	HR	\$140.00	0.00	\$0.00
Foreman OT	HR	\$210.00	0.00	\$0.00
Laborer	HR	\$107.00	2.00	\$214.00
Laborer OT	HR	\$160.50	0.00	\$0.00
Operator	HR	\$113.00	0.00	\$0.00
Operator OT	HR	\$169.50	0.00	\$0.00
EQUIPMENT				
Excavator - 490	HR	\$312.00	0.00	\$0.00
Loader	HR	\$118.00	0.00	\$0.00
JD 650 Dozer	HR	\$128.00	0.00	\$0.00
Compactor	HR	\$92.00	0.00	\$0.00
Bobcat	HR	\$110.00	0.00	\$0.00
Work Truck	HR	\$35.00	0.00	\$0.00
Kobota Exc	HR	\$82.00	0.00	\$0.00
Saw w/ blade	LS	\$150.00	0.00	\$0.00
Quad Dump Truck	HR	\$161.00	0.00	\$0.00
SUBTOTAL L & E				\$214.00
MATERIALS & MISC.				
24" Hydrant Extension	EA	\$1,751.40	1.00	\$1,751.40
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
SUBTOTAL MISC.				\$1,751.40
Subtotal				\$1,965.40
				0.00%
Subtotal				\$1,965.40
Total Amount Due				\$1,965.40

After you have had a chance to review this request please call with any questions or concerns. Otherwise, we would greatly appreciate payment for the amount requested as soon as possible or added to our current pay estimate.

Respectfully submitted,
Ryan Contracting Co.

Beth R. Tatge
 CFO

Time & Material Cost Report

INVOICE

1142-23-6R



Billing Date 11/10/2023

PO Box 246; 26350 France Ave., Elko, MN 55020 (952)894-3200

Project # & Name: UN-23-A1
 Project Owner: City of Fargo
 Bill To: City of Fargo

Description of Work: Remove and replace 29 feet of 6" steel pipe in Sander's Driveway.

Due Upon Receipt; 1.5% per month

Date of work Performed: _____
 Worksheet # _____

Description	Unit	Rate	Units	Extension
LABOR				
Supt.	HR	\$145.00	0.00	\$0.00
Foreman	HR	\$140.00	1.00	\$140.00
Foreman OT	HR	\$210.00	0.00	\$0.00
Laborer	HR	\$107.00	1.00	\$107.00
Laborer OT	HR	\$160.50	0.00	\$0.00
Operator	HR	\$113.00	1.00	\$113.00
Operator OT	HR	\$169.50	0.00	\$0.00
EQUIPMENT				
Excavator - 490	HR	\$312.00	1.00	\$312.00
Loader	HR	\$118.00	0.00	\$0.00
JD 650 Dozer	HR	\$128.00	0.00	\$0.00
Compactor	HR	\$92.00	0.00	\$0.00
Bobcat	HR	\$110.00	0.00	\$0.00
Work Truck	HR	\$35.00	0.00	\$0.00
Kobota Exc	HR	\$82.00	0.00	\$0.00
Saw w/ blade	LS	\$150.00	0.00	\$0.00
Quad Dump Truck	HR	\$161.00	0.00	\$0.00
SUBTOTAL L & E				\$672.00
MATERIALS & MISC.				
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
SUBTOTAL MISC.				\$0.00
Subtotal				\$672.00
				0.00%
Subtotal				\$672.00
Total Amount Due				\$672.00

After you have had a chance to review this request please call with any questions or concerns. Otherwise, we would greatly appreciate payment for the amount requested as soon as possible or added to our current pay estimate.

Respectfully submitted,
 Ryan Contracting Co.

Beth R. Tatge
 CFO

Time & Material Cost Report

INVOICE

7
1142-23-7R



Billing Date 11/10/2023

PO Box 246; 26350 France Ave., Elko, MN 55020 (952)894-3200

Project # & Name: UN-23-A1
Project Owner: City of Fargo
Bill To: City of Fargo

Description of Work: Install crushed concrete for Sander's and R&R's approach.

Due Upon Receipt; 1.5% per month

Date of work Performed: _____
Worksheet # _____

Description	Unit	Rate	Units	Extension
LABOR				
Supt.	HR	\$145.00	0.00	\$0.00
Foreman	HR	\$140.00	0.00	\$0.00
Foreman OT	HR	\$210.00	0.00	\$0.00
Laborer	HR	\$107.00	1.00	\$107.00
Laborer OT	HR	\$160.50	0.00	\$0.00
Operator	HR	\$113.00	0.00	\$0.00
Operator OT	HR	\$169.50	0.00	\$0.00
EQUIPMENT				
Excavator - 490	HR	\$312.00	0.00	\$0.00
Loader	HR	\$118.00	0.00	\$0.00
JD 650 Dozer	HR	\$128.00	0.00	\$0.00
Compactor	HR	\$92.00	0.00	\$0.00
Bobcat	HR	\$110.00	0.50	\$55.00
Work Truck	HR	\$35.00	0.50	\$17.50
Kobota Exc	HR	\$82.00	0.00	\$0.00
Saw w/ blade	LS	\$150.00	0.00	\$0.00
Quad Dump Truck	HR	\$161.00	0.00	\$0.00
SUBTOTAL L & E				\$179.50
MATERIALS & MISC.				
		\$0.00	0.00	\$0.00
Crushed Concrete	TN	\$20.62	24.00	\$494.88
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
SUBTOTAL MISC.				\$494.88

	Subtotal	\$674.38
	0.00%	\$0.00
	Subtotal	\$674.38
	Total Amount Due	\$674.38

After you have had a chance to review this request please call with any questions or concerns. Otherwise, we would greatly appreciate payment for the amount requested as soon as possible or added to our current pay estimate.

Respectfully submitted,
Ryan Contracting Co.

Beth R. Tatge
 CFO

Time & Material Cost Report

INVOICE

1142-23-8



Billing Date 11/10/2023

PO Box 246; 26350 France Ave., Elko, MN 55020 (952)894-3200

Project # & Name: UN-23-A1
 Project Owner: City of Fargo
 Bill To: City of Fargo

Description of Work: Gravel for crossing of 37th Street and 52nd Ave N.

Due Upon Receipt; 1.5% per month

Date of work Performed: _____
 Worksheet # _____

Description	Unit	Rate	Units	Extension
LABOR				
Supt.	HR	\$145.00	0.00	\$0.00
Foreman	HR	\$140.00	0.00	\$0.00
Foreman OT	HR	\$210.00	0.00	\$0.00
Laborer	HR	\$107.00	0.00	\$0.00
Laborer OT	HR	\$160.50	0.00	\$0.00
Operator	HR	\$113.00	0.00	\$0.00
Operator OT	HR	\$169.50	0.00	\$0.00
EQUIPMENT				
Excavator - 490	HR	\$312.00	0.00	\$0.00
Loader	HR	\$118.00	0.00	\$0.00
JD 650 Dozer	HR	\$128.00	0.00	\$0.00
Compactor	HR	\$92.00	0.00	\$0.00
Bobcat	HR	\$110.00	0.00	\$0.00
Work Truck	HR	\$35.00	0.00	\$0.00
Kobota Exc	HR	\$82.00	0.00	\$0.00
Saw w/ blade	LS	\$150.00	0.00	\$0.00
Quad Dump Truck	HR	\$161.00	0.00	\$0.00
SUBTOTAL L & E				\$0.00
MATERIALS & MISC.				
Labor & Equip	LS	\$200.00	1.00	\$200.00
Gravel	TN	\$23.92	24.00	\$574.08
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
SUBTOTAL MISC.				\$774.08

Subtotal \$774.08
 0.00% \$0.00
 Subtotal \$774.08
Total Amount Due \$774.08

After you have had a chance to review this request please call with any questions or concerns. Otherwise, we would greatly appreciate payment for the amount requested as soon as possible or added to our current pay estimate.

Respectfully submitted,
 Ryan Contracting Co.

Beth R. Tatge
 CFO

Time & Material Cost Report

INVOICE

1142-23-9



Billing Date 11/10/2023

PO Box 246; 26350 France Ave., Elko, MN 55020 (952)894-3200

Project # & Name: UN-23-A1
Project Owner: City of Fargo
Bill To: City of Fargo

Description of Work: Additional depth of receiving pits caused by boring under BNSF flat instead of planned grade.

Due Upon Receipt; 1.5% per month

Date of work Performed: _____
Worksheet # _____

Description	Unit	Rate	Units	Extension
LABOR				
Supt.	HR	\$145.00	0.00	\$0.00
Foreman	HR	\$140.00	9.00	\$1,260.00
Foreman OT	HR	\$210.00	0.00	\$0.00
Laborer	HR	\$107.00	27.00	\$2,889.00
Laborer OT	HR	\$160.50	0.00	\$0.00
Operator	HR	\$113.00	18.00	\$2,034.00
Operator OT	HR	\$169.50	0.00	\$0.00
EQUIPMENT				
Excavator - 490	HR	\$312.00	9.00	\$2,808.00
Loader	HR	\$118.00	9.00	\$1,062.00
JD 650 Dozer	HR	\$128.00	9.00	\$1,152.00
Compactor	HR	\$92.00	9.00	\$828.00
Bobcat	HR	\$110.00	0.00	\$0.00
Work Truck	HR	\$35.00	9.00	\$315.00
Kobota Exc	HR	\$82.00	0.00	\$0.00
Saw w/ blade	LS	\$150.00	0.00	\$0.00
Quad Dump Truck	HR	\$161.00	0.00	\$0.00
SUBTOTAL L & E				\$12,348.00
MATERIALS & MISC.				
Class 3 Rock	TN	\$20.62	500.00	\$10,310.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
SUBTOTAL MISC.				\$10,310.00

Subtotal \$22,658.00
 0.00% \$0.00
 Subtotal \$22,658.00

Total Amount Due **\$22,658.00**

After you have had a chance to review this request please call with any questions or concerns. Otherwise, we would greatly appreciate payment for the amount requested as soon as possible or added to our current pay estimate.

Respectfully submitted,
 Ryan Contracting Co.

Beth R. Tatge
 CFO

Time & Material Cost Report

INVOICE

1142-23-10R



Billing Date

11/10/2023

PO Box 246; 26350 France Ave., Elko, MN 55020 (952)894-3200

Project # & Name: UN-23-A1
 Project Owner: City of Fargo
 Bill To: City of Fargo

Description of Work: Remove and relay culverts on 37th street.
 3 laborers and 1 operator 3 hrs each.

Due Upon Receipt; 1.5% per month

Date of work Performed: _____
 Worksheet # _____

Description	Unit	Rate	Units	Extension
LABOR				
Supt.	HR	\$145.00	0.00	\$0.00
Foreman	HR	\$140.00	1.00	\$140.00
Foreman OT	HR	\$210.00	0.00	\$0.00
Laborer	HR	\$107.00	9.00	\$963.00
Laborer OT	HR	\$160.50	0.00	\$0.00
Operator	HR	\$113.00	3.00	\$339.00
Operator OT	HR	\$169.50	0.00	\$0.00
EQUIPMENT				
Excavator - 490	HR	\$312.00	3.00	\$936.00
Loader	HR	\$118.00	1.00	\$118.00
JD 650 Dozer	HR	\$128.00	1.00	\$128.00
Compactor	HR	\$92.00	1.00	\$92.00
Bobcat	HR	\$110.00	0.00	\$0.00
Work Truck	HR	\$35.00	1.00	\$35.00
Kobota Exc	HR	\$82.00	0.00	\$0.00
Saw w/ blade	LS	\$150.00	0.00	\$0.00
Quad Dump Truck	HR	\$161.00	0.00	\$0.00
SUBTOTAL L & E				\$2,751.00
MATERIALS & MISC.				
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
SUBTOTAL MISC.				\$0.00

Subtotal \$2,751.00
 Subtotal 0.00% \$0.00
 Subtotal \$2,751.00

Total Amount Due \$2,751.00

After you have had a chance to review this request please call with any questions or concerns. Otherwise, we would greatly appreciate payment for the amount requested as soon as possible or added to our current pay estimate.

Respectfully submitted,
 Ryan Contracting Co.

Beth R. Tatge
 CFO

Time & Material Cost Report

INVOICE

11
1142-23-11R



Billing Date 11/10/2023

PO Box 246; 26350 France Ave., Elko, MN 55020 (952)894-3200

Project # & Name: UN-23-A1
 Project Owner: City of Fargo
 Bill To: City of Fargo

Description of Work: Installed 10' of 30" CMP and a 30" CMP FES

 _____ Due Upon Receipt; 1.5% per month

Date of work Performed: _____
 Worksheet # _____

Description	Unit	Rate	Units	Extension
LABOR				
Supt.	HR	\$145.00	0.00	\$0.00
Foreman	HR	\$140.00	0.00	\$0.00
Foreman OT	HR	\$210.00	0.00	\$0.00
Laborer	HR	\$107.00	0.00	\$0.00
Laborer OT	HR	\$160.50	0.00	\$0.00
Operator	HR	\$113.00	0.00	\$0.00
Operator OT	HR	\$169.50	0.00	\$0.00
EQUIPMENT				
Excavator - 490	HR	\$312.00	0.00	\$0.00
Loader	HR	\$118.00	0.00	\$0.00
JD 650 Dozer	HR	\$128.00	0.00	\$0.00
Compactor	HR	\$92.00	0.00	\$0.00
Bobcat	HR	\$110.00	0.00	\$0.00
Work Truck	HR	\$35.00	0.00	\$0.00
Kobota Exc	HR	\$82.00	0.00	\$0.00
Saw w/ blade	LS	\$150.00	0.00	\$0.00
Quad Dump Truck	HR	\$161.00	0.00	\$0.00
SUBTOTAL L & E				\$0.00
MATERIALS & MISC.				
30" CMP	LF	\$90.00	10.00	\$900.00
30" FES	EA	\$639.50	1.00	\$639.50
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
		\$0.00	0.00	\$0.00
SUBTOTAL MISC.				\$1,539.50

Subtotal		\$1,539.50
	0.00%	\$0.00
Subtotal		\$1,539.50
Total Amount Due		\$1,539.50

After you have had a chance to review this request please call with any questions or concerns. Otherwise, we would greatly appreciate payment for the amount requested as soon as possible or added to our current pay estimate.

Respectfully submitted,
 Ryan Contracting Co.

Beth R. Tatge
 CFO

31

Memorandum

To: Board of City Commissioners
From: Bekki Majerus, Director of Facilities Management
Date: December 7, 2023
Re: Approve the Master Service Agreements for Engineering/Architectural Services (RFP24010, RFP24011)

Dear Commissioners:

Facilities Management published a Request for Qualifications (RFQ) for Engineering and Architectural Services on October 5, 2023. Submissions were opened November 3, 2023. The responses were rated using the criteria stated in the RFQ. Fourteen firms were selected and then approved by the Commission to proceed with Master Service Agreements (MSA).

Facilities Management is requesting the Commission's approval of the attached MSA contracts which have been received from their respective firms.

- CMTA Engineering
- Walker Consultants

Recommended Action:

Move to approve the Master Service Agreements with CMTA Engineering, and Walker Consultants.

Master Services Agreement
Between
City of Fargo
and Obermiller Nelson Engineering, LLC (dba: CMTA)
RFP24010

This Master Services Agreement (the “Agreement,” which includes all attached schedules), effective December 15, 2023 (“Effective Date”), is entered into by and between Obermiller Nelson Engineering, LLC (dba: CMTA) (the “Vendor”), having a principal place of business at 2201 12th Street N Suite E, Fargo, ND 58102, and City of Fargo (the “City”), a North Dakota municipal corporation, having a principal place of business at 225 4th Street North, Fargo, North Dakota 58102 (each a “Party” and collectively, the “Parties”).

1. TERM

The term of this Agreement will be (3) three years from the Effective Date, with (2) optional one-year extensions.

2. STATEMENT OF WORK

A Summary of all services the Vendor is able to provide under this Agreement is described in the Statement of Work form (“Statement of Work”) attached hereto as Attachment A. Vendor hereby agrees to complete work pursuant to a work request, awarded bid, and/or awarded proposal. Neither this Agreement nor the Statement of Work is a commitment by the City to issue the vendor any work requests, bids or proposals. The work request, Request for Bid (RFB) or Request for Proposal (RFP) shall describe the specific scope of services for a particular project. Any services provided by the Vendor under this agreement are referred to as “Services.”

3. MATERIALS

Vendor shall furnish all materials, supplies, tools, equipment, and transportation required to provide services or deliverables required under Statements of Work. Vendor shall provide all available material safety data sheets for City approval prior to use of materials.

4. LIEN WAIVER

Vendor shall submit its lien waivers and obtain and submit lien waivers from all subcontractors, and material suppliers with invoices Vendor submits to City. City’s obligation to pay invoices will be contingent upon receipt of applicable lien waivers.

5. COMPENSATION

The Parties shall negotiate rates annually. Negotiated Rate Sheet (“Rate Sheet”) for the current Agreement year is attached as Attachment B. If a new rate sheet is not negotiated by December 31 for the current Agreement year, the Rate Sheet shall carry forward for the next year. Vendor shall not charge and the City will not pay for any services performed without a work request, awarded bid or awarded proposal. Except as otherwise provided, undisputed invoices shall be payable within 30 calendar days after the receipt of the invoice. Invoices shall be e-mailed to FinanceAPAR@FargoND.gov.

6. OWNERSHIP OF DOCUMENTS

Vendor’s work product reimbursed by the City, including all data, documents, results, ideas, developments and inventions that Vendor conceives or uses during the course of its performance under this Agreement shall be the City’s property, unless otherwise agreed.

7. INDEPENDENT CONTRACTOR

The relationship between the Parties shall, within the context of this Agreement, be that of an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. The Vendor shall, at all times during the term of this Agreement, perform the duties and responsibilities herein. Neither Party is an agent of the other Party and is not authorized to make any representation contract, or contract commitment on behalf of the other Party.

8. NO CONFLICTS OF INTEREST

Vendor must disclose any actual, apparent, or potential Conflict of Interest to the City prior to execution of this Agreement if a conflict of interest arises or appear to arise during the term of this Agreement, contractor agrees to abide by any reasonable mitigation plan developed with or by the City. “Conflict of Interest” means any activity, interest, or relationship of Vendor or any of its officers, directors, affiliates, or principals that may compromise that person’s ability to render impartial assistance or advice to the City or that may give rise to legal or reputational concerns or any competitive advantage unfair to the City.

9. CONFIDENTIALITY

The Vendor agrees to not, directly or indirectly, disclose, make known, divulge, publish, or communicate any confidential information to any person, firm, or corporation without consent unless that disclosure is authorized under North Dakota law.

10. INSURANCE

a. Vendor will obtain and maintain the following insurance coverage, naming the City of Fargo as an additional insured, via commercial insurance:

i. Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. \$2,000,000 each occurrence, \$5,000,000 aggregate.

ii. Workers' Compensation (or maintenance of a legally permitted and government-approved program of self-insurance) covering Vendor Personnel pursuant to applicable state workers' compensation laws for work-related injuries suffered by Vendor's Personnel, if Vendor employs Personnel;

iii. Employer's Liability with limits of not less than U.S. \$1,000,000 per accident;

iv. Professional Liability/Errors and Omissions Liability covering damages arising out of negligent acts, errors, or omissions committed by Vendor or Vendor's Personnel in the performance of services with a liability limit of not less than U.S. \$2,000,000 per claim.

v. Automobile Liability with \$2,000,000 combined single limit per occurrence, for bodily injury and property damage combined covering owned, if Vendor owns any vehicles, non-owned, and hired vehicles, if Vendor brings vehicles on the City's premises or uses vehicles in the performance of services.

vi. Limits for Commercial General Liability and Automobile Liability may be provided through a combination of primary and umbrella coverage; and

b. Vendor shall provide the City with evidence of the foregoing coverage before providing any services.

c. Vendor shall notify the City 30 days prior to cancellation or reduction in limits of any insurance required hereunder.

11. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, consultant error, mistake, negligence, or other fault of the Vendor, any subcontractor of the Vendor, or any officer, employee, representative, or agent of the Consultant or of any subcontractor of the Consultant, or which arises out of any workmen's compensation claim of any employee of the Consultant or of any employee of any subcontractor of the

Consultant. The Consultant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Consultant, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands. The Consultant does not agree to defend, indemnify, or hold harmless the City of the City's own actions, omissions or negligence.

12. FORCE MAJEURE

Neither Party shall be liable for damages or deemed in default of this Agreement and any Statement of Work hereunder to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

13. DISPUTE RESOLUTION

Vendor and the City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution process. Nothing prevents the Parties from pursuing litigation in the appropriate State or Federal court, located in Cass County, North Dakota

14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

15. ENTIRE AGREEMENT

The terms and conditions set forth herein and any Exhibit referenced herein constitute the entire understanding of the parties relating to the provision of services by Vendor to City and shall be incorporated in all Statements of Work unless otherwise so stated therein. This Agreement may be amended only by a written instrument signed by both parties.

16. ASSIGNMENT

This Agreement may not be assigned by Vendor or City without the prior written consent of the other party.

17. TERMINATION

This Agreement may be terminated by either party upon seven days written notice should the other party fail to perform in accordance with the terms hereof, provided such failure is not cured

within such seven day period. City may terminate this Agreement for convenience at any time, in which event Vendor shall be compensated in accordance with the terms hereof for Services performed and reimbursable expenses incurred prior to its receipt of written notice of termination from City.

18. SEVERABILITY

Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

IN WITNESS WHEREOF, City and Obermiller Nelson Engineering, LLC (dba: CMTA) have caused this Agreement to be duly executed as of the date first above written.

CITY OF FARGO

Obermiller Nelson Engineering, CMTA

BY _____
Dr. Timothy J. Mahoney, Mayor

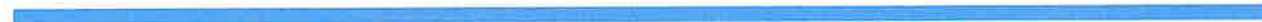
BY Anthony Nelson
Tony Nelson, PE

DATE: _____

DATE: 11/29/23

ATTEST:

BY _____
Steven Sprague, City Auditor



Statement of Work

This Statement of Work is a summary of all services the Vendor is able to provide under the Master Services Agreement. This Statement of Work is not a commitment by the City to issue the vendor any work requests, bids or proposals.

Vendor agrees to provide any of the following Services as requested in work requests, awarded bids or awarded requests for proposals from the City.

Professional Services:

- MEP & Civil Engineering
- Zero Energy/Carbon Engineering
- Renewable Energy & Sustainability Engineering
- LEED & WELL Building Certification Consulting
- Energy Modeling
- Commissioning Services
- Technology/Security Infrastructure Design
- Performance Contracting
- Construction Administration
- Energy as a Service (EaaS)

Rate Sheet

The Rates below are valid beginning December 15, 2023. Rates may be renegotiated at the request of either party annually. If new Rates are not negotiated by December 31 of the year, the Rates shall carry forward for the next year of the Agreement.

Rates for projects outside of the scope of this agreement will be negotiated separately.

Rates:

CMTA Hourly Rates

CATEGORY RATE

- Principal \$280
- Sr. Project Manager \$245
- Project Manager \$180
- Sr. Engineer \$200
- Engineer \$170
- Engineer-in-Training \$140
- Sr. Designer \$160
- Designers \$140
- Technician \$95
- Sr. Construction Administrator \$150
- Construction Administrator \$125
- Clerical \$85

EXPENSES

- Mileage IRS rate + 10%
- Travel Expenses Cost + 10%
- Shipping Charges Cost + 10%
- Prints and Reproduction Cost + 10%
- Outside Consultants Cost + 10%

**Master Services Agreement
Between
City of Fargo
and Walker Consultants
RFP24010**

This Master Services Agreement (the “Agreement,” which includes all attached schedules), effective December 15, 2023 (“Effective Date”), is entered into by and between Walker Consultants (the “Vendor”), having a principal place of business at 7760 France Ave S, Suite 820, Minneapolis, MN 55435, and City of Fargo (the “City”), a North Dakota municipal corporation, having a principal place of business at 225 4th Street North, Fargo, North Dakota 58102 (each a “Party” and collectively, the “Parties”).

1. TERM

The term of this Agreement will be (3) three years from the Effective Date, with (2) optional one-year extensions.

2. STATEMENT OF WORK

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vi. Limits for Commercial General Liability and Automobile Liability may be provided through a combination of primary and umbrella coverage; and

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11. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, consultant error, mistake, negligence, or other fault of the Vendor, any subcontractor of the Vendor, or any officer, employee, representative, or agent of the Consultant or of any subcontractor of the Consultant, or which arises out of any workmen's compensation claim of any employee of the Consultant or of any employee of any subcontractor of the

Consultant. The Consultant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Consultant, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands. The Consultant does not agree to defend, indemnify, or hold harmless the City of the City's own actions, omissions or negligence.

12. FORCE MAJEURE

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This Agreement may be terminated by either party upon seven days written notice should the other party fail to perform in accordance with the terms hereof, provided such failure is not cured

within such seven day period. City may terminate this Agreement for convenience at any time, in which event Vendor shall be compensated in accordance with the terms hereof for Services performed and reimbursable expenses incurred prior to its receipt of written notice of termination from City.

18. SEVERABILITY


Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

IN WITNESS WHEREOF, City and Walker Consultants have caused this Agreement to be duly executed as of the date first above written.

CITY OF FARGO

Walker Consultants

BY _____
Dr. Timothy J. Mahoney, Mayor

BY  _____
Vice President

DATE: _____

DATE: 11/29/2023

ATTEST:

BY _____
Steven Sprague, City Auditor

Statement of Work

This Statement of Work is a summary of all services the Vendor is able to provide under the Master Services Agreement. This Statement of Work is not a commitment by the City to issue the vendor any work requests, bids or proposals.

Vendor agrees to provide any of the following Services as requested in work requests, awarded bids or awarded requests for proposals from the City.

Professional Services:

- Engineering Design
- Parking Consulting
- Forensics
- Restoration
- building envelope consulting

Rate Sheet

The Rates below are valid beginning December 15, 2023. Rates may be renegotiated at the request of either party annually. If new Rates are not negotiated by December 31 of the year, the Rates shall carry forward for the next year of the Agreement.

Rates for projects outside of the scope of this agreement will be negotiated separately.

Rates:

Schedule of Fees

Standard Billing Rates

Principal/Director	\$280
Senior Project Manager/ Senior Consultant	\$260
Project Manager/Consultant	\$225
Senior Engineer/Senior Architect	\$220
Project Engineer	\$205
Engineer/Architect	\$195
Analyst/Planner/Specialist	\$185
Assistant Project Manager/Assistant Consultant	\$190
Designer	\$190
Senior Technician	\$170
Technician	\$155
Senior Administrative Assistant/Business Manager	\$130
Administrative Assistant	\$110

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City of Fargo, North Dakota
General Fund - Budget to Actual
 Unaudited Monthly Financial Statements - Through November 30, 2023
 Amounts shown in thousands

	YTD Budget	YTD Actual	YTD Variance
REVENUES:			
Taxes	\$ 41,698	\$ 40,192	\$ (1,506)
Licenses & Permits	6,475	6,372	(103)
Intergovernmental Revenue	20,005	18,541	(1,464)
Charges for Services	13,500	14,800	1,300
Fines & Traffic Tickets	1,722	1,338	(384)
Interest	4,218	6,001	1,783
Miscellaneous Revenue	928	586	(343)
Transfers In	11,876	11,461	(415)
Total Revenues	\$ 100,422	\$ 99,291	\$ (1,132)
EXPENDITURES:			
General Government	\$ 23,417	\$ 22,964	\$ 453
Public Safety	43,813	41,821	1,992
Public Works	13,534	13,192	342
Health & Welfare	13,901	12,663	1,238
Culture & Recreation	5,140	4,732	408
Economic Development	525	550	(25)
General Support	1,243	1,150	93
Capital Outlay	546	145	401
Operating Transfers	3,986	3,770	216
Contingency (Salary Savings)	(908)	90	(998)
Total Expenditures	\$ 105,197	\$ 101,077	\$ 4,120
Revenue Over (Under) Expenditures	\$ (4,775)	\$ (1,786)	\$ 2,989



(33)

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

December 11, 2023

Board of City Commissioners
City of Fargo
Fargo, North Dakota

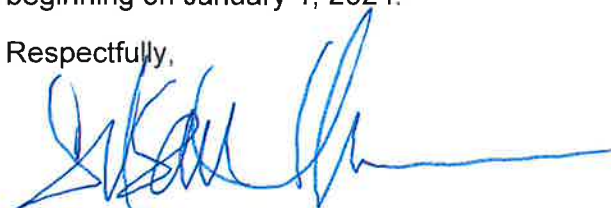
Re: Resolutions Prescribing Forestry and Street Lighting and Traffic Control Devices System Utility Rates.

Dear Commissioners,

As part of the approved 2024 budget, there were two utility rates that were authorized to be increased. The first is the Forestry Utility and the second is the Street Lighting and Traffic Control Device Utility. Attached please find the two Resolutions prescribing rates and charges for the Forestry Utility and the Street Lighting and Traffic Control Devices System Utility.

RECOMMENDED MOTION: To adopt the Resolutions Prescribing Rates and Charges for the Forestry Utility and the Street Lighting and Traffic Control Devices System Utility beginning on January 1, 2024.

Respectfully,



Susan J. Thompson
Finance Director

COMMISSIONER _____ introduced the following resolution and moved its adoption:

**RESOLUTION AUTHORIZING STREET LIGHTING AND TRAFFIC CONTROL
DEVICE UTILITY FEE**

WHEREAS, the City of Fargo has enacted Article 38-01 of the Fargo Municipal Code which authorizes the City to establish and collect a utility fee for street lighting and traffic signals; and

WHEREAS, Section 38-0103 of the Fargo Municipal Code authorizes the Board of City Commissioners to determine, establish, maintain, and change, by resolution, a schedule of rates, charges, and fees for all services, facilities, and benefits furnished by the street lighting and traffic control devices system; and

WHEREAS, on staff recommendation and upon consideration of the Board of City Commissioners of the city of Fargo during its recent budgeting process, and having anticipated the increases, the Board of City Commissioners of the city of Fargo finds the rates, as provided herein, to be reasonable.

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Fargo, North Dakota, pursuant to the provisions of Section 38-0103 of the Fargo Municipal Code, the following rates and charges shall be effective for all bills prepared after January 1, 2024.

1. **Single Family Residential units shall be \$7.00 per month.**
2. **Multi-Family Residential units shall be \$9.00 per unit per month.**
3. **Commercial properties shall be \$32.00 per month.**

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.

Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

COMMISSIONER _____ introduced the following resolution and moved its adoption:

RESOLUTION AUTHORIZING FORESTRY UTILITY FEE RATES

WHEREAS, The City of Fargo has enacted Article 19-01 of the Fargo Municipal Code which authorizes the City to establish and collect a forestry utility fee for the Department of Forestry; and

WHEREAS, Section 19-0104 of the Fargo Municipal Code authorizes the Board of City Commissioners to determine, establish, maintain, and change, by resolution, a schedule of rates, charges and fees for all services, facilities and benefits furnished by the Department of Forestry; and

WHEREAS, On staff recommendation and upon consideration of the Board of City Commissioners of the City of Fargo during its recent budgeting process, and having anticipated the increases, the Board of City Commissioners of the City of Fargo finds the rates, as provided herein, to be reasonable.

NOW, THEREFORE, BE IT RESOLVED, by the Board of City Commissioners of the City of Fargo, North Dakota, pursuant to the provisions of Section 19-0104 of the Fargo Municipal Code, the following rates and charges shall be effective for all bills prepared after January 1, 2024.

1. Single Family Residential units shall be \$5.98 per month.

2. Multi-Family Residential units shall be per unit per month as follows:

0-1	\$8.26
2-4	\$11.73
5-12	\$15.89
13-20	\$20.15
21-28	\$23.92
29-36	\$27.91
37-54	\$32.35
55-71	\$37.23
72-250	\$42.83
251 and up	\$49.29

3. Mobile Trailer Court shall be \$8.26 per month with an additional \$1.78 per unit per month.

4. Commercial properties shall be \$20.93 per month.

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.

Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

CITY OF Fargo Fire Department

34

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: NOVEMBER 30, 2023

SUBJECT: 1st AMMEDMENT TO THE JOINT POWERS AGREEMENT WITH THE RRRDC

At the June 12, 2023 Commission meeting you authorized staff to work on a lease agreement with the RRRDC to facilitate construction of a new dispatch center on City of Fargo property. The work has been completed on the agreement and we present it to you for approval.

The location of the RRRDC will be located on City of Fargo owned land adjacent to the Public Safety Building at 4630 15th Ave N. At the September 5, 2023 Fargo City Commission Meeting you authorized a land use agreement for the RRRDC. This agreement required a change to the most recent JPA. This amendment to the JPA adds Section 5.09 subsection (j) to the agreement. The subsection reads:

(j) a decision by the RRRDC Authority Board either to purchase or to not purchase certain land from the City of Fargo that is subject to a certain Ground Lease between the City of Fargo, as the owner and lessor, to the RRRDC, as the lessee.

RECOMMENDED MOTION: Authorize the Mayor to sign the first amendment to the Joint Powers Agreement with the RRRDC Authority Board.

**FIRST AMENDMENT TO
JOINT POWERS AGREEMENT
(RED RIVER REGIONAL DISPATCH CENTER)**

THIS AMENDMENT is made and entered into effective the ____ day of _____, 2023, by and between the CITY OF FARGO, a North Dakota municipal corporation, hereinafter called “Fargo”, the CITY OF WEST FARGO, a North Dakota municipal corporation, hereinafter called “West Fargo”, the CITY OF MOORHEAD, a Minnesota municipal corporation, hereinafter called “Moorhead”, the COUNTY OF CASS, (sometimes designated “Cass County Government), a corporate body and county under the laws of the State of North Dakota, hereinafter called “Cass County”, and CLAY COUNTY, a corporate body and county under the laws of the State of Minnesota, hereinafter called “Clay County”.

WITNESSETH:

WHEREAS, the parties hereto entered into a Joint Powers Agreement (the “Joint Powers Agreement”) effective January 1, 2023, regarding the governance, ownership, operation and maintenance of property and the public safety and related operations of the “Red River Regional Dispatch Center”, hereinafter referred to as “RRRDC”, which was previously established by a prior joint powers agreement dated as of July 11, 2001; and,

WHEREAS, the Board of Authority of the RRRDC has entered into a long-term lease agreement for the leasing by the RRRDC of certain land from the City of Fargo (the “RRRDC/Fargo Ground Lease”) located adjacent to the City of Fargo Public Safety Building located on 4630 15th Avenue North in Fargo and upon which land the RRRDC intends to construct certain improvements including construction of a new dispatch center building, said building and other improvements to be owned by the RRRDC with the land continued to be owned by the City of Fargo; and,

WHEREAS, the RRRDC/Fargo Ground Lease provides the RRRDC with more than one opportunity or option, during the course of the term of the lease including extensions thereof, for the RRRDC to purchase the land and/or to reject an offer to purchase the land from the City or its successors in interest; and,

WHEREAS, the Board of Authority has recommended to the Member Entities of the RRRDC that such decisions are sufficiently important to the RRRDC to warrant such decisions be included among the list that require a super-majority vote of the members of the Board of Authority, as set forth in Section 5.09 of the Joint Powers Agreement and that the Joint Powers Agreement be amended accordingly;

NOW, THEREFORE, the Joint Powers Agreement is hereby further amended as follows:

A. Section 5.09 is hereby amended to add subsection (j), to read as follows:
“... (j) a decision by the RRRDC Authority Board either to purchase or to not purchase

certain land from the City of Fargo that is subject to a certain Ground Lease between the City of Fargo, as owner and lessor, to the RRRDC, as the lessee."

B. In all other respects, the Joint Powers Agreement, effective January 1, 2023, shall be and remain in full force and effect.

C. This First Amendment to the Joint Powers Agreement shall be effective as of the date and year first above written.

[Remainder of Page Left Blank – Signature Pages to Follow]

CITY OF FARGO,
a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

CITY OF MOORHEAD
a Minnesota municipal corporation

Michelle (Shelly) Carlson, Mayor

ATTEST:

Daniel Mahli, City Manager

COUNTY OF CASS,
NORTH DAKOTA

Chad M. Peterson, Chair
Cass County Commission

ATTEST:

Robert Wilson, County Administrator

CITY OF WEST FARGO,
a North Dakota municipal corporation

Bernie Dardis, Commission President

ATTEST:

City Administrator

COUNTY OF CLAY, MINNESOTA

Frank Gross, Chair
Clay County Commission

ATTEST:

Stephen Larson, County Administrator

CITY OF
Fargo Fire Department

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: NOVEMBER 30, 2023

SUBJECT: FIRE DEPARTMENT GRANT ACCEPTANCE FROM NORTH DAKOTA DES



The North Dakota Department of Emergency Services (NDDES) – Division of Homeland Security has approved a grant application for the FY 2023 State Homeland Security Grant Program in the amount of \$136,000.00. Items that will be purchased are personal protective equipment, power equipment, training, and other authorized equipment.

RECOMMENDED MOTION: Approve the Fire Department budget adjustment to account 101-4045-412.61-41 and contract with the North Dakota Division of Homeland Security for grant funding in the amount of \$136,000.00 for the purchase of Regional Response Equipment and Training. (CFDA #97.067 SHSP)

SD/LS
Enclosure

Cc: Susan Thompson



NOTICE OF GRANT AWARD			
Recipient Contact Name: Debbie LaCombe		Recipient Contact #: 701-328-8119	
Title of Grant Program: FY 2023 State Homeland Security Program			
Federal Award Identification Number: EMW-2023-SS-00001		Federal Award Date: September 11, 2023	
Federal Awarding Agency: U.S. Department of Homeland Security			
CFDA No. 97.067 SHSP			
Subrecipient Name and Address: Fargo Fire Department 637 NP Ave Fargo, ND 58102		Subrecipient Contact Name: Steve Dirksen Telephone: 701-241-1540 Email: sdirksen@fargond.gov	
Subrecipient UEI: K2QJQZVH5PM6	Grant Number: 2	County/Tribe: Cass	
Performance Period	From: October 19, 2023	Through: August 31, 2025	
Grant Amount: \$136,000.00	Subrecipient Cost Share: \$0.00	Total Project Cost: \$136,000.00	
Scope of Service: The intent of this award is to enhance the capability of the subrecipient to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events in accordance with the federal Notice of Funding Opportunity for this grant program, the approved application scope of work and cost line items located in the NDDes grant portal to support regional hazmat and technical rescue response.			
Reporting Requirements: Progress reports on the status of the project must be submitted to NDDes quarterly through the NDDes grant portal. Reports are due January 15, April 15, July 15, and October 15 for the life of the grant. A final report is due with the final reimbursement request.			
Special Conditions: The above grant project is approved subject to the special conditions or limitations as indicated on the attached page.			
Terms and Conditions: This award is subject to the terms and conditions incorporated directly or by reference in the following: <ol style="list-style-type: none"> 1) Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs which can be found at https://grants/des/nd.gov/site/HSGP.cfm. 2) Applicable Federal and State laws and regulations. 3) The recipient agrees by signing this document that all allocations and use of funds under this grant will be in accordance with the Federal/State Notice of Funding Opportunity & FEMA Preparedness Grants Manual for this grant program. 			
This contract is not effective until fully executed by both parties. By signing below, you are accepting the terms and conditions of the award. Please make sure you read and understand these documents before signing. Maintain a copy of these documents in your official file for this award.			
Evidence of Subrecipient's Acceptance		Evidence of NDDes Approval	
 Signature	11/30/2023 Date	 Signature	10/19/2023 Date
Typed Name and Title of Authorized Representative Steve Dirksen Fire Chief		Typed Name and Title of Authorized Representative Darin Hanson Director, Division of Homeland Security	



SPECIAL CONDITIONS

State Homeland Security Grant Program (SHSP)

1. DHS Standard Terms and Conditions Generally

The Fiscal Year (FY) 2023 DHS Standard Terms and Conditions apply to all new federal financial assistance awards funded in FY023. These terms and conditions flow down to subrecipients unless an award term or condition specifically indicates otherwise. The United States has the right to seek judicial enforcement of these obligations. They FY 2023 DHS Standard Terms and Conditions are at www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions.

2. Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

- DHS financial assistance sub-recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R. Part 3002.
- By accepting this agreement, sub-recipients, and their executives, as defined in 2 C.F.R. section 170.315, certify that their policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

3. General Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

- Sub-recipients must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS.
- Sub-recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities or personnel.
- Sub-recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
- Sub-recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law, or detailed in program guidance.

4. Acknowledgement of Federal Funding from DHS

Sub-recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

5. Age Discrimination Act of 1975

Sub-recipients must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (1975) (codified as amended at Title 42, U.S. Code, section 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

6. Americans with Disabilities Act of 1990

Sub-recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101 - 12213), which prohibits sub-recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Initial



7. Best Practices for Collection and Use of Personally Identifiable Information

Sub-recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Sub-recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.

8. Civil Rights Act of 1964 - Title VI

Sub-recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

9. Civil Rights Act of 1968

Sub-recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100.

10. Copyright

Sub-recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

11. Debarment and Suspension

Sub-recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

12. Drug-Free Workplace Regulations

Sub-recipients must comply with drug-free workplace requirements in Subpart B of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

13. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude sub-recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

14. Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

Sub-recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Initial



15. E.O. 14074 – Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety

State, Tribal, local, and territorial law enforcement agencies must comply with the requirements of section 12(c) of E.O. 14074. State, Tribal, local, and territorial law enforcement agencies are also encouraged to adopt and enforce policies consistent with E.O. 14074 to support safe and effective policing.

16. Energy Policy and Conservation Act

Sub-recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94-163 (1975) (codified as amended at 42 U.S.C. section 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

17. False Claims Act and Program Fraud Civil Remedies

Sub-recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

18. Federal Debt Status

All sub-recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

19. Federal Leadership on Reducing Text Messaging while Driving

Sub-recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the Federal Government.

20. Hotel and Motel Fire Safety Act of 1990

Sub-recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a.

21. John S. McCain National Defense Authorization Act of Fiscal Year 2019

Sub-recipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. sections 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute - as it applies to DHS sub-recipients, and their contractors and subcontractors - prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

22. Limited English Proficiency (Civil Rights Act of 1964 - Title VI)

Sub-recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

Initial



23. Lobbying Prohibitions

Sub-recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt 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 any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

24. National Environmental Policy Act

Sub-recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require sub-recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

25. Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participation of faith-based organizations in individual DHS programs.

26. Non-Supplanting Requirement

Sub-recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

27. Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

28. Patents and Intellectual Property Rights

Sub-recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq, unless otherwise provided by law. Sub-recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

29. Procurement of Recovered Materials

States, political subdivisions of states (i.e., sub-recipients), and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Initial



30. Rehabilitation Act of 1973

Sub-recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973) (codified as amended at 29 U.S.C. section 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

31. Reporting of Matters Related to Recipient Integrity and Performance

General Reporting Requirements:

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the sub-recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

32. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Sub-recipients must comply with the Build America, Buy America Act (BABAA), which was enacted as part of the Infrastructure Investment and Jobs Act Sections 70901-70927, Pub. L. No. 117-58 (2021); and Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers. See also Office of Management and Budget (OMB), Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

33. SAFECOM

Sub-recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

34. Terrorist Financing

Sub-recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Sub-recipients are legally responsible to ensure compliance with the Order and laws.

35. Trafficking Victims Protection Act of 2000 (TVPA)

Trafficking in Persons:

Sub-recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106 (g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

36. Universal Identifier and System of Award Management

Requirements for System for Award Management and Unique Entity Identifier

Sub-recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.

37. USA PATRIOT Act of 2001

Sub-recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. sections 175-175c.

Initial



38. Use of DHS Seal, Logo and Flags

Sub-recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

39. Whistleblower Protection Act

Sub-recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C section 2409, 41 U.S.C. section 4712, and 10 U.S.C. section 2324, 41 U.S.C. sections 4304 and 4310.

40. Environmental Planning and Historic Preservation (EHP) Review

DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the sub-recipient to comply with all federal, state, and local laws.

DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/ FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and executive orders. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered the applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

41. Applicability of DHS Standard Terms and Conditions to Tribes

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to subrecipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

42. Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, sub-recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate sub-recipient acceptance of the changes to the award.

43. Disposition of Equipment Acquired Under the Federal Award

For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state subrecipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313. State recipients and state subrecipients must follow the disposition requirements in accordance with state laws and procedures.

Initial



44. Prior Approval for Modification of Approved Budget

Before making any change to the approved budget for this award, you must request prior written approval from NDDes. NDDes may be required by 2 C.F.R. section 200.308 to request FEMA approval of any budget modifications.

45. National Cybersecurity Review

Sub-recipients are required to complete the Nationwide Cybersecurity Review (NCSR) to benchmark and measure their progress of improving their cybersecurity posture. The NCSR can be found at <https://www.cisecurity.org/ms-isac/services/ncsr>.

46. NDDes Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs

Sub-recipient is required to also follow the applicable provisions of the NDDes Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs as well as State or local provisions that may be stricter than Federal or State laws, regulations, or policies. This document can be found under the HSGP tab on the NDDes Grants website at <https://grants.des.nd.gov>.

47. Reimbursements, Quarterly Status Reports, Time Extension Requests, Scope Changes, and Project Closeout

Sub-recipient must submit all reimbursement requests, quarterly reports, time extension requests, scope change requests, and project closeouts along with required documentation in the NDDes Grants Management System at <https://grants.des.nd.gov>.

48. Un-expended Funds

At the conclusion of the period of performance as noted on the Notice of Grant Award, upon completion of the project, or withdrawal of the project by the sub-recipient; whichever comes first, unexpended funds will be de-obligated. By signing the Notice of Grant Award, the sub-recipient is authorizing NDDes to expend the de-obligated funds on program costs.

49. Award Acceptance

The Notice of Grant Award and these Special Conditions constitute the operative document obligating and reserving the Federal funds for use by the sub-recipient. By signing the Notice of Grant Award sub-recipients is certifying acceptance of the terms and conditions of the award.

Initial

CITY OF Fargo Fire Department

(36)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: DECEMBER 5, 2023

SUBJECT: MUTUAL AID AGREEMENT BETWEEN FARGO AND JAMESTOWN FIRE DEPARTMENT

One of the processes that I undertake each year is to review the various mutual aid agreements that the Fargo Fire Department has with other fire departments. The agreement that we had with the Jamestown Fire Department was last edited in 2007.

I have worked with Assistant City Attorney Ian McLean to update the language on all mutual aid agreements we have. We have updated the agreements utilizing the guiding document provided by the North Dakota Department of Emergency Services. The majority of the changes are in section 10 of the agreement where we have updated the agreement to meet the liability limits in North Dakota Century Code. The other change in the agreement was the addition of section 16 that deals with disputes, claims, and controversies.

RECOMMENDED MOTION: Approve the Mutual Aid Agreement between Fargo and Jamestown Fire Departments.

MUTUAL AID AGREEMENT

Memorandum of Understanding (MOU) between

City of Fargo, ND Fire Department

And

City of Jamestown, ND Fire Department

- ▣ Whereas, the laws of the State of North Dakota provide that each political subdivision is empowered to make and enter into mutual aid agreements with other political subdivisions in order to more effectively respond and provide public safety services during emergency situations;
- ▣ Whereas, the undersigned political subdivisions that are parties to this mutual aid agreement must confront numerous threats to public health and safety, including but not limited to natural or manmade disasters;
- ▣ Whereas, none of the parties to this Agreement possesses all of the necessary resources to cope with every possible incident, emergency, or disaster by itself, and an effective, efficient response can best be achieved by the application and leveraging of the collective resources of these entities;
- ▣ Whereas, the parties to this Agreement have determined it is in their collective best interest to develop and implement preparedness plans and conduct joint exercises in advance of a sudden and immediate need in order to enhance the efficiency and effectiveness of their response to any emergency or disaster;
- ▣ Whereas, it is desirable that each of the parties hereto should voluntarily aid and assist each other in the event an emergency situation should occur, by the interchange of response services; and
- ▣ Whereas, it is necessary and desirable that a mutual aid agreement be executed for the interchange of such mutual assistance on a local, county, and/or regional basis; Now, therefore, it is hereby agreed by and between each and all of the parties hereto as follows:

▣ Terms of the Agreement

- 1) Each party agrees that in the event of an emergency situation, each other party to this mutual aid agreement shall furnish such personnel, equipment, facilities, or services as are available, provided that such actions would not unreasonably diminish the assisting entity's ability to provide emergency services within its jurisdiction.
- 2) Each party shall designate the appropriate official within its jurisdiction who has the legal authority to bind its jurisdiction to this Agreement and who shall sign this Agreement.
- 3) In order to invoke assistance under the provisions of this Agreement, the authorized representative from the requesting entity shall be required to contact the authorized representative of the responding entity by voice communication system, in writing or through a message relay provided by an emergency dispatch center. Any request for aid hereunder shall include a statement of the amount and type of equipment and personnel requested, and shall specify the location to which the equipment and personnel are to be dispatched. The responding entity may request such

information from the requesting entity as is necessary to confirm the emergency situation and to assess the types and amounts of assistance that shall be provided.

- 4) During an emergency situation, the ranking officer from the assisting entity will immediately report to the Incident Commander or staging as directed for assignment. All personnel shall work under the direction of the designated incident command/unified command. Under normal conditions personnel from both the assisting and requesting entity shall operate under the direction of their commander or officer once they are authorized to undertake assignments. However, personnel from either the requesting or assisting entity may receive supervision from any command personnel from the combined participating entities if authorized by the Incident Commander or agency representatives in the incident command structure.
- 6) In any emergency situation in which the mutual aid agreement has been invoked, radio communications will be established between the entities, where possible, through the use of the local public mutual aid radio system or utilization of the statewide frequency management interoperability plan.
- 6) During a hazardous materials or structural collapse type emergency, the requesting entity is to follow the protocols for requesting regional response.
- 7) Assisting entity personnel and equipment shall be released by the requesting entity when the resources are no longer needed. The assisting entity may also withdraw its personnel and equipment when deemed to be in the best interest of the assisting entity and following notice provided to the requesting entity of the intended action. The assisting entity may also withdraw resources if it determines response conditions are beyond acceptable risk. There will be no liability for withdrawal placed on or transferred to the assisting entity.
- 8) The requesting entities agree to reimburse assisting entities for actual costs of personnel, equipment, facilities, and related resources used during the period of assistance unless mutually accepted costs associated with these resources have been pre-identified in addendum to this agreement or otherwise agreed to between the parties. The providing jurisdiction and or discipline may waive all or any part of the payment for costs at its sole discretion depending on the size of the mutual aid package and the length of the deployment. Funding sources associated with this agreement may include any or all combinations of federal, state, local, and private funding. Signatories understand that federal reimbursement, as a result of declared disasters or emergencies, is contingent upon policy and practice. If participating jurisdictions routinely waive response costs, such costs normally acceptable for federal reimbursement will be ineligible. All reimbursement will be based upon proper documentation, accountings, inventories, receipts, and other evidence of expenses provided by the responding entity.
- 9) Any lending of a facility pursuant to this agreement is subject to the following conditions:
 - (a) Any request for aid hereunder shall include a statement of the amount of work space requested and type of support systems desired. This will be dependent on availability of resources.
 - (b) The host agency will provide oversight of requesting agency's technical experts tasked to establish and maintain information technology operating and communications systems.
 - (c) Requesting entity will not connect, disconnect, or otherwise modify any information technology operating or communications system without the expressed permission of host agency staff.
 - (d) Requesting entity shall vacate the facility when the facility no longer is operationally required by the requesting agency or the facility becomes operationally required by the host agency. The host agency shall provide notice to the requesting agency for the return of the facility.
 - (e) Requesting entity shall return facility to host agency in like condition as when requesting agency first occupied the workspace.

10) Liability, Workers' Compensation, Property Damage.

a) **Workers' Compensation Coverage:** Each member political subdivision will be responsible for its own actions and those of its employees and is responsible for complying with the rules and laws established by the State of North Dakota. Each member political subdivision should understand that workers' compensation coverage does not automatically extend to volunteers. Each political subdivision may obtain workers' compensation coverage for any volunteer at the political subdivision's description.

b) **Automobile Liability Coverage:** Each member political subdivision is responsible for its own actions. Each political subdivision agrees to obtain public liability insurance coverage which at a minimum matches the liability limits for political subdivisions under N.D.C.C. Chp. 32-12.1. This would entail liability insurance with at least \$375,000 per person and \$1,000,000 per occurrence combined single limit for the year 2022 and thereby rising pursuant to N.D.C.C. 32-12.1-03 through 2027. Such insurance coverage must be by a policy with an insurance company licensed to do business in North Dakota, or by being a qualified self-insured, or by being a member of a group self-insurance association. Each political subdivision is responsible for complying with the motor vehicle financial responsibility laws of the State of North Dakota. Each party agrees to obtain automobile liability coverage with at least \$375,000 per person and \$1,000,000 per occurrence combined single limit and coverage extended to owned, non-owned, and hired vehicles by a policy with an insurance company licensed to do business in North Dakota, by being a qualified self-insured, or by being a member of a group self-insurance association. It is understood that the member political subdivision may include in the emergency response volunteer companies that have motor vehicles titled in the name of the volunteer company. It is the responsibility of the member political subdivision to determine if the volunteer company has automobile liability coverage as outlined in this section. This provision is met by being a qualified self-insured or by being a member of a group self-insurance association.

c) **General Liability, Public Officials Liability, and Law Enforcement Liability:**

(1) Each member political subdivision is responsible for its own actions.

(2) For the purposes of North Dakota Century Code (N.D.C.C. § 32-12.1 Governmental Liability) only, the employees and officers of the assisting entity are deemed to be employees of the requesting entity.

(3) Under no circumstance, however, shall a party be required to pay on behalf of itself and other parties, any amounts in excess of the limits on liability established in N.D.C.C. § 32-12.1, applicable to any one party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for any party.

(4) The requesting entity agrees to defend, indemnify, and hold harmless the assisting entity against any claims brought or actions filed against the assisting entity or any employee of the assisting entity for personal injury or damage to property of any third person or persons, arising from the performance and provision of assistance pursuant to this Agreement within the limits of N.D.C.C. § 32-12.1.

11) On a regular basis, each party shall develop and update a plan providing for effective mobilization of resources and facilities.

12) Interagency assistance plans may be developed and updated on a regular basis by the parties hereto and are operative between the parties in accordance with the provisions of such plans. In addition to the emergency response plans set forth

in this agreement, the parties herein may develop and implement memorandums of agreement relating to additional assistance on a routine non-emergency basis.

13) The parties agree to review interagency assistance plans and the provisions of this Agreement at least biennially, or sooner at the request of either party due to a change in law or regulation, change in key command staff, a material change in the requesting agency's interagency assistance plan or as a follow-up to an incident where assistance was provided under this Agreement. For any amendment proposed by either party, the parties shall meet and discuss the proposed amendment in good faith and shall arrive at a mutually agreeable solution. If the parties agree to an amendment, this Agreement may be amended in writing signed by both parties.

14) Nothing within this agreement shall prevent any of the parties herein from entering into similar agreements with any other entity.

15) This Agreement shall become effective when approved and executed by the appropriate political subdivision of each party to this Agreement. The Agreement shall remain in effect between each and every party until participation in this Agreement is terminated by the party. Termination of participation in this Agreement by a response entity shall not affect the continued operation of this Agreement between and among the remaining parties. Any party to this Agreement may terminate participation in this Agreement upon thirty days written notice addressed to the designated public official of each of the other signatory political subdivisions that are parties to this Agreement. This Agreement is binding on future political subdivisions boards and commissions and participating response entities unless affirmative measures have been taken to terminate the Agreement as defined herein.

16) The parties agree that any and all disputes, claims, or controversies arising out of or relating in any way to this Agreement, must first be mediated between the parties with a mutually agreeable mediator. If the parties are unable to agree upon a mediator, a mediator shall be appointed by the American Arbitration Association. The parties agree to split the costs of mediation between them on an equal basis. If the parties are unable to resolve their dispute, claim, or controversy at mediation, the parties agree that any and all disputes, claim, or controversies arising out of or relating in any way to this Agreement shall be exclusively brought in an arbitration. If the parties cannot agree upon an arbitrator, the parties agree to an arbitration with the American Arbitration Association. The parties specifically agree that the laws of the State of North Dakota shall exclusively apply to this Agreement and any arbitration, and that any arbitration shall exclusively be held in Fargo, North Dakota.

17) The execution of this Agreement shall not give rise to any liability or responsibility for failure to respond to any request for assistance made pursuant to this Agreement. This Agreement shall not be construed as or deemed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action whatsoever hereunder for any cause whatsoever.

In witness whereof, this Agreement has been executed and approved and is effective and operative as to each of the parties as herein provided.

City of Fargo/Fire Department


Fire Chief, Steven J. Dirksen

12/5/2023
Date

Fargo Mayor, Timothy J. Mahoney M.D.

Date

City of Jamestown/Fire Department


Fire Chief, Jim A Reuther

12/5/2023
Date


Jamestown Mayor, Dwaine Heinrich

12/5/2023
Date

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December 11, 2023

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

Commissioners:

One RFP was received November 24, 2023, for our upcoming contract winter pruning operations. The pruning area includes:

- 5th Ave S to 13th Ave S, between South University Dr and 4th St – approximately 828 trees.

<u>Contractor</u>	<u>Bid</u>
Carr's Tree Service, Inc.	\$144,899.00

Funding (\$165,000.00) has been included in the 2024 annual forestry contract services budget. Depending on time and funding, the proposal also included additional trees as an option.

Recommended motion:

Move to award upcoming contract winter pruning operations request for proposals (RFP24012) to Carr's Tree Service, Inc., up to \$165,000.00.

Your approval of this request is appreciated.

Sincerely,



Scott Liudahl, City Forester

Cc: Ben Dow

commissionwinterprune2024.doc




**Fargo Cass
Public Health**
Prevent. Promote. Protect.

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

M E M O R A N D U M

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: DECEMBER 5, 2023

**RE: NOTICE OF GRANT AWARD FROM THE ND DEPARTMENT OF
HEALTH AND HUMAN SERVICES FOR THE REGIONAL
PUBLIC HEALTH NETWORK GRANT.
NO: G23.574 CFDA: 93.991
FUNDS: \$20,000
EXPIRES: 09/30/2024**

The attached notice of grant award amendment with ND Department of Health and Human Services is for \$20,000 for administrative duties performed by Fargo Cass Public Health related to the planning and implementation of the Regional Public Health Network strategies.

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

Suggested Motion:

Move to approve this grant award from the ND Department of Health and Human Services and all the subsequent budget adjustments required.

DF/lls
Attachment



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

Grant Number G23.574	CFDA Name Preventative Health and Health Services Block Grant	CFDA Number 93.991
FAIN Number NB01TO000022	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 11/1/2023
Federal Award Date 9/11/2023	Grant End Date 9/30/2024	
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 Regional Public Health Network	North Dakota Department of Health and Human Services (NDDHHS) Project Code: 1181 HLH 5143 81
Grantee Name Fargo Cass Public Health	Project Director Marie Moe
Address 1240 25 th Street South	Address 600 East 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 Marie Moe
Telephone Number 701-241-1360	Telephone Number 701-328-4916
Email Address dfleming@fargond.gov	Email Address memoe@nd.gov

	NDDHHS Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$20,000	\$0	\$20,000
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$20,000	\$0	\$20,000
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 will perform administrative duties related to the planning and implementation of the Regional Public Health Network strategies. Grantee network members will develop a strategic plan consisting of measurable objectives to build capacity to achieve a common goal(s) identified to meet the needs of the communities the network serves. Grantee must deliver the plan by December 31, 2023. Funding can be used for planning and implementation of the strategies.

Reporting Requirements
 Grantee will submit quarterly expenditure and progress report via the Program Reporting System (PRS). Expenditures for the period ending June 30, 2024, must be received by July 15, 2024. Final expenditure and progress report for the period ending September 30, 2024, must be received by October 31, 2024. Reimbursement will be processed upon the Department's approval of expenditures, progress report, and submitted strategic plan. The strategic plan will be reviewed to ensure it is responsive to the community's needs.

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 12/05/2023	Signature <i>Desi Fleming</i>	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Marie Moe, Unit Director, Systems and Performance	
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.

(309)

To: Board of City Commissioners
From: Jill Minette, Director of Human Resources
Re: City of Fargo Employment Policy Revisions
Date: December 7, 2023

The employment policies listed below have been reviewed and revised by Cabinet, the City Attorney, and the Civil Service Commission. The draft policies were also sent to all employees via email for review and comment. I am requesting approval of the policy changes with an effective date of December 25, 2023, which is the start of the first pay period of 2024.

The most significant draft changes are outlined below:

Workweek & Hours of Work Policy (600-006)

The most significant change to this policy relates to call-in pay. We will be converting back to the previous approach to call-in where all call-in time is treated as hours above and beyond the regularly scheduled hours for the week. Employees must work their regularly scheduled hours for the week or use vacation (or appropriate time-off) to reach their regularly scheduled hours.

Annual Leave (500-001)

The language has been revised to align with the call-in policy and to update the fire suppression accrual to account for all holidays.

Sick Leave (500-003)

Clarifying language has been added throughout the policy.

Overtime & Compensatory Time & Pay Matrix (600-007)

The language in the policy and pay matrix have has been revised to clarify which hours count toward the overtime calculation as well as the handling of overtime under an emergency declaration.

Longevity Policy (600-004)

The longevity policy has been updated to increase the value of longevity pay. Additionally, employees will begin to receive longevity at 5 years rather than waiting until they reach 10 years of employment

Employee Referral Bonus (200-019)

We are implementing an employee referral bonus to current employees who recruit prospective applicants who are ultimately hired by the City of Fargo. This new policy establishes the parameters for the new referral bonus program.

RECOMMENDED MOTION: Approve the employment policy changes with an effective date of December 25, 2023.

City of Fargo Employment Policy No. 600-006

Workweek & Hours of Work Policy

Date Approved: 11/92

Date Issued: 11/92

Date Revised: 11/95; 8/99; 8/02; 6/14; 12/25/23

Defined Workweek

The defined workweek for all City of Fargo employees (excluding FLSA 207K exempt employees) begins at 12:01am on Monday and ends at 12:00 midnight on Sunday. The regular schedule for all City employees is 40 hours per week.

Any requests to change the workweek must be approved by the Director of Human Resources.

The departments that have workweeks/work hours that are exceptions to this workweek definition are as follows:

- Fire Department
- Police Department
- Water Filtration
- Public Works
- FargoDome

Schedules

Scheduled hours will be determined by the employee's immediate supervisor and/or department head. Employees will be informed of their daily schedule of hours of work, including any changes that are considered necessary or desirable by the department. When possible, schedule changes will be communicated with at least a seven (7) calendar day notice. Seasonal flexible scheduling must have prior approval by the department head.

The cut-off for each workday begins at 12:01 am and ends at midnight 24 hours later. Time will be scheduled and paid accordingly (i.e., if a shift begins at 11:00 pm on Sunday and ends at 7:30 am on Monday, 1 hour will be credited to Sunday and 7 hours will be credited to Monday, assuming a 30-minute meal period).

Immediate supervisors and/or department heads may schedule overtime or extra shifts to non-exempt employees. Supervisors will assign overtime as needed. See Policy 600-007 Overtime and Compensatory Time.

Employees may perform job duties using a variety of electronic communications, including but not limited to, cell phones, etc. As with other types of work, the time spent by non-exempt employees utilizing electronic communications for work purposes is considered hours worked and is compensable. Work conducted through electronic communications outside of the regular work schedule and/or outside of an “on-call” period must be approved in advance by a supervisor. Failure to obtain advanced approval may result in disciplinary action. Hours worked must be recorded as actual start and end of time worked. This time will round to the nearest quarter of an hour, subject to the Seven Minute Rounding Rule.

Rounding Rules

The Seven-Minute Rounding Rule will be used when the employee timestamps (aka punch in or out) at a time other than their actual scheduled shift start or end time. The Seven- Minute Rounding Rule will be utilized for all hourly employees.

If the time an employee timestamps in at the beginning of their shift is seven minutes or less after the scheduled start time, their compensable time will round back to the nearest quarter of the hour. For example, an employee’s shift is scheduled to begin at 7:45 am and they timestamp in at 7:52 am, they would receive credit for time worked back to 7:45 am.

If an employee timestamps in greater than 7 minutes after their start time, their time will round ahead to the next quarter of an hour. For example, an employee’s shift is scheduled to begin at 7:45 am and they timestamp in at 7:53 am, their compensable time would begin at 8:00 am.

In the event an employee timestamps in and out for an unpaid meal break, the time will also be rounded to the nearest quarter of the hour based on the seven-minute rounding rule.

The Seven-Minute Rounding Rule does not excuse tardiness or unauthorized work that occurs outside of a scheduled shift. The Seven-Minute Rounding Rule is used to determine compensable time.

Unauthorized Work

Any work deemed as unauthorized work or “off-the-clock” (work outside of scheduled hours that has not been approved by a supervisor) is strictly prohibited for non-exempt employees. Employees must record all hours worked. Under-reporting or over-reporting of work time is prohibited and will be considered falsification of time records, resulting in possible disciplinary action up to and including termination of employment.

Time & Attendance

All employees (exempt and nonexempt) are required to use the automated time and attendance system to record their hours worked and time off for payroll and workload/workforce management. The automated time and attendance system is the official timekeeping system.

Non-exempt

Non-exempt employees are required to timestamp at the beginning and end of their shift for payroll and attendance purposes.

Non-exempt employees should timestamp in no earlier than seven minutes before their shift / workday is scheduled to begin and no later than seven minutes after their shift / workday is scheduled to end unless authorized by their supervisor to begin their shift early or end their shift late. Non-exempt employees must timestamp out/in for their meal period if required by their department.

If an employee misses an entry into the time and attendance system, they must notify their supervisor as soon as possible. The supervisor will manually enter the missed entry. Employees who consistently miss timestamp entries will be subject to disciplinary action if initial reminders and training have not resulted in consistent entries.

Exempt

In general, exempt employees will not be required to timestamp for payroll but will be required to record any schedule exceptions and time off requests approved by their supervisor and leave usage. Exempt employees required to track activities and/or projects for time accounting or grant funding, must record the amount of time spent on activities and/or projects in accordance with their department guidelines.

Normal schedule period: Exempt employees are expected to work their regularly scheduled days and hours in order to provide the greatest accessibility during their defined schedule in accordance with department operational needs. Exempt employees may routinely work over 40 hours per week or 80 hours per pay period in order to complete their job responsibilities including project work and meetings that occur outside of the regular schedule. Exempt employees, who report to work for any portion of a scheduled day, will be paid for working the entire day without being required to substitute paid leave as approved by their supervisor and/or department head. Exempt employees who are absent for an entire scheduled workday must use paid leave for the entire scheduled day unless their hours worked over the course of the pay period will equal 80 or greater. Exempt employees who do not report to work but receive prior approval from their department head to work from home on a regularly scheduled workday record the time engaged in work as hours worked. The remainder of the scheduled day would be recorded under the applicable leave type (i.e., annual or sick).

Flexible schedule period: Occasionally, supervisors may approve flexible scheduling for exempt employees because of higher work demands during a particular portion of the regular workweek. In addition, managers might allow seasonal flexible scheduling. The approved flexible scheduling may result in an employee being scheduled to work longer hours over the course of four days rather than the typical five days in order to attain a workweek of 40 or more hours within the workweek or 80 or more hours within the pay period. Flexible scheduling agreements may also involve an on-going schedule of a series of longer days combined with shorter days that result in the exempt employee working 40 or greater hours within the workweek or 80 or more hours within the pay period.

In these cases, managers should adjust the exempt employee's schedule to reflect the actual days/times the exempt employee is anticipated to work. If this flexible scheduling results in an exempt employee being out of the office on a regularly scheduled workday because they have already worked more than 40 hours in that week or 80 hours in the pay period and have met their workload demands for that time period, they will not be required to use paid leave. This flexible scheduling arrangement must be approved by the exempt employee's supervisor and/or department head prior to the schedule change.

Meal Period (Breaks)

The scheduling of meal period for all non-exempt employees is the responsibility of the employee's immediate supervisor and/or department head with the goal of providing a meal break for the employee while causing the least possible disruption for departmental operations. Employees are allowed to leave their designated worksite for the duration of their meal period.

Non-exempt employees who work at least five consecutive hours will be provided a meal period of no less than 30 minutes. Meal periods are not counted toward worked hours and are not compensable. Employees are to be completely relieved from duty during their meal period. If an employee is called back and required to perform any work duties during his or her meal period, the employee will be compensated for the entire meal period. The employee must notify their immediate supervisor as soon as possible if they worked during their meal period. The employee must log in to the automated time and attendance system and select "Cancel Deductions".

Non-exempt employees who have a one-time approval to take a shorter or longer meal break than scheduled must timestamp out at the beginning of their meal break and back in at the end of their meal break. Employees taking an approved longer meal break must either use vacation or request to work additional time within the same workweek. Employees who request a shorter meal break must be relieved from duty for at least 30 minutes in order for the meal break to be unpaid.

Meal periods may not be waived without prior approval by the employee's immediate supervisor and/or department head. Once approved, the employee indicates they are waiving their meal period by selecting "Cancel Deductions" in the automated time and attendance system.

On-going waiver of meal periods must be documented in writing and approved by the department head and the Director of Human Resources prior to the start of the period during which breaks will be waived.

Rest Breaks

Employees may be permitted two (2), separate 15-minute break periods during the workday. The scheduling of these breaks will be the responsibility of the employee's immediate supervisor and/or department head. Rest breaks are considered "time worked" and are compensable. Work breaks may not be used to account for an employee's late arrival or early departure. Rest breaks may not be accumulated to extend a meal period or combined to allow a 30-minute rest break.

Lactation / Breastfeeding Break

An employee will be permitted a reasonable break time to express breast milk for one year after the child's birth. A private area, other than a restroom, will be made available for breastfeeding employees to express milk. If no private, appropriate area can be found within the department, Human Resources will facilitate finding a location for the break. A convenient, clean and safe water source with facilities for washing hands and rinsing breast pump equipment will be located near the private location. A convenient place for temporarily storing breast milk, such as a refrigerator, will be provided. The lactation/breastfeeding breaks are paid if they are taken as a paid rest break (see rest break section above).

Training

Employees will be paid for any time spent attending training programs, meetings and other similar activities if attendance is required and the training or meeting is directly related to the employee's position.

Attendance of training programs, meetings and other similar activities will not be compensated if all of the following criteria are met:

- Attendance occurs outside of the employee's regular working hours;
- Attendance is voluntary;
- The training or meeting is not directly related to the employee's job; and
- The employee does not perform productive work while attending the training or meeting.

Time spent outside of the core training activity(s) is not compensable.

Travel Time

Time spent commuting from home to work or work to home is not compensable and is not considered travel time for the purposes of this section.

All employees (including exempt and non-exempt positions) are eligible for compensation for the time they spend on work-related traveling. The compensation an employee receives depends upon the type of travel and whether the travel time takes place within normal work hours or outside of normal scheduled work hours.

Travel during the Workday within the Fargo Area

Travel time that occurs during the normal workday is compensable if the travel time is work-related.

Travel Outside of the Fargo Area

Out-of-Town Travel Time during Normal Work Hours: The time exempt and non-exempt employees spend engaged in travel during their regularly scheduled work hours on any day of the week (including non-scheduled days) is treated as hours worked. This travel time is paid at the employee's regular hourly rate of pay (or at their overtime rate if applicable based on hours worked). Compensable travel time includes any portion of authorized travel, such as airport layovers.

Out-of-Town Travel Time Outside of Normal Work Hours: The time exempt and non-exempt employees spend in travel outside of their regularly scheduled work hours (including non-scheduled days) is only treated as hours worked if they are engaged as a driver or passenger in an automobile, plane or any other mode of transportation. This travel time is paid at the employee's regular hourly rate of pay (or overtime rate if applicable based on hours worked). Time spent on non-travel activities outside of the normal work hours (including non-scheduled days) is not compensable.

On-Call

Some positions within the City require that employees, as a condition of employment, are expected to be available for "on-call" assignments including the departments of Public Works , Transit, Water, Water Reclamation, Solid Waste, Facilities Management, Engineering, and IS.

These non-exempt employees will be required to be available by phone or radio for a specified period of time with the purpose of being contacted to report to work if required. Employees must be formally assigned to be "on-call" by their immediate supervisor and/or department head and must respond to the required work site within one hour from notification. While on call, employees must adhere to all City of Fargo policies, including the Drug Free Workplace and applicable Drug and Alcohol Policies to ensure they are fit for duty.

Compensation: Employees who are formally assigned to be "on-call" will be paid as follows:

- One hour of pay at one and one-half (1 ½) times the regular rate per day for non-scheduled workdays including holidays.
- If the employee is called in during this time, they will still receive the on-call pay in addition to any call-in pay for which they are eligible to receive.

response memorandum of understanding (MOU) through North Dakota Department of Emergency Services (NDDDES), within the region under a presidentially declared Federal emergency or are requested through the Emergency Management Assistance Compact (EMAC), or cross-border mutual assistance through the Northern Emergency Management Assistance Compact (NEMAC). Under a mayoral emergency declaration, non-exempt and exempt employees are eligible for overtime for all emergency related hours worked in excess of 40 hours per week. In addition, hours worked on regular job responsibilities in excess of 40 hours per week that are attributable to emergency related work accomplished during regularly scheduled hours will be paid as overtime for exempt employees. Likewise, exempt and non-exempt employees designated to backfill the shift or workload of the employees directly responding to the emergency will be eligible for overtime under the emergency provision as well. Disaster related overtime pay for police and fire covered under the 207(k) exemption is covered in police and fire department pay policies.

Salary Basis Compensation Disputes

It is the City of Fargo's policy to comply with applicable wage and hour laws and regulations. Accordingly, the City intends that deductions be made from employee's pay only in circumstances permitted by the Fair Labor Standards Act and the U.S. Department of Labor's rules governing the salary basis of pay for exempt employees. The improper pay deductions specified in Title 29 of the Code of Federal Regulations 541.602(a) may not be made from the pay of employees who are subject to the salary basis test.

Employees who have questions or concerns about their salaried status or who believe any deduction has been made from their pay that is inconsistent with the salaried status, should immediately raise the matter with their immediate supervisor and/or department head. If the employee has raised the matter with their supervisor and it is not resolved within ten (10) business days, or if, for any reason, the employee is uncomfortable discussing the matter with their supervisor, they must submit the question, concern or complaint to the City Administrator.

The concern or complaint must be submitted in writing including the employee's name, position and a brief description of the issue including the time period over which the complaint relates. If the employee is unable for any reason to submit the complaint in writing, the Director of Human Resources (or designee) will take the statement from the employee. The employee will then be asked to review and sign the statement to ensure it accurately reflects the complaint.

The City of Fargo is committed to investigating and resolving complaints as promptly and as accurately as possible. Consistent with the U.S. Department of Labor's policy, any complaint will be resolved within a reasonable time given all the facts and circumstances. If an investigation reveals the employee was subjected to an improper deduction from pay, the employee will be reimbursed and the City will take whatever action it deems necessary to ensure compliance with the salary basis test in the future.

Exempt / Non-Exempt Classification

The classification of exempt or non-exempt is indicated in each position's official job description.

City of Fargo

Non-Exempt Pay Matrix

Date Approved: 6/14 Date Issued: 6/14

Date Revised: 12-25-23

	Full-time Non-exempt	Full-time (30-39) & Part-time (20-29) Non-exempt
Holiday Credit Pay - (Not Worked)	<p>Employee on a weekday schedule – observed holiday is paid as 8 hours of Holiday Credit Pay at regular rate</p> <p>Employee on a schedule including weekends – if the actual holiday falls on a scheduled day off, the holiday is paid at 8 hours of Holiday Credit Pay at regular rate in addition to the 40 regular hours.</p> <p>**Excludes police & fire shift employees under 207(k) **Excludes seasonal & temporary (other than full-time temporary 40) employees</p>	<p>Employee on a weekday schedule – observed holiday is paid as a pro-rated amount based on annual scheduled hours (FTE) as Holiday Credit Pay at regular rate</p> <p>Employee on a schedule including weekends – if the actual holiday falls on a scheduled day off, the pro-rated hours are paid at Holiday Credit Pay at regular rate in addition to the regular hours worked.</p> <p>**Excludes police & fire employees under 207(k) **Excludes seasonal & temporary (other than full-time temporary 40) employees</p>
Holiday Pay - (Worked)	<p>Employees required to work are paid the actual number of hours worked on the holiday (observed or actual depending on regular schedule) at one and one-half their regular rate. Employees will accrue annual leave, equal to the number of hours worked up to 8.</p> <p>**Excludes police & fire under 207(k) & civilian police staff **Excludes seasonal & temporary (other than full-time temporary 40) employees</p>	<p>Employees required to work are paid the actual number of hours worked on the holiday (observed or actual depending on regular schedule) at one and one-half their regular rate. Employees will accrue annual leave, equal to the number of hours worked up to 8.</p> <p>**Excludes police & fire under 207(k) & civilian police staff **Excludes seasonal & temporary (other than full-time temporary 40) employees</p>
On-Call	<p>One hour of pay at one and one-half (1 ½) times the regular rate per day for holidays and nonscheduled workdays.</p> <p>**Excludes police & fire under 207(k) **Excludes seasonal & temporary (other than full-time temporary 40) employees</p>	<p>One hour of pay at one and one-half (1 ½) times the regular rate per day for holidays and nonscheduled workdays.</p> <p>**Excludes police & fire under 207(k) **Excludes seasonal & temporary (other than full-time temporary 40) employees</p>
Call-In	<p>For each 24-hour period, the unscheduled call-in will be paid as follows: Initial Response – a minimum of two hours will be paid at one and one-half (1 ½) times the regular hourly rate.</p> <p>Subsequent response(s) - a minimum of 1 hour paid at one and one-half (1 ½) times the regular hourly rate.</p> <p>Call-In occurring on a holiday will be paid at one and one-half the regular rate. **Excludes police & fire under 207(k) **Excludes seasonal & temporary (other than full-time temporary 40) employees</p>	<p>For each 24-hour period, the unscheduled call-in will be paid as follows: Initial Response – a minimum of two hours will be paid at one and one-half (1 ½) times the regular hourly rate.</p> <p>Subsequent response(s) - a minimum of 1 hour paid at one and one-half (1 ½) times the regular hourly rate.</p> <p>Call-In occurring on a holiday will be paid at one and one-half their regular rate. **Excludes police & fire under 207(k) **Excludes seasonal & temporary (other than full-time temporary 40) employees</p>

<p>Remote Call-In</p>	<p>For each 24-hour period, the unscheduled call-in will be paid as follows:</p> <p>Initial & Subsequent Remote Response – a minimum of 15 minutes will be paid at one and one-half (1 ½) times the regular hourly rate.</p> <p>Remote call-in occurring on a holiday will be paid at one and one-half the regular rate.</p> <p>**Excludes police & fire under 207(k) **Excludes seasonal & temporary (other than full-time temporary 40) employees</p>	<p>For each 24-hour period, the unscheduled call-in will be paid as follows:</p> <p>Initial & Subsequent Remote Response – a minimum of 15 minutes will be paid at one and one-half (1 ½) times the regular hourly rate.</p> <p>Remote call-in occurring on a holiday will be paid at one and one-half their regular rate.</p> <p>**Excludes police & fire under 207(k) **Excludes seasonal & temporary (other than full-time temporary 40) employees</p>
<p>Overtime</p>	<p>Employees earn overtime pay at one and one-half times their regular rate of pay for all hours worked over 40 hours within their designated workweek. Holiday Worked hours, Holiday Credit (non-worked) hours, shift differential amounts and longevity pay amounts are included in the overtime calculation. Police and Fire employees under the 207(k) exemption are paid according to the 207(k) regulations under the Fair Labor Standards Act (FLSA).</p> <p>The following forms of paid time off are <u>not</u> included in the overtime calculation:</p> <ul style="list-style-type: none">• Vacation• Sick• Compensatory Time Used• Unpaid Time Off• Military Leave• Injury Leave• Funeral Leave• Jury Duty	<p>Employees earn overtime pay at one and one-half times their regular rate of pay for all hours worked over 40 hours within their designated workweek. Holiday Worked hours, Holiday Credit (non-worked) hours, shift differential amounts and longevity pay amounts are included in the overtime calculation. Police and Fire employees under the 207(k) exemption are paid according to the 207(k) regulations under the Fair Labor Standards Act (FLSA).</p> <p>The following forms of paid time off are <u>not</u> included in the overtime calculation:</p> <ul style="list-style-type: none">• Vacation• Sick• Compensatory Time Used• Unpaid Time Off• Military Leave• Injury Leave• Funeral Leave• Jury Duty

CITY OF FARGO EMPLOYMENT POLICY NO. 600-004

LONGEVITY PAY

Date Approved: 11/92

Date Issued: 11/92

Date Revised: 12-25-23

The City of Fargo values our employees' dedication to serving the community. Longevity pay recognizes and expresses the City's appreciation for the on-going service.

Longevity pay is included in the regular paycheck and is paid over 24 pay periods of the year. When a third paycheck occurs in the month, longevity is only paid on the first two paychecks of the month and is excluded from the third check. The City's longevity pay plan for all full-time (40) regular, contract full-time (40) and full-time (40) temporary employees is as follows:

Years of Service	Longevity Pay per Pay Period	Longevity Pay per Month
After 5 years	\$12.50	\$25
After 10 years	\$25.00	\$50
After 15 years	\$37.50	\$75
After 20 years	\$50.00	\$100
After 25 years	\$62.50	\$125
After 30+ years	\$75.00	\$150

The longevity date is based on the date the employee began working in a full-time (40) regular position, contract full-time (40), or full-time (40) temporary position. Any breaks in full-time (40) regular, contract full-time (40), or full-time (40) temporary service do not count towards service for purposes of calculating longevity pay. Longevity pay begins in the pay period in which the employee reaches the incremental years of service in the table above.

An employee who leaves employment and returns under the re-employment policy will be eligible to resume longevity payments based on their new longevity date. Longevity credit will not be given for the period the re-hired employee was not employed by the City.

The longevity pay is added to the employee's pay and is included in the calculation of overtime pay as required by the Fair Labor Standards Act (FLSA).

POLICY NUMBER 200-019

Employee Referral Bonus

Effective Date: December 25, 2023

Purpose:

Research has shown that new hires who come to us through employee referrals are valuable contributors, stay with us longer and are more cost-effective recruits. Because of this, the City of Fargo is excited to announce the Employee Referral Bonus Program!

The purpose of the program is to provide an incentive award to current employees who bring new talent to the City by referring applicants who are subsequently selected and successfully employed with Team Fargo.

Eligibility:

All employees are eligible to receive a referral bonus with the exception of the following:

- Human Resources staff
- Cabinet Members
- Supervisors or managers of positions within their own division/department for which they are the hiring manager
- Employees who have recruitment as a primary function of their position and recruit an applicant for their own division/department. For example, the Training and Development Unit in the Police Department would not receive a bonus for recruiting a police officer; however, they could receive a bonus if they recruit for any other position within the City.
- Elected Officials
- Appointed Officials
- Internal transfers or promotions
- Election/Poll Workers

The newly hired employee does not receive a bonus when they are referred. Only the referring employee receives a bonus.

Referral Bonus Amounts:

Below are the eligible employment statuses and the bonus amount associated with each employment status. With the exception of temporary variable and seasonal employees, the bonus will be split into two equal payments at the 2-month and 9-month anniversary date of hire. Payments will be processed in the pay period that includes the anniversary date of hire. For example, if a new employee starts on January 1, the eligible referring employee will receive a bonus payment in the pay periods including March 1 and October 1 of that year.

The referral bonus is not included in the calculation of overtime pay as required by the Fair Labor Standards Act (FLSA) and is subject to normal taxation.

When the budget dollars for the calendar year are expended, no further bonuses will be given.

Employment Status of the New Hire	1st Bonus Payment (2-months from D.O.H.)	2nd Bonus Payment (9-months from D.O.H.)	Total Bonus
Regular full-time (40) Contract full-time (40) Temporary full-time (40)	\$500	\$500	\$1000
Regular full-time (30-39) Contract full-time (30-39)	\$375	\$375	\$750
Regular part-time (20-29) Temporary part-time (20-29) Contract (20-29)	\$250	\$250	\$500
Temporary Variable – Seasonal Fargodome event staff must work at least 24 (non-training) hours within the first 2 months.	\$150	N/A	\$150

Referral Bonus Program Administration:

The City of Fargo will grant a referral bonus to the eligible employee when the employee is listed on the hired individual's application and the Candidate Referral form is submitted by the referring employee. Referrals received after the application has been submitted and/or post interview referrals are not eligible for the referral bonus.

The referring employee must complete the Candidate Referral form found on the intranet and submit it to Human Resources. The first employee to refer a candidate will be the only referring employee eligible for payment.

The referring employee must agree to have his or her name used if the City contacts a potential applicant to garner further interest.

An employee may receive multiple bonuses, not to exceed five referrals in any calendar year.

Only candidates who meet the qualifications for the position will be considered. All candidates will be evaluated for employment consistent with City policies and procedures. Information regarding the hiring decision will be treated as confidential unless subject to open record laws.

The new hire must remain employed by the City through the bonus period in order for the referring employee to receive a bonus payment. Additionally, the referring employee must be employed by the City at the point of the bonus payments. If the referring employee leaves employment, they are no longer eligible to receive any bonus payment that would have been paid after they end employment. For example, if a new employee starts on January 1 and either the new hire or referring employee end employment on April 1, the referring employee would receive the first bonus payment (March 1) but would not be eligible to receive the second bonus payment (October 1).

Any disputes or interpretations of this employee referral program will be handled through Human Resources.

Original Approval Date: January 2024

Original Issue Date: January 2024

Revision Effective Dates:

Unscheduled Call-In

Call-In / Report to work site: Unscheduled call-in is defined as an unscheduled request made by an appropriate supervisor for an employee to return to work due to an urgent or emergency need after leaving at the end of the regular shift and before the beginning of the next regularly scheduled shift or on a scheduled day when an employee is using a time-off benefit such as annual leave or compensatory time off.

Non-exempt employees, including those assigned “on-call”, are required to report to work during an unscheduled day or during non-scheduled hours to work an unspecified period of time with less than 24 hours notice (7 days for Water Filtration and Water Reclamation employees) of the schedule change if requested by their supervisor. Requests to work additional hours outside of the employee’s schedule with greater than 24 hours notice given by the supervisor will not be paid as call-in. Additionally, instances in which employee’s schedules are changed but the total scheduled hours for the week remain the same will not be paid as call-in. For example, if an employee or workgroup’s schedule is changed from working 40 hours on Monday through Friday to working 40 hours on Tuesday through Saturday, the schedule change does not constitute call-in because the employee is not scheduled to work hours above their regularly scheduled 40 hours for the workweek.

Compensation: For each 24-hour period, the unscheduled call-in will be paid as follows

- Initial Response – a minimum of two hours will be paid at one and one-half (1 ½) times the regular hourly rate.
- Subsequent response(s) - a minimum of 1 hour paid at one and one-half (1 ½) times the regular hourly rate.

If the immediate supervisor and/or department head and the employee mutually agree, compensatory time may be substituted for call-in pay.

Travel time associated with being called back to work is not compensable.

During a week in which an employee receives ~~on-call~~ or call-in pay, if an employee does not work their regularly scheduled hours during a workweek the employee must substitute annual leave (or other applicable leave) in order to get to their regularly scheduled hours for the workweek.

Early Call-In / Report to work site: If a non-exempt employee is called in to work before the start of their shift and is required to continue working through their regularly scheduled shift, they will receive call-in pay for the time worked preceding their regularly scheduled shift. Compensation will be at the regular pay rate (or overtime if applicable based on hours worked) once the regular shift begins. If the work performed during the early call-in is completed within 30 minutes of the start of the regular shift, the employee will receive early call-in pay until the start of the regular shift.

If an employee requests and is approved to leave early during a shift that began with early call-in, the employee must substitute annual leave for any non-worked regularly scheduled hours in order to get to their regularly scheduled hours for the workweek. For example, an employee who is regularly scheduled from 7 am to 3:30 pm (with a 30-minute lunch break) is called in early at 6 am and is approved to leave at 2 pm, would need to use 1.5 hrs of annual leave, providing they do not work any additional hours throughout the week. If additional hours are worked later in the workweek which results in the employee working at least their regularly scheduled hours, substitution of annual leave for the early call-in day is not required.

Remote Call-In / Resolve issue remotely: Hours worked as a result of being called during an “on-call” period and the non-exempt employee is able to resolve the issue over the phone or remotely will be paid as follows:

Compensation:

- Initial & Subsequent response(s) – employee is paid at one and one-half (1 ½) times the regular hourly rate for all hours worked with a minimum 15-minute shift guarantee. (Two-hour minimum does not apply to remote “call-in”.)

Extensions of the Workday

Extensions of the end of a regularly scheduled workday (shift) are not treated as call-in.

CITY OF FARGO EMPLOYMENT POLICY NO. 500-001

ANNUAL LEAVE

Date Approved: 11/92

Date Issued: 11/92

Date Revised: 6/94; 10/98; 7/00; 6/14; 12-25-23

Annual leave (vacation) with pay is granted to full-time regular, part-time regular and full-time temporary (40) employees for the purpose of freeing them from their regular duties to spend time in rest, relaxation, recreation, or their personal activities. An employee engaging in outside employment should refer to City of Fargo Policy 200-010 Outside Employment (Moonlighting).

Annual Leave Accrual for Full Time (Regular, Contract and Temporary) and Part Time (Regular and Contract) Employees

Full-time regular (40), contract (40) and temporary (40) employees will earn annual leave, at a specified rate based on actual hours worked and/or paid leave hours up to 80 hours per pay period. Full-time regular (30-39), contract (30-39) and part-time regular (20-29) employees will earn annual leave on a pro-rated basis based on actual hours worked and/or paid leave hours up to 80 hours per pay period. Annual leave accrual begins on the first day of employment. The rate of accumulation is based on the employee's length of service as follows:

Years of Service	Accrual Rate per Hour Worked	Accrual Rate per Pay Period	Accrual Rate per Year
1st through 3rd	.0462	3.696 or (3 hours and 42 minutes)	96 hours
4th through 7th	.0577	4.616 or (4 hours and 37 minutes)	120 hours
8th through 12th	.0692	5.536 or (5 hours and 33 minutes)	144 hours
13th through 18th	.0808	6.464 or (6 hours and 28 minutes)	168 hours
19th and subsequent	.0923	7.384 or (7 hours and 24 minutes)	192 hours

Under special circumstances, for positions that are hard to fill, the department head may submit a request to the Position Evaluation Committee (PEC) to consider an exception. Typically, an exception involves starting a new employee at the 4 to 7 year accrual level where they would remain until they complete their 7th year of employment. This request must be submitted by the department head to the PEC and approved before offered to the potential employee.

Annual Leave Accrual for Fire Suppression Employees

Fire suppression employees, because of their schedules and work hours, earn annual leave which includes holidays. The rate of accumulation of annual leave for fire suppression employees is based upon the employee's length of service as follows:

Years of Service	Accrual Rate per Hour Worked	Accrual Rate per Pay Period	Accrual Rate per Year
1st through 3rd	.0907	10.15 or (10 hours and 9 minutes)	264 hours
4th through 7th	.1030	11.54 or (11 hours and 32 minutes)	300 hours
8th through 12th	.1154	12.92 or (12 hours and 55minutes)	336 hours
13th through 18th	.1277	14.31 or (14 hours and 18 minutes)	372 hours
19th and subsequent	.1401	15.69 or (15 hours and 41 minutes)	408 hours

Annual leave for fire suppression employees is charged on a tour-day basis.

Accrual for Full-time Temporary (30-39) and Part-time Temporary (20-29) Employees

Full-time temporary (30-39) and part-time temporary (20-29) ~~and seasonal~~ employees as defined in Policy No. 200-004 will earn annual leave based on hours worked the previous service year (from their date of hire to the employment anniversary date and subsequent service years) as follows:

1. Employees who work 1,040 hours in a service year will receive three (3) days (24 hours) of annual leave in a lump sum accrual upon completing the year of service.
2. Employees who work 1,560 hours in a service year will receive five (5) days (40 hours) of annual leave in a lump sum accrual upon completing the year of service.

Employees who transfer from a regular position to a full-time temporary (30-39) or part-time temporary (20-29) position retain their annual leave accumulation and will transition to the full-time temporary (30-39) and part-time temporary (20-29) accrual schedule effective the date of their transfer.

Employees who transfer from a full-time temporary (30-39) or part-time temporary (20-29) to a regular position will retain their annual leave accumulation. If the transfer occurs before they complete a service year and the employee has worked the required number of hours, they will receive a pro-rated lump sum accrual at the time of the transfer to a regular position as follows:

For those who have worked at least 1,560 hours, the hours worked between the employee's date of hire and the date of promotion will be multiplied by .01923. For those who have worked at least 1,040 hours, the hours worked between the employee's date of hire and the date of promotion will be multiplied by .01154. If a status change from a temporary to regular position occurs after the completion of one year of service or during a subsequent year, the same pro-ration will occur providing the employee has reached the hours worked threshold during that subsequent service year.

Annual leave will begin to accrue based on the regular accrual schedule on the effective the date of the status change.

Hours Worked (between anniversary date and transfer)	Accrual Rate per Hour Worked	Maximum Hours Accrued
1040	.01154	24
1560	.01923	40

Employees who transfer to a temporary variable or seasonal position will receive an annual leave payout.

Maximum Accrual

Employees may accrue annual leave up to 320 hours as of December 31st, which may be carried over to the next fiscal year. The annual leave balance, including all hours accrued by the end of the 26th pay period, or the last pay period of the year, minus any annual leave hours used on or before December 31 determines the year-end annual leave accrual. Any hours over 320 will be forfeited.

Department heads may submit a request for exemption from the maximum accrual for instances where the employee was unable to use their annual leave due to circumstances beyond their control (i.e., a storm or other disaster that requires staff to be recalled from vacation at the end of the year or extraordinary workload demands). The requests will be reviewed on a case-by-case basis by the Director of Human Resources.

Fire suppression employees may accrue annual leave up to 576 hours which may be carried over to the next fiscal year. Any accumulated hours in excess of these amounts shall be forfeited.

Annual Leave Usage

Annual leave is paid at the employee's regular base rate of pay at the time the leave is taken. Annual leave is available for use the pay period following the period in which the leave is accrued (i.e. hours accrued during pay period one are available for use beginning pay period two). New employees can begin to use annual leave upon availability. Annual leave may not be taken in less than quarter hour (15 minute) increments unless the employee is exhausting their annual leave balance. All accrued annual leave must be used before an employee can take time off on an unpaid status.

Non-exempt employees only use the amount of annual leave necessary to get to their regularly scheduled hours for the workweek. For example, if an employee submits a time-off request for eight hours in advance of a work week and then works 36 hours, the time-off will be reduced to four (4) hours of annual leave necessary to get to 40 hours for the workweek. Likewise, an employee who is regularly scheduled less than 40 hours per week would only use the amount of annual leave necessary to get to their regularly scheduled hours for the workweek.

Exempt employees will be required to use annual leave if they are absent for an entire scheduled workday unless otherwise stated in this policy. In cases where leave is within an approved Family and Medical Leave Act (FMLA) leave of absence, an extended approved absence, or in instances where a claim has been filed with Workforce Safety and Insurance (WSI) but has not yet been approved, annual leave (or sick leave) will be used for hours in which the exempt employee is absent during their regular work schedule. Department heads retain the right to require annual leave usage for partial day absences in situations where the exempt employee is not routinely working at least their minimum scheduled hours each workweek or while an exempt employee is working under a performance improvement plan or disciplinary action has been taken. See Policy 600-006 Workweek and Hours of Work Policy for further details on exempt employee timekeeping.

In order to schedule annual leave, employees must submit a time-off request through the automated time and attendance system at least two weeks before the requested leave date. Employees in departments with departmental policy requiring more advance notice of requested leave must follow their departmental policy. Employees must ensure they have enough accrued leave available to cover the dates requested. Annual leave hours will only be approved if accrued by the beginning date of the requested annual leave. No advance of unaccrued leave will be permitted.

Requests will be reviewed and considered for approval based on several factors, including department operating and staffing requirements. Consideration may be given to seniority at the discretion of the department head based on departmental policies and procedures. The supervisor should respond to the leave request within three business days of the date it was submitted indicating whether the request has been approved or denied, along with a reason for denial.

Occasionally at the point a job offer is extended, a potential employee will request time off early in their employment due to previous commitment. If the department head approves the time off, the employee must use all of the annual leave accrued at the time of the leave before going into an unpaid leave status. Likewise, a current employee must exhaust their annual leave before going into an unpaid leave status for time off purposes and only upon the approval of the department head.

Annual Leave in Conjunction with Other Types of Absences

Holiday During Annual Leave	If a regularly scheduled holiday falls during a period of days in which an employee is using annual leave, the employee will be paid holiday credit pay (non-worked) providing they have either hours worked or paid leave during the scheduled shift preceding the holiday.
Illness During Annual Leave	If an employee would otherwise be unable to work due to an FMLA qualifying injury or illness during annual leave, sick leave benefits may be used instead of annual leave for the defined recovery period. Employees are required to notify their supervisors within twenty-four (24) hours of the injury or illness. No other use of sick leave during annual leave periods will be approved.
Funeral Leave During Annual Leave	If an employee suffers the loss of a family member or relative during regularly scheduled annual leave and funeral leave is appropriate, the time off for the funeral will not be considered annual leave unless it exceeds the allotted funeral leave days. Refer to City of Fargo Employment Policy No. 500-006 - Funeral Leave
Family and Medical Leave (FMLA):	Annual leave may be designated for all or portions of Family and Medical Leave Act Leave (FMLA). Refer to City of Fargo Employment Policy No. 500-005 – Family and Medical Leave.
Sick Leave	Annual leave must be used in circumstances of employee absences due to illness after an employee has exhausted their sick leave balance
Injury Leave	<p>An employee who files a claim with Workforce Safety and Insurance (WSI) and is unable to work due to the injury/illness for which they have filed a claim will be placed on a leave of absence and first paid from their accrued sick leave. Once sick leave is exhausted, the employee will then be paid from annual leave. If the claim is accepted by WSI, sick and/or annual leave used relating to this leave will be credited back to the employee.</p> <p>An employee may elect to use their accrued annual leave (after exhausting sick leave) to make up the difference between the amount paid by WSI and the 1/3 pay from the City. Employees who are not eligible to receive the 1/3 pay from the City may request to be paid from their annual leave balance</p>

	<p>(after exhausting sick leave) during their leave of absence.</p> <p>Employees on an injury leave of greater than 30 continuous days will stop accruing annual leave after the 30th day until the employee returns to work. Leave accrual lost during this time is not reinstated.</p>
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Annual Leave at the End of Employment

For purposes of employment termination (voluntary, involuntary or retirement), annual leave accruals will be paid in one lump sum on the final check for the pay period in which employment ended. The entire accrued balance will be paid at the employee's base rate of pay as of their last day of work. Longevity pay will be included in the payout calculation.

A deceased employee's estate will be entitled to all accrued, unused annual leave. The final paycheck will be deposited into the employee's existing account through direct deposit unless a written notification has been received authorizing payment to a designated beneficiary or the estate.

An employee who returns to their former position while their name is on the re-employment list will be given credit for prior service when determining the accrual level for annual leave.

CITY OF FARGO EMPLOYMENT POLICY NO. 500-003
SICK LEAVE

Date Approved: 11/92

**Date Revised: 4/94; 10/98; 8/99; 7/00; 10/00; 12/04; 6/14;
 12-25-23**

Sick leave is granted for full-time regular, part-time regular and full-time temporary (40) employees for the purpose of personal illness and injury, well-care, and medical, dental and Employee Assistance Program appointments.

In addition, sick leave may be used by an employee to tend to the needs of certain family members who are ill, or to assist them in obtaining medical services or other services related to their health or well being. Eligible family members include the employee’s spouse, parent, child (natural, adoptive, foster or stepchild), and any other family member who is financially or legally dependent upon the employee, or who resides with the employee for the purpose of the employee providing care to the family member.

Sick Leave Accrual for Full Time (Regular, Contract and Temporary) and Part Time (Regular and Contract) Employees

Full-time regular (40), contract (40) and temporary (40) employees will earn sick leave at a specified rate based on actual hours worked and/or paid leave hours up to 80 hours per pay period. Full-time regular (30-39), contract (30-39) and part-time regular (20-29) employees will earn leave on a pro-rated basis based on actual hours worked and/or paid leave hours up to 80 hours per pay period. Sick Leave accrual begins on the first day of employment. The rate of accumulation is based on the employee’s length of service as follows:

Years of Service	Accrual Rate per Hour Worked	Accrual Rate per Pay Period	Accrual Rate per Year
1st through 10th	.0462	3.696 or (3 hours and 42 minutes)	96 hours
11th and subsequent	.0692	5.536 or (5 hours and 33 minutes)	144 hours

Under special circumstances, for positions that are hard to fill, the department head may submit a request to the Position Evaluation Committee (PEC) to consider an exception. Typically an exception involves starting a new employee at the 11th year accrual level. This request must be submitted by the department head to the PEC and approved before offered to the potential employee.

Sick Leave Accrual for Fire Suppression Employees

Fire suppression employees accrue sick leave at a rate of 11.2 hours per calendar month of full-time service. After a Fire Suppression employee has completed ten years of service, sick leave accrues at 16.8 hours per calendar month of full-time service. The rate of accumulation is based on the employee's length of service as follows:

Years of Service	Accrual Rate per Hour Worked	Accrual Rate per Pay Period	Accrual Rate per Year
1st through 10th	.0462	5.17 or (5 hours and 10 minutes)	134.4 hours
11th and subsequent	.06923	7.75 or (7 hours and 45 minutes)	201.6 hours

Sick leave for fire suppression employees is charged on a tour-day basis.

Accrual for Full-time Temporary (30-39), Part-time Temporary (20-29)

Full-time temporary (30-39) and part-time temporary employees as defined in Policy No. 200-004 will earn sick leave based on hours worked the previous service year (from their date of hire to the employment anniversary date and subsequent service years) as follows:

1. Employees who work 1,040 hours in a service year will receive two (2) days (16 hours) of sick leave in a lump sum accrual upon completing the year of service.
2. Employees who work 1,560 hours in a service year will receive five (5) days (40 hours) of sick leave in a lump sum accrual upon completing the year of service.

Employees who transfer from a regular position to a full-time temporary (30-39) or part-time temporary position retain their sick leave accumulation and will transition to the full-time temporary (30-39) and part-time temporary accrual schedule effective the date of their transfer.

Employees who transfer from a full-time temporary (30-39) or part-time temporary (20-29) position to a regular position will retain their sick leave accumulation. If the transfer occurs before they complete a service year and the employee has worked the required number of hours, they will receive a pro-rated lump sum accrual at the time of the transfer to a regular position as follows:

For those who have worked at least 1,560 hours, the hours worked between the employee's date of hire and the date of promotion will be multiplied by .01923. For those who have worked at least 1,040 hours, the hours worked between the employee's date of hire and the date of promotion will be multiplied by .0077. If a status change from a temporary to regular position occurs after the completion of one year of service or during a subsequent year, the same pro-ration will occur providing the employee has reached the hours worked threshold during that subsequent service year.

Sick leave will begin to accrue based on the regular accrual schedule on the effective date of the status change.

Hours Worked (between anniversary date and transfer)	Accrual Rate per Hour Worked	Maximum Hours Accrued
1040	.0077	16
1560	.01923	40

Employees who transfer to a temporary variable or seasonal position will receive a payout of sick leave hours in excess of 960 hours. These hours will be paid out at 44.4% of the accrued sick leave over 960 hours without interest.

Maximum Accrual

Sick leave may accrue to a maximum of 960 hours. At the end of each calendar year (after pay period 25) or at the time of termination, 44.4% of the accrued sick leave in excess of 960 hours will be paid to the employee without interest.

Fire Suppression employees may accrue sick leave to a maximum of 1,344 hours. At the end of each calendar year or at the time of termination, 44.4% of the accrued sick leave in excess of 1,344 hours shall be paid to the employee without interest.

The amount of such compensation is computed by multiplying the number of hours of banked sick leave in excess of the maximum by 44.4% and then by the employee's hourly pay rate, including longevity pay.

Sick Leave Usage

Sick leave is paid at the employee's regular base rate of pay at the time the leave is taken. Sick leave is available for use the pay period following the period in which the leave is accrued (i.e., hours accrued during pay period one is available for use beginning pay period two). New employees may use sick leave upon availability. Sick leave may not be taken in less than quarter hour (15 minute) increments unless the employee is exhausting their sick leave balance. For absences that qualify for sick leave utilization, all accrued sick leave must be used before an employee must draw from their vacation balance (see City of Fargo Policy 500-005 Family and Medical Leave Act Policy for compensation during FMLA). All accrued time off balances must be exhausted before the employee can move into an unpaid status.

Non-exempt employees only use the amount of sick leave necessary to get to their regularly scheduled hours for the workweek. For example, if an employee submits a time-off request for eight hours in advance of a work week and then works 36 hours, the time-off will be reduced to 4 hours of sick leave necessary to get to 40 hours for the workweek. Likewise, an employee who is regularly scheduled less than 40 hours per week would only use the amount of sick leave necessary to get to their regularly scheduled hours for the workweek.

Exempt employees will be required to use sick leave if they are absent for an entire scheduled workday unless otherwise stated in this policy. In cases where leave is within an approved Family and Medical Leave Act (FMLA) leave of absence, an extended approved absence, or in instances where a claim has been filed with Workforce Safety and Insurance (WSI) but has not yet been approved, sick leave will be used for hours in which the exempt employee is absent during their regular work schedule. Department heads retain the right to require sick leave usage for partial day absences in situations where the exempt employee is not routinely working at least their minimum scheduled hours each workweek or while an exempt employee is working under a performance improvement plan or disciplinary action has been taken. See Policy 600-006 Workweek and Hours of Work Policy for further details on exempt employee timekeeping.

Employees must notify their immediate supervisor, no later than 30 minutes prior to the regular start time of their shift, of their absence (unless a longer notice is required by the employee's department.) Employees must follow their department's procedures to notify the supervisor and/or any other department personnel of an absence. Sick leave hours will only be approved if accrued by the beginning date of the requested leave.

Employees are expected to schedule planned medical appointments to minimize disruption of workflow. Foreseeable sick leave requests must be submitted as a time-off request through the automated time and attendance system.

If sick leave is exhausted, employees must use annual leave for the remainder of the absence. Once both sick and annual leave are exhausted, employee's absences for reasons covered under the sick leave policy may be paid from compensatory time (at the employee's request) or will be recorded as unpaid leave. Employees who have exhausted all accrued time off may request leave donation under Policy 500-002 Donation of Annual Leave.

Employees must use sick leave for its intended purpose. Supervisors will monitor employee use of sick leave for indication of abuse. Abuse of sick leave may result in disciplinary action up to and including termination of employment.

Any employee who has a sick leave absence in excess of three consecutive days may be required to present medical documentation for the absence before they return to work. In addition, the City reserves the right to require documentation from a treating physician indicating the employee is fit for duty and authorizing the employee to return to work at any time at the discretion of the department head. Absences of greater than three full consecutive days of sick leave utilization will be reviewed to determine if Family and Medical Leave is applicable (See City of Fargo Policy 500-005 Family and Medical Leave Policy).

Sick Leave in Conjunction with Other Types of Absences

Holiday During Sick Leave	If a regularly scheduled holiday falls during a period of days in which an employee is using sick leave, the employee will be paid holiday credit pay (non-worked) providing they have either hours worked or paid leave during the scheduled shift preceding the holiday.
Illness During Annual Leave	If an employee would otherwise be unable to work due to an FMLA qualifying injury or illness during annual leave, sick leave benefits may be used instead of annual leave for the defined recovery period. Employees are required to notify their supervisors within twenty-four (24) hours of the injury or illness. No other use of sick leave during annual leave periods will be approved.
Funeral Leave During Sick Leave	If an employee suffers the loss of a family member or relative during a period of sick leave use and funeral leave is appropriate, the time off for the funeral will not be considered sick leave. Refer to City of Fargo Employment Policy No. 500-006 - Funeral Leave
Family and Medical Leave (FMLA):	Sick leave may be designated for all or portions of Family and Medical Leave (FMLA). Refer to City of Fargo Employment Policy No. 500-005 – Family and Medical Leave.
Injury Leave	<p>An employee who files a claim with Workforce Safety and Insurance (WSI) and is unable to work due to the injury/illness for which they have filed a claim will be placed on a leave of absence and paid from their accrued sick leave. Once sick leave is exhausted, the employee will then be paid from annual leave. If the claim is accepted by WSI, sick leave used relating to this leave will be credited back to the employee.</p> <p>An employee may elect to use their accrued sick time to make up the difference between the amount paid by WSI and the 1/3 pay from the City. Employees who are not eligible to receive the 1/3 pay from the City may request to be paid from their sick leave balance during their leave of absence.</p>

	Employees on an injury leave of greater than 30 continuous days will stop accruing sick leave after the 30 th day until the employee returns to work. Leave accrual lost during this time is not reinstated.
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Sick Leave at the End of Employment

At the time an employee's non-work related injury/illness becomes permanent, and separation from employment occurs, Human Resources will calculate the amount of unused sick leave the employee has accumulated and the City will award the individual a lump sum payment in their final check. In order to qualify for this payout, the employee must provide documentation demonstrating eligibility for social security disability income.

A deceased employee's estate will be entitled to all earned, unused sick leave. The final paycheck will be deposited in the employee's existing account through direct deposit unless a written notification has been received authorizing payment to a designated beneficiary or the estate.

Employees leaving employment for any reason other than a non-work related permanent disability or death will be paid out 44.4% of the accrued sick leave in excess of 960 hours, or 1,344 for Fire Suppression employees, without interest.

An employee who returns to their former position while their name is on the re-employment list will have their sick leave balance, minus any sick leave paid out, reinstated at the time of re-hire and be given credit for prior service when determining the accrual level for sick leave.

CITY OF FARGO EMPLOYMENT POLICY NO. 600-007

OVERTIME & COMPENSATORY TIME

Date Approved: 11/92

Date Issued: 11/92

**Date Revised: 12/97; 8/99; 6/14;
12-25-23**

NON-EXEMPT EMPLOYEES:

Pursuant to the Fair Labor Standards Act (FLSA), all non-exempt employees are eligible for overtime compensation. Department/division heads will have the authority to schedule and manage overtime within the allotted budget and any policies adopted by the City Commission.

Overtime

Overtime shall be defined as all hours worked in excess of 40 per defined workweek. For those public safety employees covered by the 207K Exemption, overtime shall be defined as all hours worked in excess of Fair Labor Standards Act (FLSA) maximums. For purposes of calculating overtime, paid time off hours (including vacation, sick, and compensatory time off used) are not considered "hours worked". Holiday credit (non-worked) hours, holiday worked pay hours, shift differential pay amount and longevity pay amount are included in the overtime calculation.

Non-exempt employees must have supervisory approval before working hours in excess of 40 in the defined workweek. Failure to secure approval to work overtime may result in disciplinary action, up to and including termination of employment.

All overtime must be approved by the department/division head and the method of compensation must be agreed upon prior to incurring the overtime, whenever possible. Overtime may be compensated, at the discretion of the employer by either of the following methods:

1. Paying the employee one and one-half the regular rate of pay for all overtime hours.
2. Permitting the employee to accrue compensatory time for all overtime hours worked at a rate of one and one-half hours for each hour of overtime worked.

Compensatory Time

Compensatory time may be allowed at the discretion of the department head. Within those departments that opt to permit compensatory time, non-exempt employees may be eligible to accrue compensatory time off at a rate of one and one-half for each hour of overtime worked. Temporary (except full-time temporary (40) and seasonal employees are not eligible to accrue compensatory time.

Non-exempt employees may accrue a maximum of 40 hours of compensatory time (accrual at time and one-half equals 60 total compensable hours). For sworn personnel in the Police or Fire

departments, a maximum of 80 hours of actual overtime worked may be accrued (accrual at time and one-half equals 120 total compensable hours). Any hours earned in excess of these maximum limits will be paid as overtime compensation for the pay period in which the hours are worked.

On an annual basis, all accrued compensatory time will be paid via a supplemental check between the first and second regular payroll of the year. All compensatory time hours accrued as of the end of pay period containing December 31 will be paid at the employee's regular rate of pay.

Furthermore, the decision to grant compensatory time in lieu of overtime payment is at the discretion of the department/division head and must be mutually agreed-upon by both the employee and department/division head.

Employees who have requested the use of their compensatory time off will be permitted to use the time off within a reasonable period of time, at the discretion of the department/division head so long as the use of the compensatory time does not unduly disrupt the operations of the department or the City. When employment ends, all compensatory time accrued will be paid out to the employee at their current rate of pay in their final paycheck. If an employee transfers from a non-exempt to an exempt position, they will be paid all accrued compensatory time as of the date of the transfer at the rate of pay of the pre-transfer position.

EXEMPT EMPLOYEES:

Exempt employees include any individual employed in a bona fide executive, administrative or professional capacity whose primary duty meets the defined primary duties under the applicable exemption, meets the salary basis test provisions and the standard test for either the executive, administrative or professional exemption as defined by the Department of Labor. Employees in computer related positions may qualify for the computer exemption as defined by the Department of Labor.

The Fair Labor Standards Act regulations on exemptions address the actual job duties of the employee and are not concerned with job titles, civil service classifications or other group identifications. The City of Fargo will apply the "salary basis" test as outlined in FLSA to determine if an employee meets the executive, administrative or professional exemption. Elected officials are not covered under the provisions of this policy.

Exempt employees are not eligible to receive overtime compensation. Such employees are compensated for services on a salary basis (rather than hourly); are not considered to be on a standard 40-hour work week; and are expected to work as long as it is reasonably necessary to fulfill their job responsibilities. Exempt employees, by the very nature of their jobs, do not receive overtime pay as a matter of course.

The Fair Labor Standards Act recognizes, however, that exempt employees may perform non-exempt work and are thus entitled to overtime in emergencies. Under extremely unusual conditions, when the Mayor and/or Board of City Commissioners officially declare an emergency within the City, exempt employees are eligible to receive overtime pay. It is expected that these conditions would be extremely rare and apply only when the City faces extraordinary situations. Likewise, exempt employees are eligible for overtime pay when they are called to respond to the mutual aid of other jurisdictions within the state under a governor declared emergency or regional



FARGO POLICE DEPARTMENT
CHIEF DAVID B. ZIBOLSKI
105 25th Street North
Fargo, ND 58102-4002
Main Line: 701.235.4493 | Fax: 701.297.7789
FargoPolice.com

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COPY

December 6, 2023

Board of City Commissioners
City Hall
Fargo, ND 58102

RE: Acceptance of MOU with the Bureau of Alcohol, Tobacco, Firearms and Explosives

Dear Commissioners,

As part of the implementation of the National Integrated Ballistic Information Network (NIBN), the Fargo Police Department is seeking approval to sign the attached Memorandum of Understanding with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

NIBN technology compares images of submitted ballistic evidence from shooting scenes and recovered firearms and produces a list of similar results. Trained technicians then conduct a correlation review of these results, identifying NIBIN leads or potential links or associations from the same firearm. Ultimately, this technology will greatly advance our ability towards solving crimes and connecting criminal activity involving firearms.

City Attorney Nancy Morris reviewed the MOU for the Department and saw no concerns the agreement.

Recommended Motion:

Approve the acceptance of Memorandum of Understanding with the Bureau of Alcohol, Tobacco, Firearms and Explosives.

I would be happy to answer any questions you have relative to this request.

Sincerely,

David B. Zibolski
Chief of Police

Memorandum of Understanding (MOU)
Between

The
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

And

The
Fargo Police Department

Hereinafter referred to as NIBIN Partner Site (NPS)

I. PURPOSE

This serves as an agreement between ATF and NPS: Fargo Police Department

This agreement allows for ATF to perform correlation review(s) for the NPS ballistic evidence which is entered into the NIBIN database. These correlation reviews will be conducted by ATF through the NIBIN National Correlation and Training Center (NNCTC) and will be disseminated back to the affected parties as documented in this MOU.

II. ROLES AND RESPONSIBILITIES OF ATF

The NNCTC, on the basis of a request for assistance by the appropriate ATF Field Division Special Agent in Charge (or their Designee), will perform correlation reviews on all ballistic evidence entered into NIBIN by the NPS and issue documentation of the NIBIN Leads or Negative results to all affected parties within 24-48 hours. The NNCTC will not perform correlation reviews on evidence entered or received by the NPS prior to the NNCTC start date that is scheduled at the time of onboarding.

The ATF Special Agent in Charge initiating the request will assign a field division liaison to act as an intermediary between the NNCTC and the NPS and ensure that the protocols established by this MOU as well as MROS are followed in order to establish effective processes for the utilization of NIBIN in the field.

The services of the NNCTC will be handled by highly trained IBIS technicians. In addition, all of the technician's work will be peer reviewed and finally reviewed by a senior firearms and tool mark examiner assigned to the NNCTC prior to dissemination to the field.

The NNCTC will review any results with a Unified Score over 1.2 for every case. This standard was established based upon research and discussion within the NIBIN community as well as published articles on the subject. If necessary and justified by the circumstances of a particular investigation, the NNCTC will increase this threshold as warranted. A site may request a more

exhaustive search of the database or an expedited correlation review/response (under 24 hours) when the NPS deem it absolutely necessary and mission critical; however, appropriate justifications for such service will be required along with follow up written documentation to the NNCTC. These types of requests should be rare based upon the success we achieve with correlations results from the Unified Scoring System over 1.2 and the standard 24-48 hours turnaround; therefore, the procedure for the NPS to request a more exhaustive search will be handled via telephonic communication with the NNCTC Firearms and Tool mark Examiner supervisor and followed up by an email documenting the justification for such request(s).

The NNCTC is authorized to provide accurate and timely documentation of the correlation reviews and negative results to the parties through a distribution list provided by the sponsoring ATF Field Division.

III. ROLES AND RESPONSIBILITIES OF THE NPS

The true performance metric of NIBIN is the successful prosecution of shooters. In order to best utilize the services of the NNCTC, the NPS agrees to establish policies and procedures that adhere to the four critical steps of an effective and sustainable NIBIN program:

Comprehensive Collection: NPS must establish internal policies for the collection and submission of all evidence suitable for entry into NIBIN regardless of crime. Evidence includes cartridge cases recovered from crime scenes and test fires from seized or recovered crime guns.

Timely Turnaround: Since violent crime investigations can go “cold” very quickly the goal is to get the evidence into NIBIN as soon as possible after collection, then to provide any and all relevant NIBIN intelligence (NIBIN Leads/Negatives) back to the investigator within 24-48 hours.

Follow-Up: Investigators, intelligence personnel and prosecutors should pursue NIBIN Leads as appropriate. Follow-up contains three distinct but overlapping components: comprehensive crime gun intelligence, effective and thorough criminal investigation, and consistent prosecution.

Feedback: Feedback is necessary for the sustained success of a NIBIN program and allows all involved to benefit from the process through ongoing evaluation and innovation. Feedback should be provided to all parties involved including patrol, investigative, lab, and intelligence personnel.

1. The NPS will enter the applicable investigator(s) contact information into the case comments section when entering evidence into IBIS. The contact information for said investigator should contain at a minimum: Name, Title, Telephone number and Email address in the format provided below. This will allow for the establishment of clear lines of communication between the NNCTC and the field investigators in order to best utilize the NIBIN Lead during the course of criminal investigations.

2. If the NPS conducts occasional or mission specific correlations reviews in lieu of utilizing the services of the NNCTC, the NPS will indicate this fact by changing the status of the corresponding IBIS correlation requests to "**Previously Viewed**" in order to prevent redundancy.

3. For every test fired cartridge case acquired into IBIS, the NPS will provide all applicable make; model; caliber; and serial number, by associating an IBIS firearm exhibit to the test fired cartridge case or bullet exhibit. The serial number should be documented exactly as it is inscribed on the firearm, NO special characters or titles (i.e. do not input "serial # 123AEG instead input 123AEG"). This will facilitate accurate and timely crime gun intelligence. Also, an effort should be made to enter any other available firearm information in the Firearm Exhibit Details section, such as recovery information and/or possessor.

IV. REPORTING REQUIREMENTS

On a quarterly basis the NPS will provide a report to the ATF Field Division liaison detailing whether or not any ATF issued NIBIN Lead(s) were later confirmed by a Firearm and Tool mark Examiner.

It is strongly recommended that the NPS forward any relevant NIBIN success stories to ATF. Doing so reaffirms the importance of NIBIN and assists with the advancement of the local and national NIBIN program(s). These success stories can be provided to the ATF Field Division Liaison or emailed directly to <mailto:NNCTC-FOD@atf.gov>

V. FUNDING AND ADMINISTRATIVE MATTERS

This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds. This MOU is a basic statement of the understanding between parties of the matter described herein. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the language in this MOU in no way implies that funds will be made available for such expenditures.

VI. INFORMATION SHARING CONDITIONS

Both ATF and the NPS acknowledge their understanding that work performed under this MOU by the NNCTC is "LAW ENFORCEMENT SENSITIVE" and intended "FOR OFFICIAL LAW ENFORCEMENT USE ONLY." Failure to protect and safeguard such data from loss, misuse, or unauthorized access could adversely affect law enforcement operations, including those areas related to officer safety, as well as, the fair and equitable administration of justice, and the privacy of individuals. Information provided by the NCNTC shall be used for investigative purposes only.

No information produced pursuant to this MOU may be duplicated, reproduced, or disseminated without the express authorization of ATF and/or the NPS, except as may be required by State or Federal law or court of competent jurisdiction. The Parties agree that premature disclosure of NNCTC data can reasonably be expected to interfere with pending or prospective law enforcement proceedings. It is agreed that the law enforcement sensitive firearms information generated pursuant to this MOU shall not be disclosed to a third party without the consent of both Parties of this MOU, subject to Federal and any applicable non-conflicting State law. The Parties agree to notify all other Parties to the MOU prior to the release of any sensitive firearms information to a third party under State or Federal law.

Releases to the media or third parties, judicial demands, public announcements, Freedom of Information Act/Privacy Act/Open Records requests, and communications with Congress concerning information generated and retrieved pursuant to this MOU shall be addressed by the Parties following coordination by authorized representatives of each Party.

Over the course of the agreement, both parties may come across information that may identify U.S. persons whose information is protected by the Privacy Act of 1974 and/or Executive Order 12333 (or any successor executive order). All such information will be handled lawfully

pursuant to the provisions thereof.

VII. COMMENCEMENT OR EFFECTIVE DATE DETERMINATION

The terms of this MOU will become effective on the date on which it is signed by all parties. This MOU will remain valid until modified or rescinded by written mutual consent or terminated unilaterally after 30 days advanced written notice by any party via certified mail. Notice shall be made to the Chief, Firearms Operations Division of ATF, 99 New York Ave NE Room 6N. 555 Washington DC 20226. This fully executed MOU is entered into by ATF and the NPS prior to the commencement of service by the NNCTC to facilitate a logical transition of correlation services from the NPS to the NNCTC. The onboarding date, determined by both the NNCTC and NPS, will be the date used by the NPS for acceptable entry and receiving dates of submissions to the NNCTC as indicated in Section II, Paragraph 1 of the MOU.

Signature Date
(Chief Law Enforcement or Public Safety Official)

David Zibolski
Name

Chief of Police
Title
Fargo Police Department
NESS Partner Site

Signature Date
(ATF - Special Agent in Charge)

Bradley Engelbert
Name

Special Agent in Charge
Title
St. Paul
ATF Field Division

Signature Date

Name

Chief, Firearms Operations Division
Title

MEMORANDUM OF UNDERSTANDING
Between the Bureau of Alcohol, Tobacco, Firearms and Explosives and the
FARGO POLICE DEPARTMENT
Regarding the National Integrated Ballistic Information Network

This Memorandum of Understanding (MOU) is entered into by the U.S. Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the FARGO POLICE DEPARTMENT, hereinafter collectively referred to as “the parties,” and the FARGO POLICE DEPARTMENT, referred to as the “NIBIN Partner.” This MOU establishes and defines a partnership between the parties that will result in an ATF National Integrated Ballistic Information Network (NIBIN) system installation, operation, and administration for the collection, timely analysis, and dissemination of crime gun data to enhance the efforts of law enforcement to integrate resources to reduce firearms violence, identify shooters, and refer them for prosecution.

AUTHORITY

This MOU is established pursuant to the authority of the participants to engage in activities related to the investigation and suppression of violent crimes involving firearms. ATF’s authorities are set forth in Title 28, Code of Federal Regulations, sections 0.130-0.131, and include the power to investigate violations of the Gun Control Act of 1968 (as amended), Title 18, United States Code, Chapter 44.

BACKGROUND

The ATF NIBIN Program uses sophisticated technology to compare images of ballistic evidence. It is part of an integrated investigative approach to reduce firearms violence and improve crime gun intelligence. Through aggressive targeting, investigation, and prosecution of shooters and their sources of crime guns, Federal, State, tribal, and local law enforcement agencies work in concert to combat firearms-related violence.

SCOPE

Participation in this program is expressly restricted to the sharing of ballistic imaging of firearms data associated with crimes recovered by any law enforcement agency in the United States and international law enforcement partners who have entered into agreements with ATF to share ballistic data. ATF may work with our international law enforcement partners to search their networks in an effort to identify a crime gun in their database against a crime gun in ATF’s NIBIN network.

NIBIN systems are to be used to image ballistic evidence and test fires of firearms illegally possessed, used in a crime, or suspected by law enforcement officials of having been used in a crime. Ballistics information and/or evidence from firearms taken into law enforcement custody through a gun buy-back program, property damage crimes involving firearms, found or abandoned firearms, and domestic disturbances are also permitted to be entered in the NIBIN system.

Any NIBIN unit, whether ATF-owned or site-purchased, will not be used to capture, share, or store ballistic images acquired at the point of manufacture, importation, or sale of a firearm, or images of law enforcement-issued firearms not associated with crimes. The NIBIN system does not store information related to firearms owners or registration.

APPLICABLE LAWS

The applicable statutes, regulations, directives, and procedures of the United States, DOJ, and ATF shall govern this MOU and all documents and actions pursuant to it. Nothing in this MOU will prevail over any Federal law, regulation, or other Federal rule recognized by ATF. Notwithstanding the foregoing, nothing in this agreement will be construed as a waiver of sovereign immunity in excess of or beyond that which is authorized by the law of the NIBIN Partner's jurisdiction. This MOU is not a funding document. All specific actions agreed to herein shall be subject to funding and administrative or legislative approvals.

MODIFICATIONS AND TERMINATIONS

This MOU shall not affect any pre-existing or independent relationships or obligations between the parties. If any provision of this MOU is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

Except as provided herein, this MOU may be modified or amended only by written mutual agreement of the parties. Either party may terminate this MOU by providing written notice to the other party. The termination shall be effective upon the thirtieth calendar day following provision of notice, unless an alternative date is agreed upon.

If either party terminates this MOU, ATF will retain its interest in the electronically stored information contained in the database and any ATF-deployed NIBIN system. ATF agrees to provide to the NIBIN Partner an electronic copy of the data collected by the NIBIN Partner, subject to Federal law and regulation.

LIABILITY

The NIBIN Partner hereby agrees to assume full and sole liability for any damage, injury, or harm of any sort caused by the operation and use of any NIBIN system or related to the use and interpretation of any information contained in, processed by, or extracted from any database subject to this agreement and the protocols and procedures of the NIBIN Program, to the extent allowed by law.

The rights and obligations set out in this MOU run between the signatories. Nothing in this MOU is intended to create any substantive or procedural rights, privileges, or benefits enforceable in any administrative, civil, or criminal matter by any prospective or actual third-parties.

ATF-DEPLOYED SYSTEM INSTALLATION

The NIBIN Partner hereby agrees and acknowledges that all ATF-deployed NIBIN systems shall remain the property of ATF and the U.S. Government. ATF agrees to provide, install, and maintain all ATF-deployed NIBIN systems for use by the NIBIN Partner and any other law enforcement agencies served by or in partnership with the NIBIN Partner. Should the installation of the NIBIN system require physical construction at the site, the NIBIN Partner will be responsible for such construction and any associated costs. If a system is to be moved to allow additional access outside of a laboratory, ATF will work with the NIBIN Partner to ensure the appropriate protocols are put into place to ensure the integrity of crime gun evidence along with maximum use of the equipment.

ATF-DEPLOYED SYSTEM MAINTENANCE

ATF will maintain all ATF-deployed NIBIN systems furnished to the NIBIN Partner and repair or replace inoperable or outdated systems in an expeditious manner, subject to availability and funding. However, maintenance and repairs required as the result of unauthorized movement, alteration, damage, or destruction will not be assumed by ATF. At all times, the NIBIN Partner agrees not to make or cause to be made any repairs, alterations, movements, additions, improvements, or replacements to the NIBIN systems not expressly authorized in writing by ATF in advance, and further agrees to exercise due care in every respect to prevent system movement, damage, destruction, or misuse.

ATF-DEPLOYED SYSTEM USAGE

Because the NIBIN Program focuses on the reduction of firearms-related violent crimes, the NIBIN Partner shall enter all eligible ballistic evidence recovered from crime scenes as soon as possible. In addition, the NIBIN Partner shall enter into NIBIN test-fire cartridge cases from eligible firearms taken into law enforcement custody in a timely manner. All NIBIN Partner-owned NIBIN equipment will be held to same standards as ATF-deployed systems. NIBIN Partners may not charge other law enforcement agencies for the entry of evidence into ATF-owned or ATF-maintained automated ballistics technology used in the NIBIN Program.

ATF-DEPLOYED SYSTEM REMOVAL

ATF retains the right to remove a NIBIN system upon: (1) a determination that the equipment is neglected or misused; (2) a determination that the equipment is not used effectively to combat violent crime; (3) failure to comply with any obligations or requirements set forth in this MOU; (4) receipt of written notification of the termination of the participation of the NIBIN Partner in the NIBIN Program; (5) the cancellation of this MOU by ATF; or (6) termination of the NIBIN Program by ATF.

If ATF intends to remove a NIBIN system from the NIBIN Partner, ATF will provide written notice.

SELF-PURCHASED SYSTEMS

All clauses that reference ATF-Deployed Systems are not applicable to agencies that self-purchase equipment. However, all other requirements involving network requirements, usage, Minimum Required Operating Standards (MROS), movement of equipment, network requirements and security requirements do apply to all agencies on the NIBIN network. These requirements ensure the integrity of the database and the network security.

SYSTEM MOVEMENT

If the NIBIN Partner seeks to move its NIBIN system, it must submit a written request to ATF. ATF's decision regarding the proposed move will be provided to the NIBIN Partner in writing. Any movement of the NIBIN system after the initial installation will occur at the expense of the NIBIN Partner and only after receipt of authorization by, and coordination with, FTI. In order to realize maximum use of the equipment, it should be placed where trained personnel can expeditiously enter evidence. ATF will work with each partner to realize optimal placement of equipment to obtain actionable investigative leads.

In the event of a natural disaster, ATF will work with the NIBIN Partner to safeguard the NIBIN equipment.

Due to communication line installation/move requirements, NIBIN Partners must provide a minimum of 120 calendar days' advance notice to ATF and the NIBIN system manufacturer before the intended move of a NIBIN system.

In the event of unauthorized movement, alteration, damage, or destruction of any NIBIN system caused by its employees, contractors, or any other person under its control, the NIBIN Partner agrees to assume the cost of replacement or repairs of the equipment.

The NIBIN Partner agrees to report to ATF, within 5 calendar days, any incident involving the following: an unauthorized movement, alteration, damage, or destruction of ATF-deployed NIBIN systems, any unauthorized use of NIBIN systems or the unauthorized release of data related to the NIBIN Program.

COMMUNICATION LINES

ATF will provide and support primary communication lines necessary for connecting NIBIN systems to the NIBIN network.

SECURITY

The NIBIN Partner will comply with all ATF, DOJ and/or other Federal security requirements related to the NIBIN program, network, and systems to ensure the integrity of the program. These requirements are set forth under NIBIN security policies. ATF

will promptly notify the NIBIN Partner should these requirements change. All NIBIN sites will not knowingly allow a person to access the NIBIN network using another person's user ID and password.

The NIBIN Partner agrees to conduct criminal background checks, including fingerprint checks, of all NIBIN users. Upon successful completion of these background checks, the NIBIN Partner will notify ATF's NIBIN Branch in writing.

SYSTEM USAGE AND MINIMUM REQUIRED OPERATING STANDARDS

To ensure the consistency, integrity, and success of NIBIN, ATF has enacted Minimum Required Operating Standards (MROS). The MROS, listed below, are rooted in ATF's "Four Critical Steps for a Successful NIBIN Program" – comprehensive collection, timeliness, investigative follow-up, and feedback. They identify the practices that best allow NIBIN to provide comprehensive and timely crime gun intelligence.

1. Enter all fired or test fired cartridge cases from serviced law enforcement agencies and/or departments through a NIBIN acquisition machine within 2 business days of receipt.
2. Enter accurately all required information during the acquisition process on the NIBIN acquisition machine.
3. Correlate and conduct a secondary review of any potential NIBIN leads through an approved NIBIN correlation machine within 2 business days.
4. Disseminate NIBIN leads within 24 hours.
5. Designate and maintain a NIBIN program administrator.
6. No policy shall inhibit or restrict NIBIN submissions by serviced law enforcement agencies and/or departments.
7. Operate with only qualified NIBIN users.

Please note that Standards 3 and 4 are not applicable to NIBIN sites using the NIBIN National Correlation and Training Center for correlation reviews of ballistic images.

As a NIBIN partner, the FARGO POLICE DEPARTMENT is striving to meet the MROS by developing and implementing changes in their operations and working toward compliance. Each NIBIN site must be in compliance with MROS or working towards compliance to the satisfaction of the Crime Gun Intelligence Governing Board.

AUDITS

ATF and the NIBIN Partner acknowledge their understanding that the operations described in this MOU are subject to audit by ATF, DOJ, the DOJ Office of the Inspector

General, the General Accountability Office, and other auditors designated by the U.S. Government regardless of the funding source for the system (NIBIN Partner or ATF). Such audits may include reviews of all records, performance measurements, documents, reports, accounts, invoices, receipts, or other evidence of expenditures related to this MOU and the NIBIN Program.

Notwithstanding, ATF will conduct audits of all NIBIN Partners and their sites once every two years for the remainder of the MOU. The purpose of the audits is to review and verify compliance with the required MROS. Each site must be in full compliance with the MROS in order to maintain access to NIBIN.

Further, the NIBIN Partner agrees to allow auditors to conduct one or more in-person interview(s) of any and all personnel the auditors determine may have knowledge relevant to transactions performed or other matters involving this MOU and the NIBIN Program.

The NIBIN Partner hereby acknowledges its understanding that, for accounting purposes, that the principles and standards for determining costs shall be governed by the policies set forth in the Office of Management and Budget Circular A-87, revised (available via the OMB, the Superintendent of Documents at the U.S. Government Printing Office, or via the Internet at <http://www.whitehouse.gov/omb/circulars/a087/a087-all.html>.)

PERSONNEL AND TRAINING

Prior to the execution of this MOU and a NIBIN system installation, the NIBIN Partner must employ, or have access to, a technical person capable of performing forensic microscopic comparison of bullet and cartridge evidence.

The NIBIN Partner agrees to provide and maintain sufficient personnel to operate the NIBIN system and agrees to allow use of the equipment by ATF personnel or our representatives to support the program at the host location. All personnel accessing NIBIN must be a Qualified NIBIN User as required by the MROS. This MOU should not be construed to require the hiring of any new personnel, except at the discretion of the NIBIN Partner. If the NIBIN Partner determines that additional personnel resources are required, all costs associated with this hiring will be borne by the NIBIN Partner. All users of the equipment must satisfy the same requirements as other NIBIN users and be properly trained, qualified and approved in advance by ATF.

Following basic entry training, ATF will verify trainee competency before authorizing network access. Individuals trained internally by a NIBIN Partner will not be certified as appropriately trained until they successfully pass a competency test administered by ATF.

The NIBIN Partner may provide access to the NIBIN system under its operational control to another law enforcement agency. Any such other law enforcement agency agrees to the same restrictions placed upon the NIBIN Partner by this MOU. However, the NIBIN Partner agrees to assume full liability and responsibility for the administration of such access.

Access to the NIBIN system will be under the management and control of the NIBIN Partner. The NIBIN Partner will ensure that only trained, cleared and qualified personnel have access to the NIBIN system.

Participating agencies will develop the appropriate standard operating procedures to ensure all eligible ballistic evidence will be submitted for NIBIN.

COORDINATION

ATF and the NIBIN Partner agree to adhere to standardized procedures and policies for collecting, handling, documenting, transporting and preserving firearms, bullets, casings and any similar evidence submitted for analysis and input into NIBIN.

ATF and the NIBIN Partner similarly agree to adhere to standardized procedures and policies for the source data collection, input, exchange and protection of information, to include information as to the location where ballistic evidence was collected, the circumstances under which it was collected and all crimes to which the firearm(s) or other ballistic evidence is linked.

ATF and the NIBIN Partner agree to cooperate in the development and implementation of data entry protocols and quality assurance procedures for the NIBIN Program. ATF further agrees to cooperate with all participants in the NIBIN Program to establish model standards, protocols, and procedures for the users of the network. Such protocols will be applicable as they are implemented.

The NIBIN Partner will require all participating law enforcement agencies to adhere to the protocols, procedures, policies and quality assurance standards as established above.

Except as expressly prohibited by law, the NIBIN Partner agrees to provide ATF with access to all information, reports and any other relevant information regarding crimes related to evidence entered into the system as well as monthly reports outlining historical, statistical and case adjudication information on the use and results of the use of the NIBIN Program and/or system and the related services provided by ATF and the system manufacturer in order to ensure the capturing of required performance management information. Such information will be gathered for the purpose of informing the law enforcement community, other Government agencies, Congress and the public on NIBIN results. Additionally, ATF will collect information for results-oriented performance measures.

PUBLICITY

Any NIBIN Partner who becomes aware of, or participates in, publicity related to the NIBIN system and investigations within their jurisdiction should advise ATF of same within 48 hours.

DISCLOSURE OF INFORMATION RELATED TO NIBIN

NIBIN system information may be shared with other law enforcement and prosecutors' offices in furtherance of criminal investigations and prosecutions. The NIBIN Partner shall not share any NIBIN system information for other purposes, including requests under the Freedom of Information Act, without express, written authorization from ATF.

INCORPORATION OF APPENDIX

The Appendix to this MOU includes definitions of terms used and is fully incorporated herein. Because requirements may change over time, due to technological advances, security enhancements, or budgetary matters, the Appendix may be updated.

AGREEMENT

ATF and the NIBIN Partner hereby agree to abide by the terms and conditions of this MOU, including any appendices, and all policies of the NIBIN Program. The terms and conditions of this MOU will be considered accepted in their entirety upon the signature by the ATF Special Agent in Charge and the NIBIN Partner signature.

David Zibolski
Chief, Fargo Police Department
105 25th St. N.
Fargo, ND 58102

Date

JONATHAN ORTIZ

Jeffrey B. Reed
Acting Special Agent in Charge, St. Paul Field Division
Bureau of Alcohol, Tobacco, Firearms and Explosives

Digitally signed by JONATHAN ORTIZ
Date: 2023.08.23 10:33:31 -05'00'

Date

Katherine Eberhardt
Chief, Firearms Operations Division
Bureau of Alcohol, Tobacco, Firearms and Explosives

Date

APPENDIX

TERMS

Acquisition - An entry of a ballistic image.

ATF – Bureau of Alcohol, Tobacco, Firearms and Explosives, a principal law enforcement agency within the U.S. Department of Justice.

Bullets – Designated calibers of projectiles fired from rifles, revolvers, and pistols.

Cartridge cases – Designated metal casings from cartridges fired from rifles, shotguns, revolvers, and ejected from pistols.

Correlation – Automated data comparison of signature images to a database.

Crime Gun – Any firearm that is illegally possessed, used in a crime, or suspected by law enforcement officials of having been used in a crime or act of terrorism.

Found or Abandoned Firearms – Firearms that come into the custody of law enforcement outside of investigative or judicial process. A found firearm is located by law enforcement or a non-owner and the owner-possessor is not readily identifiable (e.g., a firearm found in an open field). An abandoned firearm may be a found firearm or a firearm where the possessor chooses to permanently relinquish control of the firearm and abandon any rights of ownership. ATF suggests that NIBIN Partners provide written notice to those persons permanently abandoning or temporarily relinquishing custody of a firearm that the firearm will be test fired and the results entered into the NIBIN System.

NIBIN Network – An ATF-designed and maintained system of interconnected computer systems and terminals used in support of the NIBIN Program.

NIBIN Program – The integration of aggressive targeting, investigation, and prosecution of shooters and their sources of crime guns using automated ballistics technology.

NIBIN Program Administrator – An individual the NIBIN site has designated to communicate with all parties (e.g., submitting law enforcement agencies, ATF Crime Gun Intelligence Centers) involved in the NIBIN process. The NIBIN Program Administrator must be a qualified NIBIN user and full-time employee of the NIBIN site. The NIBIN Program Administrator should be responsible for implementing and directing policies and procedures of the NIBIN site.

NIBIN System – Refers to the integrated ballistic imaging, analysis, and information processing system for use with automated ballistics technology.

Performance Measurements – Various management instruments used to evaluate program effectiveness in successfully removing shooters and their crime gun sources. Performance measurements also include the NIBIN Minimum Required Operating Standards and related audits.

Potential Candidate for Confirmation – Two bullets or cartridges cases displaying sufficient similarity during a correlation review such that the items should be compared using traditional comparative microscopy by a trained firearm examiner to determine if they can be associated to the same firearm.

Qualified NIBIN User – technician and/or firearms examiner trained by ATF, Forensic Technology, and/or a NIBIN Authorized Trainer program to perform acquisition and/or correlation reviews of ballistic images on the NIBIN network.

Security Requirements – Types and levels of physical and cyber protection necessary for equipment, data, information, applications, and facilities to meet security policies and standards.

Security Policies – The set of laws, rules, directives, and practices that regulate how an organization manages, protects and distributes controlled information.

Timely – Occurring at a suitable time and without unnecessary delay. Some NIBIN submissions require a response within 48 hours to be considered timely.

Volunteer – An individual who has chosen to perform services without charge or payment and has entered into a written agreement with a NIBIN Partner addressing issues of confidentiality, costs, and waiver of all claims against the Federal government.



FARGO POLICE DEPARTMENT
CHIEF DAVID B. ZIBOLSKI
105 25th Street North
Fargo, ND 58102-4002
Main Line: 701.235.4493 | Fax: 701.297.7789
FargoPolice.com

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COPY

December 6, 2023

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

RE: Ordinance amendment – 8-0806 “Officer to Report”

Board of Commissioners:

I am seeking your permission to work with City Attorney Nancy Morris to draft an amendment to the City of Fargo ordinance 8-0806, “Officer to Report”.

Fargo Municipal Code section 8-0806, currently states that every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident either at the time and at the scene of the accident or thereafter by interviewing the participates or witnesses shall forward promptly a written report in duplicate to the traffic division. Said officer upon completion of investigation shall issue and affix to each of the cards involved a “damaged-car release sticker”.

With approval, we will work with Nancy to update the ordinance to more closely reflect state reporting requirements 39-08-10 (attached).

Suggested Motion:

Direct the City Attorney to work with the Fargo Police Department to draft an amendment to City of Fargo ordinance 8-0806 “Officer to Report”.

Sincerely,

David B. Zibolski
Chief of Police

39-08-10 Officer to Report

Every law enforcement officer, who in the regular course of duty investigates a motor vehicle crash required to be reported as provided in section 39-08-09 either at the time and at the scene of the crash or thereafter by interviewing the participants, or witnesses, shall make and promptly forward to the director a report of the crash in the format prescribed by the director. The report must contain all the information required therein unless the information is not available, and must be transmitted electronically to the department of transportation using the software prescribed by the director.



PUBLIC WORKS

**FLEET MANAGEMENT, FORESTRY
STREETS & SEWERS
WATERMANS & HYDRANTS**
402 23rd Street North
Fargo, ND 58102
Phone: 701.241.1453 | Fax: 701.241.8100
FargoND.gov

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December 6, 2023

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

RE: (2) Auto Side Load Refuse Truck (RFP24014).

Commissioners:

On December 4, 2023, two (2) proposals were received and read for the purchase of two (2) Auto Side Load Refuse Trucks. Proposals were submitted by the following vendors.

The results are as follows:

<u>Firm</u>	<u>Price for two w/Trade</u>
Sanitation Products.	\$598,674.00
Northland Truck Sales Inc.	\$669,000.00

The review committee consisting of Scott Olson, Dave Rheault, and Tom Ganje evaluated two (2) proposals and determined that one proposal was compliant. Sanitation Products met all required specifications and the price was within expected parameters. Funding for this project is included in the 2024 Solid Waste budget.

Our recommendation is to purchase two (2) Auto Side Load Refuse Trucks based on the proposal from Sanitation Products.

SUGGESTED MOTION:

I/we hereby move, based on the proposal from Sanitation Products, to approve the purchase of two (2) Auto Side Load Refuse Trucks for the total purchase price of \$598,674.00.

Respectfully Submitted,

Tom Ganje
Fleet Purchasing Manager

**2024 (2) Auto Side Load Refuse Trucks
RFP24014
12/6/2023**

	Sanitation Products	Northland Truck
Chassis Make	Freightliner	Freightliner
Chassis Model	M2 106	M2 106
Body Make	Labrie	New Way
Body Model	Automizer	Sidewinder
Total Price (1)	\$303,087.00	\$339,500.00
Total Price (2)	\$606,174.00	\$679,000.00
Unit 211 Trade Value	\$7,500.00	\$10,000.00
Total Price for (2)		
Less Trade Value	\$598,674.00	\$669,000.00
Delivery Date	Dec-24	May-25
Meets Specifications	Yes	No



**PUBLIC
WORKS**

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WATERMANS & HYDRANTS**
402 23rd Street North
Fargo, ND 58102
Phone: 701.241.1453 | Fax: 701.241.8100
FargoND.gov

December 6, 2023

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

RE: (1) Container Handler Truck (RFP24015)

Commissioners:

On December 4, 2023, one (1) proposal was received and read for the purchase of one (1) Container Handler Truck.

The results are as follows:

<u>Firm</u>	<u>Total Price w/ Trade</u>
Sanitation Products.	\$ 144,760.00

The review committee consisting of Scott Olson, Dave Rheault, and Tom Ganje evaluated one (1) proposal and determined that the proposal was compliant. Sanitation Products met all required specifications and the price was within expected parameters. Funding for this project is included in the 2024 Solid Waste budget.

Our recommendation is to purchase one (1) Container Handler Truck based on the proposal from Sanitation Products.

SUGGESTED MOTION:

I/we hereby move, based on the proposal from Sanitation Products, to approve the fleet expansion purchase of one (1) Container Handler Truck for \$144,760.00 with a 3-year annual lease.

Respectfully Submitted,

Tom Ganje
Fleet Purchasing Manager

2024 Container Handler Truck
RFP24015
6-Dec-23

	Sanitation Products
Body Manf.	Galbreath
Body Model	CH8000R
Chassis Make	Freightliner
Chassis Model	M2 106
Price	\$152,260.00
Tade-In Unit 217	\$7,500.00
Total Price with Trade	\$144,760.00
Estimated Delivery Date	Aug-24



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FLEET MANAGEMENT, FORESTRY
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WATERMANS & HYDRANTS
402 23rd Street North
Fargo, ND 58102
Phone: 701.241.1453 | Fax: 701.241.8100
FargoND.gov

December 6, 2023

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

RE: (1) High Compaction Front Load Refuse Truck (RFP24016).

Commissioners:

On December 4, 2023, two (2) proposals were received and read for the purchase of one (1) High Compaction Front Load Refuse Truck.

The results are as follows:

<u>Firm</u>	<u>Price for (1) with Trade</u>
Sanitation Products	\$353,839.00
Northland Truck Sales Inc.	Did not meet specifications

The review committee consisting of Scott Olson, Dave Rheault and Tom Ganje evaluated two (2) proposals and determined that one proposal was compliant. Sanitation Products met all required specifications and the price was within expected parameters. Funding for this project is included in the 2024 Solid Waste Budget.

Our recommendation is to purchase one (1) High Compaction Front Load Refuse Truck based on the proposal from Sanitation Products.

SUGGESTED MOTION:

For RFP24016, approve the recommendation to purchase one (1) High Compaction Front Load Refuse Truck from Sanitation Products totaling \$353,839.00.

Respectfully Submitted,

Tom Ganje
Fleet Purchasing Manager

**2024 High Compaction Front Load Refuse Truck
RFP24016
12/6/2023**

	Sanitation Products	Northland Truck
Chassis Make	Peterbilt	Peterbilt
Chassis Model	520	520
Body Make	Labrie	New Way
Body Model	Wittke	Mammath
Price for (1)	\$357,339.00	\$349,900.00
Unit 165 Trade Value	\$3,500.00	\$2,000.00
Total Price including Trade Value	\$353,839.00	\$347,900.00
Delivery Date	Nov-24	Feb-25
Met Specifications	Yes	No



PUBLIC WORKS

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402 23rd Street North
Fargo, ND 58102
Phone: 701.241.1453 | Fax: 701.241.8100
FargoND.gov

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December 6, 2023

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

RE: 2024 Police Department Replacement Vehicles (PBC23376).

Commissioners:

Using The State Contract for vehicle purchasing has been very successful for the City of Fargo. We have been able to capitalize on significant cost savings over purchasing from the dealer networks.

The results are as follows:

<u>Model</u>	<u>Unit Cost</u>
Police Interceptors	\$45,955.92
Expedition SSV	\$52,512.00

The review committee consisting of Assistant Chief Stefonowicz, Ben Dow, and Tom Ganje evaluated ND State Contract 376, ND Spec SSP7-2 and ND Spec SSP7-7. This North Dakota Specification is a cooperative purchasing contract established pursuant to North Dakota Century Code (NDCC) sections 54-44.4-13. Vehicle contracts opened for one week in August. Funding for this project is included in the 2024 Vehicle Replacement budget.

SUGGESTED MOTION:

Move to approve the purchase of six (6) Ford Police Interceptors and two (2) Ford Expeditions SSV from Nelsons Auto Center totaling \$380,759.52.

Respectfully Submitted,

Tom Ganje
Fleet Purchasing Manager



**FLEET MANAGEMENT, FORESTRY
STREETS & SEWERS
WATERMANS & HYDRANTS**
402 23rd Street North
Fargo, ND 58102
Phone: 701.241.1453 | Fax: 701.241.8100
FargoND.gov

July 20, 2023

MEMORANDUM

To: Finance Committee
From: Tom Ganje
Subject: 2024 State Contract for Vehicle Purchases

Using the State Contract for vehicle purchasing has been very successful for the City of Fargo. We have been able to capitalize on significant cost savings over purchasing from the dealer networks. However, over the last three years it has been extremely difficult to capitalize on these contracts due to the limited supply and short window of time the contracts are available. The 2023 contract window was extremely tight and we were bound to one week of ordering. Staff was recently notified that the 2024 State Contract for vehicles is going to be open sooner than previous years. It will be crucial for staff to have the ability to place orders as soon as the 2024 State Contract opens due to the allocation of vehicles to our local dealer allotments. Without these vehicles it will impede the City of Fargo's replacement cycle due to the controlled allocation system. We are working diligently with our vendors each day on the availability of these vehicles. Staff wants to be ready to order vehicles at the most optimum time to allow for the best cost savings for the city. In order to do so, we are Requesting Finance Committee authorization to order 2024 vehicle replacements as soon as the State Contracts become available.

At this time, Ben Dow and Tom Ganje are asking for Finance Committee approval to order the 2024 budgeted vehicle replacements as soon as the State Contracts become available. None of the vehicles ordered will be delivered or paid for prior to January 1, 2024.



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 F Fargo PD

Sold To: Fargo, ND, City of
Attn: Tom Ganje
Address: 402 23rd St N
 Fargo, ND 58102

Date: 8/9/2023
Phone: 701-241-1460
FAX:
Salesperson: Melissa Larson
 0

Key Code:

Stock No:	Year	Make	Model	New/Used	Vehicle ID Number
Fargo PD	2024	Ford	Police Interceptor Gas	New	
			Color: TBD		

Price of Vehicle: *Per ND Spec: SSP7-7* \$45,460.00

Options & Extras:		
19K AGM Battery	\$106.09	\$495.92
59D Keyed Alike - 0135X	\$48.41	
60A Grille LED Lights, Siren, & Speaker Pre-wiring	\$48.41	
63B Side Marker LED Lights	\$281.19	
85R Rear Console Mounting Plate	\$43.26	
87R Move Rearview Camera Display to Mirror	\$0.00	
18D Global Unlock	\$0.00	
61B OBD II Connector	\$53.56	
Credit for Removal of 41H Block Heater	(\$85.00)	

Delivery Included

\$45,955.92

Trade - In:

Total for One \$45,955.92
Total for Six \$275,735.52

Total Cash Price:

Terms: Net 30 days

Your Purchase Order # PDR001

Project # IFB 110.7-23-047

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: Tom Ganje

Date: 8-25-23



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	F R011
Sold To: Fargo, ND, City of Attn: Tom Ganje Address: 402 23rd St N Fargo, ND 58102		Date: 8/14/2023 Phone: 701-241-1460 FAX: Salesperson: Melissa Larson 0	
		Key Code:	

Stock No:	Year	Make	Model	New/Used	Vehicle ID Number
R011	2024	Ford	Expedition SSV Color: Black	New	
Price of Vehicle:				<i>Per ND Spec: SSP7-2</i>	\$52,952.00
Options & Extras:					(\$440.00)
Credit for 2 Additional Keys					(\$440.00)

Delivery Included

Trade - In:		\$52,512.00
Total Cash Price:		
<u>Terms: Net 30 days</u>		
Your Purchase Order # PDR001	Total for One	\$52,512.00
	Total for Two	\$105,024.00
	Project #	IFB 110.7-23-047

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: Tom Ganje
 Printed Name: Tom Ganje Date: 8-25-23



REPORT OF ACTION
UTILITY COMMITTEE

Project No. SW 22-01

Type: SW 22-01 Final Balancing Change Order

Location: Solid Waste Division – Landfill

Date of Hearing: 12/4/23

<u>Routing</u>	<u>Date</u>
City Commission	12/11/23
Project File	<u>SW 22-01 Cell 20 Construction</u>

Scott Olson, Solid Waste Utility Director, presented the attached memo to the Utility Committee via email which details the Final Balancing Change Order (FBCO) for project SW 22-01 – Cell 20 Construction project.

The Contractor met the requirements of the contract and it has been accepted by the City. The FBCO reconciles the estimated quantities used in the contract with the final quantities as measured and surveyed in the field. Final adjustments to associated bid items are attached to this memo.

Following this Final Balancing Change Order the final contract amounts are as follows:

Contractor	Original Contract Amount	Change Order Amount	Final Contract Amount
Burski Excavating, Inc.	\$3,446,663.90		
Previously Approved CO #1-4		\$23,841.00	
CO #5 - FBCO		\$60,145.19	
		Total	\$3,506,809.09

Change orders for the project account for 2.4% of total project costs.

MOTION:

On a motion by Troy Hall, seconded by James Hausauer, the Utility Committee voted via email to approve the Final Balancing Change Order for project SW 22-01 Cell 20 Construction in the amount of \$60,145.19.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Denise Kolpack, City Commissioner	X	X		X
Thomas Knakmuhs, City Engineer	X	X		
Susan Thompson, City Finance Director	X	X		
Bruce Grubb, City Administration	X	X		
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Wastewater Plant Supt.	X	X		
Scott Liudahl, City Forester	X	X		
James Hausauer, Wastewater Util. Director	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director	X	X		
Scott Olson, Solid Waste Utility Director	X	X		
Daniel Portlock, Water Utility Engineer	X	X		

ATTEST:



 Scott Olson, PE
 Solid Waste Utility Director

C: Tim Mahoney, Mayor
 Commissioner Preston
 Commissioner Piepkorn
 Commissioner Strand



Division of Solid Waste

2301 8th Avenue North
 Fargo, North Dakota 58102
 Phone: 701-241-1449
 Fax: 701-241-8109

To: Utility Committee
 From: Scott Olson, Solid Waste Utility Director *SO*
 Date: December 6, 2023
 Subject: Project SW 22-01 – Change Order 5 - Final Balancing Change Order

On May 31, 2022, the Commission approved the award of the Cell 20 Construction Project SW 22-01 to Burski Excavating, Inc. in the amount of **\$3,422,822.90**.

Project	Contractor	Substantial Completion Date	Bid Amount
Cell 20 Construction	Burski Excavating, Inc	November 30, 2022	\$3,422,822.90

With previous Change Order approval, the current contract amounts and substantial completion dates are as follows:

Change Orders	Change Order Amounts	Change in Sub. Completion Date	Current Contract Amount
Change Orders 1-4	\$23,841.00	23 Days	
		Total	\$3,446,663.90

Attached is the Final Balancing Change Order (FBCO) in the amount of \$60,145.19. The Contractor met the requirements of the contract and it has been accepted by the City. The FBCO reconciles the estimated quantities used in the contract with the final quantities as measured and surveyed in the field. Final adjustments to associated bid items are attached to this memo.

Following this Final Balancing Change Order (FBCO) the final contract amounts are as follows:

Contractor	Current Contract Amount	Change Order Amount	Final Contract Amount
Burski Excavating, Inc.	\$3,446,663.90		
CO #5 - FBCO		\$60,145.19	
		Total	\$3,506,809.09

Change orders for the project account for 2.4% of total project costs.

SUGGESTED MOTION:

Approve the final balancing change order in the amount of \$60,145.19 which will adjust the final contract price to \$3,506,809.09 for Project SW 22-01.

Attachment

cc: Steve Sprague, City Auditor
 Randy Hanson, Stantec
 Scott Anderson, Landfill Supervisor

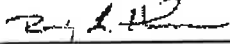

Date of Issuance: 12/01/23	Effective Date: 12/01/23
Owner: City of Fargo Division of Solid Waste	Owner's Contract No.: SW22-01
Contractor: Burski Exc., Inc	Contractor's Project No.:
Engineer: Stantec, Inc.	Engineer's Project No.: 227704764
Project: Cell 20 Construction	Contract Name: Cell 20 Construction

The Contract is modified as follows upon execution of this Change Order:

Final balancing change order to adjust for variations of bid quantities to final quantities. See attachment for final quantities.

Attachments: Cell 20 Pay Application Tracking

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ <u>3,422,822.90</u>	Original Contract Times: Substantial Completion: <u>November 30th, 2022</u> Ready for Final Payment: <u>December 30th, 2022</u> days or dates
Increase from previously approved Change Orders No. <u>1</u> to No. <u>4</u> : \$ <u>23,841.00</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>3</u> : Substantial Completion: <u>23</u> Ready for Final Payment: <u>169</u> days
Contract Price prior to this Change Order: \$ <u>3,446,663.90</u>	Contract Times prior to this Change Order: Substantial Completion: <u>December 23rd, 2022</u> Ready for Final Payment: <u>June 16th, 2023</u> days or dates
Increase of this Change Order: \$ <u>60,145.19</u>	[Increase] of this Change Order: Substantial Completion: <u>0</u> Ready for Final Payment: <u>0</u> days
Contract Price incorporating this Change Order: \$ <u>3,506,809.09</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>December 23rd, 2022</u> Ready for Final Payment: <u>June 16th, 2023</u> days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u></u>	By: _____	By: <u></u>
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: <u>Project Manager</u>	Title _____	Title <u>PM</u>
Date: <u>12/01/23</u>	Date _____	Date <u>12-1-23</u>

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

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December 11, 2023

City of Fargo Commissioners
225 N 4th Street
Fargo, ND 58102

Dear Commissioners:

At the October 30, 2023 Fargo City Commission meeting, contracts were awarded to two separate vendors (GMV Synchronatics Corporation and Via Mobility LLC) for replacement paratransit and fixed route scheduling and dispatching software.

The software will replace and improve current systems used for live bus tracking, Google transit directions, auto vehicle location, auto voice announcements, auto passenger counters, vehicle inspection reports, ride scheduling, ride arrival, and micro transit apps and scheduling.

The City of Fargo will purchase the software with the selected vendors and the City of Moorhead will reimburse the City of Fargo for Moorhead's share based on a cost sharing allocation contained in the proposed Memorandum of Understanding (MOU) and its applicable attachments.

RECOMMENDED MOTION: Approve the attached Memorandum of Understanding (MOU) with the City of Moorhead for the purchase of transit scheduling and dispatching software for use on the MATBUS system, including cost allocations by which Moorhead would reimburse Fargo for their share of the software.

Sincerely,



Julie Bommelman
City of Fargo Transit Director
476-6737

/enc

For Schedule Information: 701-232-7500

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF FARGO AND CITY OF MOORHEAD
REGARDING PURCHASE OF SOFTWARE FOR THE
MATBUS TRANSIT SYSTEM

This Memorandum of Understanding (hereinafter referred to as the "MOU") is entered into by and between the City of Fargo, a North Dakota municipal corporation ("Fargo") and the City of Moorhead, a Minnesota Municipal Corporation ("Moorhead").

RECITALS

- A. Pursuant to Chapter 54-40.3 N.D.C.C. and Minnesota Statutes § 471.59 (Joint Exercise of Powers), the above-named cities have the legal authority to enter into an agreement, through action of their respective governing bodies, to jointly or cooperatively exercise any power common to the contracting powers or any similar powers, including those which are the same except for territorial limits within which they may be exercised.
- B. Fargo and Moorhead (collectively, the "Cities") have previously entered into agreements to facilitate the joint operation of the Fargo-Moorhead Metropolitan Area Transit System ("MATBUS").
- C. The Cities have worked together to select comprehensive software projects to be utilized in the management and dispatching of fixed route and paratransit services throughout the MATBUS system and funded through Federal and/or State capital grants.
- D. The Cities agree to purchase software products, services, and ongoing maintenance (collectively the "Software"), as described below:
 - a. Fixed Route scheduling and dispatching software and related hardware, including but not limited to Computer-aided Design (CAD), Auto Vehicle Location (AVL) Auto Voice Announcements (AVA) and Digital Vehicle Inspection Reports (DVIR), to be purchased through **GMV Syncromatics Corporation** at a total cost not to exceed \$1,000,000 per established budgets, of which Fargo has budgeted \$700,000 and Moorhead \$300,000.
 - b. Paratransit scheduling and dispatching software and related hardware, including but not limited to on-demand and micro transit service scheduling, through **Via Mobility LLC** at a total cost not to exceed \$125,000 per established budgets, of which Fargo has budgeted \$100,000 and Moorhead \$25,000.
 - c. Related third-party hardware and equipment, such as tablets and tablet mounting, for installation of Software, which costs are included in the budgets of C(a) and C(b) above.
- E. Fargo has participated in a cooperative purchase through the State of North Dakota for the above mentioned Software.
- F. The Cities wish to enter into this MOU to formally establish the funding split between the Cities whereby Fargo purchases the Software and Moorhead reimburses Fargo for its share of the Software to be used on Moorhead vehicles for the convenience of Moorhead passengers.

In consideration of the above, the Cities agree as follows:

AGREEMENT

1. Intent. The Cities intend to purchase the Software to be used on the transit system.
2. General Responsibilities. Fargo agrees to purchase, operate, and maintain the Software on MATBUS for a period of not less than five years. Fargo shall not dispose of or discontinue operating of the Software prior to five years from the date of acceptance of the Software without written permission from Moorhead.
3. Funding. The Cities agree to the funding split outlined in Attachment A, with Fargo paying the full cost and Moorhead reimbursing Fargo for Moorhead's share. Ongoing monthly operating fees related to the Software will be governed by the Master Agreement between Fargo and Moorhead.
4. Amendments. The provisions and responsibilities set forth in this MOU may only be changed by mutual agreement of the Cities. Such changes to the MOU shall be effective only upon execution of a written amendment signed by authorized representatives of the Cities. Minor changes to Attachment A may be made at the staff level as long as the changes do not exceed the amount of funds budgeted and provided by grant sources, as contained in Section C above.
5. Monitoring. Moorhead reserves the right to monitor and evaluate progress and performance to assure that the Software is implemented, operated, maintained and supported.
6. Termination Clause. This MOU may be terminated by Fargo or Moorhead upon at least thirty (30) days written notice only prior to the purchase and payment for the Software. The withdrawal of either party from this MOU shall render the MOU null and void.
7. Governing Law. The MOU will be subject to, governed by, and construed according to the laws of the State of North Dakota.
8. Federal Clauses. Fargo and Moorhead agree to comply with any applicable Federal requirements and clauses related to this procurement and resulting assets. Federal Clauses are contained in Attachment B to this MOU.
9. Signatures. In witness thereof, the Cities have caused this MOU to be executed by their duly authorized representatives on the date indicated below.

Dated: _____

CITY OF FARGO, NORTH DAKOTA

A municipal corporation

By: _____

Timothy J. Mahoney, Mayor

ATTEST:

By: _____

Steve Sprague, City Auditor

Dated: _____

CITY OF MOORHEAD, MINNESOTA

Municipal Corporation

By: _____

Michelle (Shelly) A. Carlson, Mayor

By: _____

Dan Mahli, City Manager

ATTACHMENT A - COST ALLOCATION BY CITY

TOTAL COST

Item	Price	Quantity	Total Cost	Quantity	% of Cost	FGO Total	Quantity	% of Cost	MHD Total
GMV Fixed Route AVA/AVL Software (Split based on Number of Vehicles Owned)									
Fixed Route CAD/AVL		43	\$284,290.00	31	72.09%	\$204,953.26	12	27.91%	\$79,336.74
Vehicle Network Gateway		43	\$23,005.00	31	72.09%	\$16,585.00	12	27.91%	\$6,420.00
Automated Voice Announcement		43	\$136,095.00	31	72.09%	\$98,115.00	12	27.91%	\$37,980.00
Interior LED for AVAS Visual Announcement		43	\$85,355.00	31	72.09%	\$61,535.00	12	27.91%	\$23,820.00
Designation Sign Integration for Single Sign-on		43	\$25,370.00	31	72.09%	\$18,290.00	12	27.91%	\$7,080.00
Automatic Passenger Counter		43	\$272,510.00	31	72.09%	\$196,460.70	12	27.91%	\$76,049.30
Real Time Passenger Information		43	\$0.00	31	72.09%	\$0.00	12	27.91%	\$0.00
Annual Service Fees - Year 1		43	\$58,605.00	31	72.09%	\$42,250.12	12	27.91%	\$16,354.88
OPTIONS:									
Real-Time Passenger Information - Mobile App		43	\$14,500.00	31	72.09%	\$10,453.49	12	27.91%	\$4,046.51
Annual Service Fees - Year 1		43	\$3,500.00	31	72.09%	\$2,523.26	12	27.91%	\$976.74
Digital Vehicle Inspection (Includes 3 Fargo OnDemand Vehicles)		46	\$18,860.00	34	73.91%	\$13,940.00	12	26.09%	\$4,920.00
Annual Service Fees - Year 1		46	\$16,100.00	34	73.91%	\$11,900.00	12	26.09%	\$4,200.00
GFI Farebox Integration		43	\$28,165.00	31	72.09%	\$20,305.00	12	27.91%	\$7,860.00
TOTAL FIXED ROUTE			\$966,355.00			\$697,310.81			\$269,044.19
Annual Fees Applicable to Years 2-5			\$78,205.00			\$56,673.37			\$21,531.63

TOTAL COST

Item	Price	Ridership	Total Cost	Ridership	% of Cost	FGO Total	Ridership	% of Cost	MHD Total
GMV Transit Check Digital DVIR licenses for Paratransit Vehicles									
GMV will supply one Digital DVIR platform for the whole system									
Installation Fee	\$6,560.00	42,226	\$6,560.00	34,075	80.70%	\$5,293.71	8,151	19.30%	\$1,266.29
Yearly Maintenance Fee	\$5,600.00	42,226	\$5,600.00	34,075	80.70%	\$4,519.02	8,151	19.30%	\$1,080.98
TOTAL PARATRANSIT			\$12,160.00			\$9,812.72			\$2,347.28
ANNUAL FEES APPLICABLE TO YEAR 2-5			\$5,600.00			\$4,519.02			\$1,080.98

GRAND TOTAL CAPITAL COST			\$978,515.00			\$707,123.54			\$271,391.46
ANNUAL FEES APPLICABLE TO YEARS 2-5			\$83,805.00			\$61,192.39			\$22,612.61

ATTACHMENT A - COST ALLOCATION BY CITY

TOTAL COST

Fargo Cost

Moorhead Cost

Item	Price	Ridership	Total Cost	Ridership	% of Cost	FGO Total	Ridership	% of Cost	MHD Total
Via Paratransit Scheduling Software (Split based on YTD Ridership as of 9/30/2023)									
Installation Fee includes localization for new zone, service design, co-branded rider app, testing and quality assurance, development service model, remote and in-person training, launch oversight)									
Monthly Per Vehicle Fees are based on buses in maximum service and includes license to tech modules, fleet optimization, virtual bus stop architecture, automatic product upgrades, cloud hosting and third-party tools, expert operations and growth support, analytics and reporting									
Installation Fee	\$20,000.00	42,226	\$20,000.00	34,075	80.70%	\$16,139.35	8,151	19.30%	\$3,860.65
Monthly Per Vehicle Fee - Year 1 (Veh 1-3)	3 x \$500 x 12	42,226	\$18,000.00	34,075	80.70%	\$14,525.41	8,151	19.30%	\$3,474.59
Monthly Per Vehicle Fee - Year 1 (Veh 4-25)	10 x \$250 x 12	42,226	\$30,000.00	34,075	80.70%	\$24,209.02	8,151	19.30%	\$5,790.98
Monthly Per Vehicle Fee - Year 1 (Veh 26+)	0 x \$200 x 12	42,226	\$0.00	34,075	80.70%	\$0.00	8,151	19.30%	\$0.00
Tablets & Mounts in Vehicles (16 vehicles)	16 x \$1200	42,226	\$19,200.00	34,075	80.70%	\$15,493.77	8,151	19.30%	\$3,706.23
TOTAL PARATRANSIT			\$87,200.00			\$70,367.55			\$16,832.45
<i>Annual Fees Applicable to Years 2-5</i>			<i>\$48,000.00</i>			<i>\$38,734.43</i>			<i>\$9,265.57</i>

COST SUMMARY - INITIAL YEAR

	Moorhead	Fargo
GMV Synchronatics: Fixed Route AVA/AVL	\$269,044.19	\$697,310.81
GMV Synchronatics: Paratransit Digital Vehicle Inspection	\$2,347.28	\$9,812.72
Via Mobility LLC: Paratransit Scheduling	\$16,832.45	\$70,367.55
TOTAL	\$288,223.92	\$777,491.08
Budget	\$325,000.00	\$800,000.00

COST SUMMARY - ANNUAL FEES

	Moorhead	Fargo
GMV Synchronatics: Fixed Route AVA/AVL	\$21,531.63	\$56,673.37
GMV Synchronatics: Paratransit Digital Vehicle Inspection	\$1,080.98	\$4,519.02
Via Mobility LLC: Paratransit Scheduling	\$9,265.57	\$38,734.43
TOTAL	\$31,878.18	\$99,926.82

ATTACHMENT B

By entering into a sale with the City of Fargo, ND, and/or the City of Moorhead, MN, doing business as MATBUS, the supplier is agreeing to be bound by the following federal clauses and certifications as applicable:



1. **No Government Obligation to Third Parties:** *Applies to all third-party contracts that are federally funded.*

- a. The Agency 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 Agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.



2. **Access to Records and Reports:** *Applies to all contracts funded in whole or in part with FTA funds.*

- a. **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.
- b. **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.
- c. **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.

- d. 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.



3. **Federal Changes:** *Applies to all contracts.*

The 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 the Agency and FTA, and they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.



4. **Civil Rights and Equal Opportunity:** *Applies to all contracts.*

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency 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.

- a. 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.
- b. 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.

- c. 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.
- d. 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.



5. **Incorporation of FTA Terms:** *Applies to all contracts.*

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 Agency requests which would cause the Agency to be in violation of the FTA terms and conditions.



6. **Energy Conservation:** *Applies to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, 'Requirements/or Energy Assessments,' 49 C.F.R. part 622, subpart C.*

The 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).



7. **Veterans Employment:** *Applies to capital projects, to the extent practicable*

As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, the Contractor agrees that it:

- a. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
- b. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

The Contractor also assures that its sub-recipients will:

- a. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
- b. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.



8. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:** *Applies to all contracts.*

The Contractor is prohibited from obligating or expending federal funds to:

- a. Procure or obtain
- b. Extend or renew a contract to procure or obtain; or
- c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, "covered telecommunications equipment or services" is:

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
 - ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - iii. Telecommunications or video surveillance services provided by such entities or using such equipment.
- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Contractor shall not provide covered telecommunications equipment or services in the performance of this contract.



9. **Termination Provisions:** *Applies to all contracts over \$10,000.*

Termination for Convenience (General Provision): The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to the Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision): If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.5

Opportunity to Cure (General Provision): The Agency in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Agency's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within ten [10] days after receipt by Contractor or written notice from the Agency setting forth the nature of said breach or default, the Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach: In the event that the Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the Agency shall not limit the Agency's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

This termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.



10. **Debarment, Suspension, Ineligibility and Voluntary Exclusion:** *Applies to contracts in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.*

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 I 80, subpart C, as supplemented by 2 C.F.R. part I 200, 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.



11. **Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters** : *Applies to all contracts exceeding \$25,000.*

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify City Utilities, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which City Utilities is located. The Contractor must include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement between the FTA and City Utilities, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

Additional Notice to U.S. DOT Inspector General. The Contractor must promptly notify the Agency, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Agency is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project is subject to this agreement or another agreement with the Agency involving a principal, officer, employee, agent, or Third-Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.



12. **Lobbying Restrictions:** *Applies to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. 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 agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

The undersigned certifies (Note: A separate certification will be required to be signed if the contract meets this criteria), to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of

any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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.



- 13. **Buy America:** *Applies to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.*

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.



- 14. **Clean Air Act and the Federal Water Pollution Control Act:** *Applies to all contracts exceeding \$150,000.*

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq and the Federal Water Pollution Control Act as amended, 33 U.S.C. § 1251-1388. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.



15. **Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate:** *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$250,000) and those contracts shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.*

- a. Disputes will be presented in writing to the appropriate Agency personnel - in Fargo, the Fargo Transit Director, in Moorhead, the Moorhead Transit Manager. Agency personnel and the Contractor will attempt to resolve any dispute arising in the performance of the contract.

Fargo: If the Transit Director and Contractor cannot resolve the dispute, the issue will be presented in writing to the Fargo City Administrator within ten [10] working days of dispute. If the dispute cannot be resolved by the City Administrator, it will be submitted in writing within ten [10] working days of the Fargo City Administrator's decision to the Fargo City Commission - it is the sole responsibility of the Contractor to schedule a hearing with the Fargo City Commission. 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 the hearing.

Moorhead: If the Transit Manager and Contractor cannot resolve the dispute, the issue will be presented in writing to the Moorhead City Manager within ten [10] working days of the dispute. If the dispute cannot be resolved by the City Manager, it will be submitted in writing within ten [10] working days of the Moorhead City Manager's decision to the Moorhead City Council - it is the sole responsibility of the Contractor to schedule a hearing with the Moorhead City Council. 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 the hearing.

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

- b. Unless otherwise directed by the Cities of Fargo/Moorhead, the Contractor shall continue performance under this contract while matters in dispute are being resolved.

- c. 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 or damage.
- d. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Cities of Fargo and/or Moorhead 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 applicable state.



16. **Cargo Preference:** *Applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.*

The Contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.



17. **Fly America:** *Applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.*

Definitions. As used in this clause—

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- a. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- b. If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- c. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR§ 47.403. [State reasons]:

(End of statement)

The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.



18. **Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback:**

Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

- a. Prevailing Wage Requirements
 - i. *Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA 's 'Davis-Bacon Related Act');*
 - ii. *The Davis-Bacon Act, 40 USC. §§ 3141-3144, 3146, and 3147; and*
 - iii. *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.*
- b. "Anti-Kickback" Prohibitions
 - i. *Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;*
 - ii. *Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 USC. § 3145; and*
 - iii. *US. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.



19. **Contract Work Hours & Safety Standards Act:** *Applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers. Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:*
- a. *Contract Work Hours and Safety Standards*
 - i. *Contract Work Hours and Safety Standards Act, as amended, 40 USC §§ 3701- 3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and A-38*
 - ii. *U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.*
 - b. **For Construction Contracts:**
 - i. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
 - ii. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
 - iii. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other

Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

- iv. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

c. For Awards Not Involving Construction:

- i. 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.
- ii. 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.
- iii. 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.



20. **Bonding:** *The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (exceeding \$175,000. Minnesota State Statute 574.26 limit is \$100,000) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:*

- a. A bid guarantee from each bidder equivalent to five [5] percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond,

certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - i. 50% of the contract price if the contract price is not more than \$1 million;
 - ii. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii. \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond. Bid Bond Requirements (Construction)

Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the Agency to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety [90] days subsequent to the opening of bids, without the written consent of the Agency.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety [90] days after the bid opening without the written consent of the Agency, shall refuse or be unable to enter into this contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting Bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the Agency as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense the Agency for the damages occasioned by default, then the

undersigned bidder agrees to indemnify the Agency and pay over to the Agency the difference between the bid security and the Agency's total damages, so as to make the Agency whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive. Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

Performance bonds

- a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
- b. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

Payment bonds

- a. The penal amount of the payment bonds shall equal:
 - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
 - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;
 - iii. Two and one half million if the contract price is more than \$5 million.
- b. If the original contract price is \$5 million or less, the Agency may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the Agency's interest.

The following situations may warrant a performance bond:

- a. The Agency's property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
- b. A contractor sells assets to or merges with another concern, and the Agency, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

- c. Substantial progress payments are made before delivery of end items starts.
- d. Contracts are for dismantling, demolition, or removal of improvements.

When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

- a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
- b. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.
The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Agency's interest.
- d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

The penal amount of payment bonds shall equal:

- I. Fifty percent of the contract price if the contract price is not more than \$1 million;
- II. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- III. Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The Agency shall determine the amount of the advance payment bond necessary to protect the Agency.

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished, and the financial responsibility of the Contractor is unknown or doubtful. The Agency shall determine the amount of the patent indemnity to protect the Agency.

Warranty of the Work and Maintenance Bonds

The Contractor warrants to the Agency, the architect and/or engineer that all materials and equipment furnished under this contract will be of highest quality and new unless otherwise specified by the Agency, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be

considered defective. If required by the project manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one [1] year after final payment by the Agency and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the Agency. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate maintenance (or guarantee) bonds in form acceptable to the Agency written by the same corporate surety that provides the performance bond and labor and material payment bond for this contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one [1] year after final payment and shall be written in an amount equal to ONE HUNDRED PERCENT [100%] of the CONTRACT SUM, as adjusted (if at all).



21. EEO: *Applies to all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3*

All Firms will be required to follow Federal Equal Employment Opportunity (EEO) policies. The Agency will affirmatively assure that on any project constructed pursuant to this advertisement, equal employment opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, sex, and marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.



22. Seismic Safety: *Applies only to contracts for the construction of new buildings or additions to existing buildings.*

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.



23. Transit Employee Protective Arrangements: *Applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.*

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a. U.S. DOL Certification. Under this contract or any amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the contract.
- b. Special Warranty. When the contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a special warranty for its award, including its award of federal assistance under the Tribal Transit Program. The U.S. DOL special warranty is a condition of the contract.
- c. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.



24. Charter Service Operations: *Applies to contracts for operating public transportation service.*

The Contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b. FTA regulations, "Charter Service," 49 C.F.R. part 604;
- c. Any other federal Charter Service regulations; or
- d. Federal guidance, except as FTA determines otherwise in writing.

The Contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- a. Barring it or any subcontractor operating public transportation under its award that has provided prohibited charter service from receiving federal assistance from FTA;

- b. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA 's Charter Service regulations; or
- c. Any other appropriate remedy that may apply.

The Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.



25. School Bus Service Operations: *Applies to contracts for operating public transportation service.*

The Contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
- c. Any other Federal School Bus regulations; or
- d. Federal guidance, except as FTA determines otherwise in writing.

If the Contractor violates this school bus agreement, FTA may:

- a. Bar the Contractor from receiving Federal assistance for public transportation; or
- b. Require the Contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the Contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.



26. Substance Abuse Requirements: Drug & Alcohol Testing: *Applies to third party contractors who perform safety-sensitive functions. Contractors must comply with FTA 's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:*

- a. *Operating a revenue service vehicle, including when not in revenue service;*

- b. *Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
- c. *Controlling dispatch or movement of a revenue service vehicle;*
- d. *Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts or such services; or an employer who receives funding under 49 USC § 5311 and contracts out such services.*
- e. *Carrying a firearm for security purposes.*

Additionally, third-party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

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 and/or Minnesota, or the Cities of Fargo/Moorhead, 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 February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager and City of Fargo Transit Director. 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.



27. Rights to Inventions Made Under a Contract or Agreement: *Applies when entering into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award. The recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, "and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:*

- a. *Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and*
- b. *Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.*

Intellectual Property Rights: This project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the contract.

- a. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - i. Any subject data developed under the contract, whether or not a copyright has been obtained; and
 - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- b. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this contract agrees to permit FTA to make available to the public, either FTA 's license in the copyright to any subject data developed in the course of the contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this contract, is not completed for any reason whatsoever, all data

developed under the contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

- c. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- d. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- e. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the contract work.
- f. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.



28. Disadvantaged and Small Business Enterprise (DBEs): *Applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year.*

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

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).

In connection with the performance of this service, the Contractor will cooperate with the Agency 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 ensure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to ensure 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 Agency for purchases pertaining to this contract to the best of the Contractor's ability and will provide the Agency 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 Agency 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 Agency.

Fostering Small Business Participation

The Agency 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 Agency. This program is race and gender-neutral, however SBEs can also count towards DBE goals.

**29. Prompt Payment and Return of Retainage:** *Applies to all contracts.*

Recipients must establish a contract clause to require prime Contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days (payment required within 10 days or paying interest at 1 ½ percent per Minnesota State Statute 4 71.425 subd. 4a) 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).

**30. 6002 of the Solid Waste Disposal Act:** *Applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.*

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6962) by the Resource Conservation and Recovery Act (RCRA), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**31. Americans with Disabilities Act Access (ADA):** *Applies to all contracts.*

Introduction: 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I thru V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issues by other Federal agencies.



- a) **Rolling Stock Accessibility:** Rolling stock must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA Accessibility Specifications for Transportation Vehicles," 36

CFR Part 1192 and 49 CFR Part 38. Vehicles acquired (with limited exceptions) should be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;



- b) **Purchased Transportation Services Accessibility:** A third party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. MART advises its third party contractors operating public transportation services to review the requirements for public entities in this context which include but are not limited to:
- a. **Complementary Paratransit Service:** Requirements that public entities providing fixed-route service provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route system.
 - b. **Equal Opportunity:** Requirements for service with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.



- c) **Design and Construction Accessibility:** Facilities to be used in public transportation systems and service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB's Americans with Disabilities Act Accessibility Guidelines" (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.



32. Assignability Clause: *Applies to all contracts.*

Procurements through assignments: Neither the Agency nor the Contractor shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other.



33. Program Fraud & False or Fraudulent Statements & Related Acts: *Applies to all third-party contracts that are federally funded.*

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and U.S. DOT

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

- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 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.
- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.



34. Bus Testing: *Applies only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA 's bus testing requirements in all grant applications for FTA funding for bus procurements.*

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FT A's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.



35. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases: *Applies to the purchase of revenue service rolling stock with FTA funds and must comply with the*

pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(11 1) and supplemented by 49 C.F.R. part 663.

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance



36. Safe Operation of Motor Vehicles: *Applies to all federally funded third party contracts.*

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.



37. Recycled Products: *Applies to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000. Applies to States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.*

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource

Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.



38. **Build America, Buy America Act (BABAA)**: *Applies to all Federally-funded infrastructure projects that involve the purchase of iron, steel, manufactured products, and construction materials used in covered infrastructure projects as mandated by Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58.*

The Build America, Buy America provisions of the "Infrastructure Investment and Jobs Act" ensure that federal infrastructure programs must use materials produced in the United States, increase the requirement for American-made content, and strengthen the waiver process associated with these provisions. The provisions require that all manufactured products used in an infrastructure project are manufactured in the United States. The cost of a product's components that were mined, produced, or manufactured in the United States must also be greater than 55% of the total cost of the product's components, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

The term infrastructure includes, at a minimum, the structures, facilities and equipment in the United States for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property.

In certain circumstances, exceptions to the Build America, Buy America provisions may be approved following submission of an appropriate waiver request. The three exception categories are: 1. Public interest: Applying the domestic content procurement preference would be inconsistent with the public interest. 2. Nonavailability: The types of iron, steel, manufactured products or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality. 3. Unreasonable cost: The inclusion of iron, steel, manufactured products or construction materials produced in the United States will increase the cost of the overall project by more than 25%.

"Domestic Content Procurement Preference"? A: Per the Office of Management and Budget's Memorandum M-22-11: Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, a domestic content procurement preference means the following: 1. All iron and steel used in the project are produced in the United States. 2. The manufactured products used in the project are produced in the United States. 3. The construction materials used in the project are produced in the United States. For example, aluminum, copper, and lead used in a project are considered construction materials because they are non-ferrous metals and are incorporated into the building or public work. Similarly, prefabricated windows brought to a site for incorporation into

a building would be covered by the Build America, Buy America provisions as they are construction materials made of glass, plastic, wood and metals



Water Treatment Plant
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

(48)

December 7, 2023

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

Subject: Drinking Water State Revolving Fund Loan Resolution and Agreement for Project WA2255, Fargo WTP GAC Filter Upgrades

Dear Commissioners:

The Finance Department and Water Utility are seeking approval of a Drinking Water State Revolving Fund (DWSRF) Loan Resolution, Loan Agreement, and other loan-related documents for Project WA2255, Fargo WTP GAC Filter Upgrades. There is a 75% loan forgiveness (grant) for up to \$4,800,000 through a federal EPA program attached to this filter upgrade project. Grants awarded to the Water Utility improve rates to all water customers. The Water Utility has been successful in securing about \$55 million in grant funding for capital projects since 2012, significantly helping with water rates.

The State Industrial Commission approved the DWSRF loan on October 31, 2023. A copy of the approval letter and proposed amortization schedule is attached. The amortization schedule shows the EPA grant applied and only \$1,800,000 will need to be paid back. Water rate revenue (Fund 501) and Infrastructure Sales Tax (Fund 450) are both pledged as potential repayment sources for this DWSRF loan.

Project WA2255 is expected to be completed in 2024. The filter upgrades will further improve tap water quality to customers. Dorsey & Whitney LLP (Dorsey), our bond counsel, drafted the proposed DWSRF loan documents which were reviewed by the North Dakota Public Finance Authority (PFA). Staff from the Finance Department and Water Utility worked together with Dorsey and PFA on the loan documents. The following loan documents are attached:

- Loan Resolution
- Loan Agreement
- Closing Certificate

Your consideration is greatly appreciated in this matter.

Sincerely,

Troy B. Hall
Water Utility Director

RECOMMENDED MOTION: Approve Drinking Water State Revolving Fund Loan Resolution, Loan Agreement, and other loan documents for Project WA2255, Fargo WTP GAC Filter Upgrades.

Doug Burgum
GOVERNOR

Drew H. Wrigley
ATTORNEY GENERAL

Doug Goehring
AGRICULTURE COMMISSIONER



North Dakota Public Finance Authority

November 22, 2023

Mr. Troy Hall
City of Fargo
THall@fargond.gov

Dear Mr. Hall:

On October 31, 2023 the Industrial Commission approved a \$6,400,000 loan requested by the City of Fargo. The loan will be made under the Public Finance Authority's **Drinking Water** State Revolving Fund Program. This loan approval is contingent upon the ND Department of Environmental Quality determining project eligibility and expires in one year. If any other conditions to loan approval are known as of the date of this letter, an attachment will be included. If the first draw of funds is not made within one year of the date of approval, the applicant must submit a new application and related attachments for consideration by the PFA and its' advisors, as applicable.

We are providing a copy of this letter and a preliminary debt service schedule to your bond counsel. Please contact your bond counsel to discuss and coordinate the completion of the loan documents. Once the form of the documents has been approved, you will receive a letter from the Department of Environmental Quality concerning the submissions of payment requests for draws against the approved loan amount.

Please be sure to alert your Independent Public Accounting Firm or the Office of the State Auditor that the Drinking Water State Revolving Fund Program (Environmental Protection Agency's Capitalization Grants for Drinking Water State Revolving Funds, CFDA #66.468 IJA Emerging Contaminants) is considered a federal award for auditing purposes. Your financial statements may be required to be audited in compliance with the Single Audit Act with respect to the receipt and expenditure of loan proceeds. In addition, any equipment purchased with SRF funds must comply with the Federal equipment management requirements published in OMB Circular A-110 (___34). If you have any questions, please discuss this with your Independent Public Accounting Firm or the office of the State Auditor.

A copy of the annual or biennial audited financial statements, or the annual report, as appropriate under N.D.C.C. 54-10-14, **must be submitted to the Public Finance Authority every year that the loan is outstanding.** This requirement is set out in the form of the loan agreement.

Please feel free to call your bond counsel or us if you have any questions concerning the loan closing.

Sincerely,

Benita Eberts
Business Manager

cc: Jennifer L. Hanson, Dorsey & Whitney LLP (hanson.jennifer@dorsey.com)
Kara Tonolli, Dorsey & Whitney LLP (tonolli.kara@dorsey.com)
Steve Sprague, City Auditor (ssprague@fargond.gov)

Drinking Water Loan Info -- Preliminary

Loan #	204
Loan	Fargo
Interest Rate	1.50%
Administration Fee	0.50%
Approved Amount	6,400,000.00
Loan Forgiveness	4,800,000.00
Loan Amount	1,600,000.00
Fully Funded Amount	0.00
Issuance Denomination	5,000.00
Credit Rating	Aa1
Security Type	Revenue
Closing Date	12/15/2023
First Maturity	9/1/2025
Term	30
Final Maturity	9/1/2054
First Interest	3/1/2024
First Interest Payment	4,000.00
First Admin. Payment	1,333.00
Debt Service Reserve Fund	76,125.00
First DSRF Payment	9/1/2025

Project Description
WTP GAC Filter Upgrade

Date	Principal	Interest	Total		Annual	Outstanding	Admin. Fee	Total	Annual	Debt Service Reserve Funding
			Principal & Interest	P&I Payment	Balance	Payment		Total Payment		
3/1/2024	-	4,000.00	4,000.00	-	-	1,600,000.00	-	5,333.00	-	-
9/1/2024	-	12,000.00	12,000.00	16,000.00	16,000.00	1,600,000.00	4,000.00	16,000.00	21,333.00	-
3/1/2025	-	12,000.00	12,000.00	-	-	1,600,000.00	4,000.00	16,000.00	-	-
9/1/2025	40,000.00	12,000.00	52,000.00	64,000.00	64,000.00	1,560,000.00	4,000.00	56,000.00	72,000.00	15,225.00
3/1/2026	-	11,700.00	11,700.00	-	-	1,560,000.00	3,900.00	15,600.00	-	-
9/1/2026	40,000.00	11,700.00	51,700.00	63,400.00	63,400.00	1,520,000.00	3,900.00	55,600.00	71,200.00	15,225.00
3/1/2027	-	11,400.00	11,400.00	-	-	1,520,000.00	3,800.00	15,200.00	-	-
9/1/2027	40,000.00	11,400.00	51,400.00	62,800.00	62,800.00	1,480,000.00	3,800.00	55,200.00	70,400.00	15,225.00
3/1/2028	-	11,100.00	11,100.00	-	-	1,480,000.00	3,700.00	14,800.00	-	-
9/1/2028	40,000.00	11,100.00	51,100.00	62,200.00	62,200.00	1,440,000.00	3,700.00	54,800.00	69,600.00	15,225.00
3/1/2029	-	10,800.00	10,800.00	-	-	1,440,000.00	3,600.00	14,400.00	-	-
9/1/2029	45,000.00	10,800.00	55,800.00	66,600.00	66,600.00	1,395,000.00	3,600.00	59,400.00	73,800.00	15,225.00
3/1/2030	-	10,462.50	10,462.50	-	-	1,395,000.00	3,487.50	13,950.00	-	-
9/1/2030	45,000.00	10,462.50	55,462.50	65,925.00	65,925.00	1,350,000.00	3,487.50	58,950.00	72,900.00	-
3/1/2031	-	10,125.00	10,125.00	-	-	1,350,000.00	3,375.00	13,500.00	-	-
9/1/2031	45,000.00	10,125.00	55,125.00	65,250.00	65,250.00	1,305,000.00	3,375.00	58,500.00	72,000.00	-
3/1/2032	-	9,787.50	9,787.50	-	-	1,305,000.00	3,262.50	13,050.00	-	-
9/1/2032	45,000.00	9,787.50	54,787.50	64,575.00	64,575.00	1,260,000.00	3,262.50	58,050.00	71,100.00	-
3/1/2033	-	9,450.00	9,450.00	-	-	1,260,000.00	3,150.00	12,600.00	-	-
9/1/2033	45,000.00	9,450.00	54,450.00	63,900.00	63,900.00	1,215,000.00	3,150.00	57,600.00	70,200.00	-
3/1/2034	-	9,112.50	9,112.50	-	-	1,215,000.00	3,037.50	12,150.00	-	-
9/1/2034	45,000.00	9,112.50	54,112.50	63,225.00	63,225.00	1,170,000.00	3,037.50	57,150.00	69,300.00	-
3/1/2035	-	8,775.00	8,775.00	-	-	1,170,000.00	2,925.00	11,700.00	-	-
9/1/2035	50,000.00	8,775.00	58,775.00	67,550.00	67,550.00	1,120,000.00	2,925.00	61,700.00	73,400.00	-
3/1/2036	-	8,400.00	8,400.00	-	-	1,120,000.00	2,800.00	11,200.00	-	-
9/1/2036	50,000.00	8,400.00	58,400.00	66,800.00	66,800.00	1,070,000.00	2,800.00	61,200.00	72,400.00	-
3/1/2037	-	8,025.00	8,025.00	-	-	1,070,000.00	2,675.00	10,700.00	-	-
9/1/2037	50,000.00	8,025.00	58,025.00	66,050.00	66,050.00	1,020,000.00	2,675.00	60,700.00	71,400.00	-
3/1/2038	-	7,650.00	7,650.00	-	-	1,020,000.00	2,550.00	10,200.00	-	-
9/1/2038	50,000.00	7,650.00	57,650.00	65,300.00	65,300.00	970,000.00	2,550.00	60,200.00	70,400.00	-
3/1/2039	-	7,275.00	7,275.00	-	-	970,000.00	2,425.00	9,700.00	-	-
9/1/2039	50,000.00	7,275.00	57,275.00	64,550.00	64,550.00	920,000.00	2,425.00	59,700.00	69,400.00	-
3/1/2040	-	6,900.00	6,900.00	-	-	920,000.00	2,300.00	9,200.00	-	-
9/1/2040	55,000.00	6,900.00	61,900.00	68,800.00	68,800.00	865,000.00	2,300.00	64,200.00	73,400.00	-
3/1/2041	-	6,487.50	6,487.50	-	-	865,000.00	2,162.50	8,650.00	-	-
9/1/2041	55,000.00	6,487.50	61,487.50	67,975.00	67,975.00	810,000.00	2,162.50	63,650.00	72,300.00	-
3/1/2042	-	6,075.00	6,075.00	-	-	810,000.00	2,025.00	8,100.00	-	-
9/1/2042	55,000.00	6,075.00	61,075.00	67,150.00	67,150.00	755,000.00	2,025.00	63,100.00	71,200.00	-
3/1/2043	-	5,662.50	5,662.50	-	-	755,000.00	1,887.50	7,550.00	-	-
9/1/2043	55,000.00	5,662.50	60,662.50	66,325.00	66,325.00	700,000.00	1,887.50	62,550.00	70,100.00	-
3/1/2044	-	5,250.00	5,250.00	-	-	700,000.00	1,750.00	7,000.00	-	-
9/1/2044	55,000.00	5,250.00	60,250.00	65,500.00	65,500.00	645,000.00	1,750.00	62,000.00	69,000.00	-
3/1/2045	-	4,837.50	4,837.50	-	-	645,000.00	1,612.50	6,450.00	-	-
9/1/2045	60,000.00	4,837.50	64,837.50	69,675.00	69,675.00	585,000.00	1,612.50	66,450.00	72,900.00	-
3/1/2046	-	4,387.50	4,387.50	-	-	585,000.00	1,462.50	5,850.00	-	-
9/1/2046	60,000.00	4,387.50	64,387.50	68,775.00	68,775.00	525,000.00	1,462.50	65,850.00	71,700.00	-
3/1/2047	-	3,937.50	3,937.50	-	-	525,000.00	1,312.50	5,250.00	-	-
9/1/2047	60,000.00	3,937.50	63,937.50	67,875.00	67,875.00	465,000.00	1,312.50	65,250.00	70,500.00	-
3/1/2048	-	3,487.50	3,487.50	-	-	465,000.00	1,162.50	4,650.00	-	-
9/1/2048	60,000.00	3,487.50	63,487.50	66,975.00	66,975.00	405,000.00	1,162.50	64,650.00	69,300.00	-
3/1/2049	-	3,037.50	3,037.50	-	-	405,000.00	1,012.50	4,050.00	-	-
9/1/2049	65,000.00	3,037.50	68,037.50	71,075.00	71,075.00	340,000.00	1,012.50	69,050.00	73,100.00	-
3/1/2050	-	2,550.00	2,550.00	-	-	340,000.00	850.00	3,400.00	-	-
9/1/2050	65,000.00	2,550.00	67,550.00	70,100.00	70,100.00	275,000.00	850.00	68,400.00	71,800.00	-
3/1/2051	-	2,062.50	2,062.50	-	-	275,000.00	687.50	2,750.00	-	-
9/1/2051	65,000.00	2,062.50	67,062.50	69,125.00	69,125.00	210,000.00	687.50	67,750.00	70,500.00	-
3/1/2052	-	1,575.00	1,575.00	-	-	210,000.00	525.00	2,100.00	-	-
9/1/2052	65,000.00	1,575.00	66,575.00	68,150.00	68,150.00	145,000.00	525.00	67,100.00	69,200.00	-
3/1/2053	-	1,087.50	1,087.50	-	-	145,000.00	362.50	1,450.00	-	-
9/1/2053	70,000.00	1,087.50	71,087.50	72,175.00	72,175.00	75,000.00	362.50	71,450.00	72,900.00	-
3/1/2054	-	562.50	562.50	-	-	75,000.00	187.50	750.00	-	-
9/1/2054	75,000.00	562.50	75,562.50	76,125.00	76,125.00	-	187.50	75,750.00	76,500.00	-
Total	\$ 1,600,000.00	\$ 423,925.00	\$ 2,023,925.00	\$ 2,023,925.00			\$ 141,308.00	\$ 2,165,233.00	\$ 2,165,233.00	\$ 76,125.00

CITY OF FARGO, STATE OF NORTH DAKOTA

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF
\$6,400,000
CITY OF FARGO TAXABLE SALES TAX AND WATER REVENUE BOND

RECITATIONS

The City of Fargo, North Dakota (the "City"), hereby recites that by resolution of its governing body the City has:

1. Found and determined that it is necessary for the City to plan, design and construct filter modifications to the City's lime softening water treatment plant (the "Project").
2. Directed its engineer to prepare a report as to the general nature, purpose and feasibility of the Project and an estimate of the probable cost of the Project.
3. After receiving and approving the engineer's report, directed the engineer to prepare detailed plans and specifications for construction of the Project.
4. Approved the engineer's detailed plans and specifications for construction of the Project and caused a copy of such plans and specifications to be filed in the office of the City Auditor.
5. By publication, advertised for bids for construction of the Project.
6. Opened and made public the bids, entered them in the minutes of the meeting of the governing body at which they were considered and caused them to be kept by the City Auditor.
7. After requiring the engineer to make a careful and detailed statement of the estimated cost of the Project, awarded the contract to the lowest responsible bidder and approved the contractor's performance bond.
8. Applied to the North Dakota Department of Environmental Quality (the "Department") and the North Dakota Public Finance Authority (the "Public Finance Authority") for financial assistance to finance costs of the Project, which application has been approved.
9. Performed all other acts required by the Constitution and laws of North Dakota prerequisite to the issuance and sale of revenue bonds and required by the Home Rule Charter and ordinances of the City of Fargo for the purpose of providing money to pay for the cost of the Project in the manner required of the City by law with full power and authority conferred on it as a political subdivision and municipality of North Dakota.
10. Enacted City Code Article 3-20, dedicating the revenues raised and collected pursuant to the sales and use tax (the "Sales Tax") imposed and collected pursuant to said article to infrastructure capital improvements, including water supply and treatment needs including construction or expansion of water treatment facilities, all of which is set forth

in Article 3(S) of the Home Rule Charter, as implemented by Article 3-20 of the Fargo Municipal Code.

RESOLUTION

Be it resolved by the governing body of the City:

SECTION 1. Authorization and Sale.

1.01. Ratification of Prior Acts. All acts performed, resolutions, motions, or ordinances adopted or passed, and all publications incidental to the construction and financing and refinancing of the Project, whether or not reflected in the official minutes and records of the City, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the City which are in any way inconsistent with this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

1.02. Authorization. It is hereby found and determined to be necessary for the City to issue \$6,400,000 in principal amount of its CITY OF FARGO TAXABLE WATER AND SALES TAX REVENUE BOND (the "Municipal Securities"), pursuant to N.D.C.C. ch. 40-35, Article 3(S) of the Home Rule Charter, and Article 3-20 of the Fargo Municipal Code, upon the terms as set forth in this Resolution for the purpose of constructing the Project and paying related costs of issuance.

1.03. Offer and Acceptance. The governing body of the City, in response to its application for financial assistance from the Department and the Public Finance Authority, has received an offer from the Public Finance Authority, subject to the approval of the Industrial Commission of North Dakota, to purchase the Municipal Securities at a price equal to the principal amount plus accrued interest, if any, to the date of purchase, which offer is more fully set out in a Loan Agreement to be entered into between the City and the Public Finance Authority (the "Loan Agreement"). It is hereby found and determined that the offer of the Public Finance Authority to purchase the Municipal Securities is reasonable and advantageous to the City and is hereby accepted, and the Loan Agreement, in substantially the form presented to the City at this meeting, is hereby accepted and authorized to be executed on behalf of the City by its Mayor and City Auditor (the "Authorized Officers"), with such modifications as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the Loan Agreement and to deliver it to the Public Finance Authority, which execution and delivery shall be conclusive evidence of the approval of any modifications with respect to the Loan Agreement.

SECTION 2. Term of Bonds.

2.01. Form. The Municipal Securities issued under this Resolution shall be designated CITY OF FARGO TAXABLE SALES TAX AND WATER REVENUE BOND, and shall be issued to the Public Finance Authority in the form of a single registered Municipal Security in substantially the form as attached hereto as Exhibit A.

2.02. Terms. The City authorizes the issuance of the Municipal Securities in the aggregate principal amount not to exceed \$6,400,000, dated the date of issuance and delivery to the Public Finance Authority.

The Municipal Securities shall bear interest commencing on the date of delivery thereof at the rate of 1.50% per year (plus an administrative fee as set out in the Loan Agreement), with principal payable in installments on September 1 of each of the years and in accordance with “Attachment A” attached to Exhibit A to this Resolution, subject however to the final amortization schedule to be attached to the Municipal Securities upon the final loan advance or upon any forgiveness thereof in accordance with Section 2.02 of the Loan Agreement. Interest shall be payable semiannually on each March 1 and September 1 commencing March 1, 2024 (or, if the Municipal Securities have not been delivered by such date, the first March 1 or September 1 thereafter). Interest will be payable only on funds actually advanced to the City by the Public Finance Authority as a draw on the Municipal Securities. The schedule below and attached to the Municipal Securities will be revised to reflect the actual principal amount loaned to the City at the completion of the Project and any loan forgiveness provided.

2.03. Payment to Registered Holders. The principal of and interest on the Municipal Securities shall be payable to the registered holder thereof at the address appearing on the registration books of the registrar in any coin or currency of the United States of America, which on the respective dates of payment is legal tender for the payment of public or private debts or by check or draft delivered to the registered holder thereof at the address appearing on the registration books of the registrar.

2.04. Registration. The Municipal Securities shall be registered as to both principal and interest and shall be initially registered in the name of and payable to the North Dakota Public Finance Authority. While so registered, principal of and interest on the Municipal Securities shall be payable at the office of the Bank of North Dakota, in Bismarck, North Dakota (the “Bank”), or such other place as may be designated by the Public Finance Authority in writing, delivered to the Registrar. The Bank shall act as Registrar and as such shall establish and maintain a register for the purpose of recording the names and addresses of the registered holders or assigns, and the date of such registration.

2.05. Transfer and Exchange. The Municipal Securities are transferable upon the books of the City at the principal office of the Bank of North Dakota, as bond registrar, or a successor bond registrar appointed by the Bank of North Dakota (the “Bond Registrar”), by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Municipal Securities of other authorized denominations. Upon such transfer or exchange, the City will cause new Municipal Securities to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Municipal Securities shall be required to be made during the 15 days next preceding an interest payment date, nor during the 45 days next preceding the date fixed for redemption of such Municipal Securities.

2.06. Registered Owner Deemed Owner. The City, the Bond Registrar and the paying agent may deem and treat the person in whose name any Municipal Securities are registered as the absolute owner thereof, whether the Municipal Securities are overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City, the Bond Registrar nor the

paying agent shall be affected by any notice to the contrary. The City shall pay the fees and expenses of the Bond Registrar and the paying agent.

2.07. Execution and Delivery. The Municipal Securities shall forthwith be prepared under the direction of the City Auditor and when so prepared shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Auditor and shall be authenticated by the manual signature of the Registrar. When the Municipal Securities have been so executed and authenticated, they shall be delivered by the City to the Public Finance Authority.

2.08. Redemption. The Municipal Securities shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Public Finance Authority, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

2.09. Authorization of Related Documents. The Mayor, City Auditor, and other authorized officers of the City are hereby authorized to execute such additional agreements, certificates, and documents required or appropriate in connection with the issuance of the Municipal Securities and the transactions contemplated by the issuance thereof.

2.10. Draws of Municipal Security Proceeds. The proceeds of the Municipal Securities are irrevocably appropriated to pay expenses necessarily incurred in the construction and completion of the Project and to pay costs associated with the issuance of the Municipal Securities. Draws on the Municipal Securities, in the form of Requisitions for Payment, shall be submitted by the City to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to the Public Finance Authority for approval and funding.

SECTION 3. Source of Payment. The City hereby dedicates and pledges the Net Revenues (as defined in Section 4.02 hereof) of the City's water treatment facility (the "Water Utility") and the Sales Tax (together the "Pledged Revenues") to the payment of the principal of and interest on the Municipal Securities on a parity basis with bonds previously issued or to be issued and secured by a pledge of the Pledged Revenues and permitted herein. The City has previously issued its Sales Tax Revenue Bonds, Series 2008B; Sales Tax Revenue Bonds, Series 2008D; Amended and Restated Sales Tax Revenue Bonds, Series 2013B and Water Revenue Bond, Series 2018C (the "Outstanding Bonds"; together with the Municipal Securities and any other obligations secured by the Pledged Revenues and on a parity therewith, the "Bonds").

The Net Revenues are to be deposited in the funds set forth in Section 4 hereof.

SECTION 4. Funds.

4.01. Water Utility Fund. The City has created, and will maintain, a WATER UTILITY FUND (the "Water Utility Fund"). The City shall credit and pay to the Water Utility Fund, as received, the entire gross revenues derived from the operation of the City's Water Utility, including any future additions thereto and betterments thereof, including all income and receipts derived from rates, fees and charges for services, facilities, products and by-products of the Water Utility furnished or sold to the City and its inhabitants and all other customers, and for the availability thereof, and from sale of any of the properties of the Water Utility not necessary to be retained,

and from the investment of any of the money so collected. On the books and records of the Water Utility Fund there shall be established and maintained the following funds as a part of the Water Utility Fund. Amounts on deposit in the Water Utility Fund from time to time shall be apportioned among said funds at least once in each calendar month and shall thereafter be held and administered and disbursed from the several funds established in this section.

4.02. Operation and Maintenance Fund. The City has created, and will maintain, an OPERATION AND MAINTENANCE FUND (the "Operation and Maintenance Fund"). Upon each such monthly apportionment, as a first lien and charge on the gross revenue, the City shall transfer to the Operation and Maintenance Fund from amounts on deposit in the Water Utility Fund such sum as shall be needed, over and above any credit balance held therein, to pay all claims then due and allowed which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the utility, and to pay such expenses estimated to accrue for a period of one month, and to maintain a reasonable reserve for contingencies. Monies in the Operation and Maintenance Fund shall be used only to pay expenses of the foregoing type and not for major repairs, replacements, or capital improvements which are properly chargeable to replacement and depreciation reserves or surplus funds. All revenues in excess of such amount deposited to the Operation and Maintenance Fund shall be the Net Revenues (the "Net Revenues") of the Water Utility.

4.03. Sales Tax and Water Revenue Bond Fund. The City has created, and will maintain, a SALES TAX AND WATER REVENUE BOND FUND (the "Bond Fund"). Upon each such monthly apportionment, out of the Pledged Revenues on hand at the time of each such distribution, an amount equal to not less than one-sixth (1/6) of the amount necessary to pay interest which becomes due on the next interest payment dates for the Bonds and an amount equal to not less than one-twelfth (1/12) of the sum of principal payments to become due on the next principal payment dates for the Bonds. These amounts may be reduced by an amount equal to the interest earnings on the Bond Fund credited to the Bond Fund subsequent to the last monthly apportionment. If Pledged Revenues on hand at any time are insufficient to permit the transfer to the Bond Fund of the full amount so required, such deficiencies shall be restored out of the next Pledged Revenues thereafter received. There shall also be credited to said fund the accrued interest, if any, paid on each subsequent issue of Additional Bonds and Additional SRF Bonds, if any. The money in said fund shall be solely for the purposes of paying principal of, and premium, if any, and interest on Bonds, as such principal, premium and interest respectively come due. Subordinate Bonds (hereinafter defined) shall not be payable from the Bond Fund.

In the event Pledged Revenues on deposit in the Bond Fund and amounts on deposit in the Surplus Fund available for transfer to the Bond Fund are insufficient to pay the principal of, and premium, if any, and interest on the Bonds then due, such Pledged Revenues and the transfers from the Surplus Fund shall be apportioned among each series of Bonds in proportion to the amount of principal, premium, if any, and interest then payable on the Bonds of each series. Transfers from any SRF Reserve Fund, including the Reserve Account established hereunder, shall be applied only to principal, premium, if any, and interest payable on the related series of SRF Bonds.

4.04. Surplus Fund. All surplus Net Revenues from time to time received in excess of the current requirements of the Bond Fund and any SRF Reserve Fund shall be credited on the books of the City to the Surplus Fund of the Water Utility Fund, provided that City reserves the

right to create additional funds within said fund for the purpose of segregating any of such surplus Net Revenues which may be pledged and appropriated to the payment of any Subordinate Bonds hereafter issued to finance improvements, replacements, or repairs of the Water Utility, subject to the prior lien on the Net Revenues of the Bonds. Surplus Net Revenues on hand from time to time shall be available and shall be used to the full extent necessary to restore a deficiency in the Operation and Maintenance Fund, the Bond Fund, the Reserve Account and any other SRF Reserve Fund, but when not so needed may be used to pay for capital improvements, replacements, or repairs to the Water Utility, or to pay principal and interest on Subordinate Bonds hereafter issued for such purposes, or they may be used to redeem and pay prior to maturity Bonds (other than Subordinate Bonds) when and as such bonds become redeemable according to their terms, or purchase Bonds (other than Subordinate Bonds) in the secondary market when deemed advisable. The City shall maintain in the Surplus Fund such cash or investments as it shall from time to time determine to constitute an adequate reserve for operation or maintenance emergencies and for depreciation and contemplated improvement or replacement of the Water Utility. At the end of the City's fiscal year, if there are no deficiencies in the Operation and Maintenance Fund, the Bond Fund, or any SRF Reserve Fund and there is an adequate reserve for operation and maintenance emergencies and for depreciation, contemplated improvements and replacements of the Water Utility, the City may transfer monies in excess of such requirements to other funds of the City in accordance with and subject to the limitations contained in the ordinances of the City and the provisions of state law.

4.05. Reserve Account. A separate SRF Reserve Fund (the "Reserve Account") is established within the Water Utility Fund and shall be funded to the total amount of \$76,125.00, in five installments of \$15,225.00, payable on each September 1 beginning September 1, 2025, which may be reduced proportionately if the final loan amount is less than the approved loan amount of \$6,400,000. Moreover, the City shall receive a credit for funds already on deposit in the Reserve Account.

SECTION 5. Additional Net Revenues Parity Pledges.

5.01. Parity Bonds. The City reserves the further right of issuing additional municipal securities payable from the Sales Tax or Net Revenues on a parity as to both principal and interest with the Municipal Securities, provided that the Pledged Revenues received during the last fiscal year prior to such issuance shall have been in an amount not less than one hundred ten percent (110%) of the average annual amount of principal and interest to become due during the remaining term of the then outstanding obligations payable from the Pledged Revenues. However, if rates and charges for the Water Utility have been increased since the beginning of the last fiscal year next preceding the issuance of such additional municipal securities, the net revenues received during such preceding fiscal year shall be deemed to be the amount which would have been received in the preceding fiscal year had the increased rates and charges been in effect throughout such preceding fiscal year. Also, for purposes of this test, the Net Revenues may be adjusted by including the additional Net Revenues, as determined by a competent feasibility or rate study, to be realized from the area to be served by the improvements to be constructed with such additional municipal securities, provided that the interest on the additional municipal securities is funded until the date of completion of the improvements to be constructed with the proceeds of the additional municipal securities or other available funds.

5.02. Subordinate Lien Bonds. Except as authorized in Sections 5.01, 5.02 and this 5.03, the City will issue no additional bonds or other obligations of any kind payable from or constituting a lien upon the Pledged Revenues, unless the lien thereof is expressly made junior and subordinate to the lien on the then outstanding Bonds issued hereunder (“Subordinate Bonds”), and such additional bonds or obligations shall not be payable from the Bond Fund or any SRF Reserve Fund but may be payable from funds permitted to be transferred from the Surplus Fund to other funds of the City pursuant to Section 4 of this Resolution.

SECTION 6. Water Utility Covenants.

6.01. Rate Covenant. The City will establish, impose and collect rates and charges for the services, facilities, products, and by-products of the Water Utility, according to a schedule projected to generate Net Revenues in each fiscal year at least equal to, together with other revenues expected to be available therefor including the Sales Tax, 110% of the actual annual debt service on all Bonds outstanding, and to pay all amounts owed to any insurer of the Bonds outstanding. If the actual Net Revenues, together with other revenues expected to be available therefor including the Sales Tax, fail to meet this level, the City shall promptly increase its rates and charges to a level so that Net Revenues are projected to meet the required level. Annual debt service shall be determined for each fiscal year on the basis of a bond year ending on the January 1 immediately following the end of each fiscal year.

6.02. Covenant to Maintain Water Utility. The City will continue to own, operate and maintain the Water Utility, and will not sell or otherwise dispose of any properties thereof; provided, that any properties of the Water Utility not essential to continued operation of the Water Utility in satisfaction of other covenants herein prescribed may be sold or otherwise disposed of at their market value, and the proceeds thereof used to purchase other property required for the Water Utility or to pay principal and interest on obligations issued with respect to the Water Utility. The City will continue to maintain the Water Utility in good and efficient operating condition, supplying water service and facilities to the City and its inhabitants, and will not authorize or enfranchise the establishment of any other utility for such purpose.

6.03. General. The City covenants and agrees with the Holders from time to time of all the Municipal Securities that until all the Municipal Securities are fully discharged as provided in this Resolution, it will continue to hold, maintain and operate the Water Utility as a public convenience, free from all liens thereon or on the income therefrom, and will maintain, expend and account for its Water Utility Fund and the several funds therein as provided in Section 4, and will not issue bonds, notes or other indebtedness secured by or payable from the income or revenues of the Water Utility except upon the conditions and in the manner prescribed in Section 5, and will perform and cause all officers and employees of the City to perform and enforce each and all of the additional covenants and agreements set forth in this Section 6. The City further covenants to cause the Water Utility to be properly maintained and no free service shall be provided to any person or corporation.

6.04. Competing Service. The City will not establish or enfranchise any other facilities in competition with the facilities of the Water Utility.

6.05. Property Insurance. The City will cause all buildings, properties, fixtures and equipment constituting a part of the Water Utility to be kept insured with a reputable insurance carrier or carriers, qualified under the laws of North Dakota, in such amounts as are ordinarily carried, and against loss or damage by such hazards and risks as are ordinarily insured against, by public bodies owning and operating properties of a similar character and size; provided that if at any time the City is unable to obtain insurance, it will obtain insurance in such amounts and against risks as are reasonably obtainable. The proceeds of all such insurance shall be available for the repair, replacement or reconstruction of damaged or destroyed property, and until paid out in making good such loss or damage, are pledged as security for the outstanding Bonds. All insurance proceeds received in excess of the amount required for restoration of the loss or damage compensated thereby shall be and become part of the revenues appropriated to the Water Utility Fund. If for any reason insurance proceeds are insufficient for the repair, replacement and reconstruction of the insured property, the City shall supply the deficiency from revenues on hand in the Surplus Fund.

6.06. Liability Insurance and Surety Bonds. The City will carry insurance against liability of the City and its employees for damage to persons and property resulting from the operation of the Water Utility in such amounts as the City determines from time to time to be necessary or advisable by reason of the character and extent of such operation. It will also cause all persons handling money and other assets of the Water Utility Fund to be adequately bonded for the faithful performance of their duties and to account for and pay over such money to the City. All amounts received under such insurance and bonds shall be applied to the payment of the loss or damage covered thereby. The premiums for all insurance and bonds required by this Section 6.06 and Section 6.05 constitute part of the operating expenses of the Water Utility, but no insurance liabilities of the City in excess of amounts received under such insurance and bonds shall constitute a lien or charge on revenues or any other assets herein or otherwise pledged to the Water Utility Fund.

6.07. Cost of Insurance and Accounting. The insurance and fidelity bond premiums and the cost of the bookkeeping and audits herein provided for and of the billings and collection of the gross revenues shall be payable from the Operation and Maintenance Fund.

6.08. General Covenants. The City hereby covenants and agrees with the owners of all outstanding Municipal Securities as follows:

- a. That it will, to the extent the Pledged Revenues are sufficient, promptly cause the principal and interest on all Municipal Securities to be paid as they become due.
- b. That it will maintain complete books and records relating to the operation of the Water Utility, the Bond Fund, Reserve Account, Operation and Maintenance Fund, and Surplus Fund, in accordance with generally accepted accounting principles, and will cause such books and records to be audited annually at the end of each fiscal year, and an audit report prepared and made available for inspection of owners of the Municipal Securities.
- c. That it will not issue bonds or other obligations having a claim superior to the claim of the Municipal Securities upon the Net Revenues of the Water Utility.

- d. That it will promptly deposit into the Bond Fund all sums required to be so deposited.
- e. That it will operate the Water Utility in a sound, efficient and economic manner.

SECTION 7. Miscellaneous.

7.01. Limited Obligations. The Municipal Securities issued hereunder shall not constitute a charge, lien or encumbrance upon any property of the City, and no holder or holders thereof shall ever have the right to compel any exercise of the taxing power of the City to pay the principal and interest on the Municipal Securities. The principal and interest of the Municipal Securities shall not be a general obligation of the City but are payable solely from the Pledged Revenues as set forth in this resolution.

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Adopted December 12, 2023.

CITY OF FARGO

By: _____
Dr. Tim Mahoney, Mayor

ATTEST:

Steven Sprague, City Auditor

FORM OF MUNICIPAL SECURITY

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
COUNTY OF CASS

CITY OF FARGO

TAXABLE SALES TAX AND WATER REVENUE BOND

No. R-1 \$6,400,000

<u>Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
1.50%	September 1, 2054	[_____], 2023	NONE

REGISTERED OWNER: NORTH DAKOTA PUBLIC FINANCE AUTHORITY

PRINCIPAL AMOUNT: SIX MILLION FOUR HUNDRED THOUSAND DOLLARS

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, North Dakota (the "City"), a political subdivision of and existing under and pursuant to the laws of the State of North Dakota, for value received, hereby promises to pay solely from the sources set forth herein to the Registered Owner specified above, or registered assigns, the Principal Amount (set forth above), or such lesser amount actually disbursed to the City, on or before the Maturity Date (set forth above). Interest shall accrue from the Date of Original Issuance at the annual rate of one and one half percent (1.50%) and shall be payable semiannually on March 1 and September 1, commencing March 1, 2024. The Principal Amount of this Bond is subject to mandatory redemption on the dates and in the amounts set forth in Attachment A to this Municipal Security, which Attachment A shall be revised in accordance with Section 2.02 of the Loan Agreement in the event funds are advanced to the City less than as originally set forth in the Loan Agreement. The City hereby promises to pay the Administrative Fee, as defined in the Loan Agreement (being one half of one percent (0.50%) per annum on the outstanding principal amount of the Bond), payable semi-annually on each March 1 and September 1. All payments due with respect to this Bond are payable in lawful money of the United States of America at the main office of the Bank of North Dakota, in Bismarck, North Dakota, as paying agent and Registrar under the Resolution hereinafter described or of its successor as such. Interest shall be paid by check or draft mailed to the Registered Owner at the Owner's address set forth on the registration books or by wire or other electronic funds transfer.

This Municipal Security is issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota, including N.D.C.C. ch. 40-35, Article 3(S) of the Home Ruler Charter and Article 3-20 of the Fargo Municipal Code (the "Act"), and pursuant to a Resolution (the "Resolution") and a Loan Agreement (the "Loan Agreement") adopted and entered into by the City. Reference is hereby made to the Resolution and the Loan Agreement for a

description of the Funds and Accounts pledged to the payment of the Municipal Securities and the rights of the Registered Owner of the Municipal Securities. The principal and interest payments for this Bond and the Administrative Fee payable hereunder are not general obligations of the City, but are payable solely from Pledged Revenues, including Sales Tax and Net Revenues received by the City from the operation of the water treatment facility of the City of Fargo, and from any future additions thereto and betterments thereof.

This Municipal Security is transferable, as provided in the Resolution and the Loan Agreement, only upon books of the City kept by the Bank of North Dakota, as bond registrar, by the Registered Owner hereof in person or by the Owner's duly authorized attorney, or it may be surrendered in exchange for new Municipal Securities of the same aggregate principal amount, maturity and interest rate, as provided in the Resolution.

This Municipal Security shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Registered Owner, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

It is further certified, recited and declared that all acts, conditions and things required by the Constitution and the statutes of the State of North Dakota to exist, to have happened and to have been performed precedent to and in connection with the issuance of the Municipal Securities have been performed in due time, form and manner as required by law; and that the issuance of the Municipal Securities is within every debt and other limit prescribed by law.

IN WITNESS WHEREOF, the City has caused this Municipal Securities to be executed in its name by the manual or facsimile signatures of its Mayor and of its City Auditor, all as of the Date of Original Issue set forth above.

CITY OF FARGO, NORTH DAKOTA

By: _____
Tim Mahoney
Mayor

ATTEST:

Steven Sprague City
Auditor

CERTIFICATE OF AUTHENTICATION

This Municipal Security is one of the Municipal Securities described in and issued under the provisions of the within-mentioned Resolution.

BANK OF NORTH DAKOTA

By: _____
Authorized Representative

ASSIGNMENT

For Value received the undersigned hereby sells, assigns and transfers unto _____ the within-mentioned Municipal Security and hereby irrevocably constitutes and appoints _____ attorney-in-fact, to transfer the same on the books of registration thereof, with full power of substitution in the premises.

Dated: _____, 20__

Social Security or other identifying number of Assignee

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Municipal Security in every particular, without alteration or any change whatsoever.

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company.

ATTACHMENT A

[insert initial amortization schedule]

CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that attached hereto is a full, true and correct copy of the Resolution adopted by the governing body of the City of Fargo at the meeting held on December 12, 2023, and that such Resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this ___ day of [_____], 2023.

City Auditor

(SEAL)

**NORTH DAKOTA
STATE REVOLVING FUND PROGRAM**

LOAN AGREEMENT

**NORTH DAKOTA PUBLIC FINANCE AUTHORITY
(Lender)**

and

**CITY OF FARGO, NORTH DAKOTA
(Municipality)**

(To be completed by Public Finance Authority)

Dated Date of Loan Agreement: [_____], 20[]

SRF Program (circle one): **Clean Water SRF**
Drinking Water SRF

State Act (circle one): **N.D.C.C. ch. 61-28.2 (Clean Water)**
N.D.C.C. ch. 61-28.1 (Drinking Water)

Summary Description of Project: **Construction of water treatment facility
improvements**

Approved Loan Amount: **\$6,400,000**

Construction period: **October, 2023-December, 2025**

Form of municipal securities: **Taxable Sales Tax and Water Revenue Bond, Series
[]**

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EXHIBIT A: Description of Project

EXHIBIT B: Municipal Securities Payment Schedule

EXHIBIT C: Form of North Dakota State Revolving Fund Program Certificate Relating to
Lobbying and Litigation

LOAN AGREEMENT

THIS LOAN AGREEMENT is made and entered into as of [_____], 20[___], by and between the NORTH DAKOTA PUBLIC FINANCE AUTHORITY (the "Authority"), an agency and instrumentality of the State of North Dakota (the "State"), and the CITY OF FARGO, NORTH DAKOTA (the "Municipality"), a political subdivision of the State.

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

"Administrative Fee" means an annual fee of 1/2 of one percent (.50%) of the outstanding principal amount of the Loan or such lesser amount, if any, as the Authority may approve from time to time.

"Authority Act" means N.D.C.C. ch. 6-09.4.

"Authority Bonds" or "Bonds" mean bonds of the Authority authorized, authenticated, and delivered in order to finance or refinance the Project pursuant to this Loan Agreement and to enable the Department, through the Authority, to draw EPA capitalization grant funds for deposit in the SRF.

"Costs" means those costs associated with the Project and the Loan that are eligible to be funded from the SRF, as determined by the Department and the Authority.

"Department" means the North Dakota Department of Health.

"EPA" means the United State Environmental Protection Agency.

"Event of Default" means any occurrence or event specified in Section 5.01 of this Loan Agreement.

"Financial Obligation" means: (I) a debt obligation; (ii) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of a debt obligation or derivative instrument. Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board (MSRB) consistent with the Rule.

"General Records" shall have the same meaning given in Section 3.01(f) of this Loan Agreement.

"Loan" means the loan evidenced by the Municipal Securities, made by the Authority to the Municipality pursuant to this Loan Agreement to finance or refinance all or a portion of the Costs of the Project.

“Loan Agreement” means this Loan Agreement, including the Exhibits attached to, and hereby made a part hereof, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

“Loan Closing” means the date upon which the Municipality shall issue and deliver the documents listed in Section 2.05 and shall be eligible to receive the Loan.

“Loan Commitment” means the offer by the Department to provide financial assistance to the Municipality from the SRF, subject to approval by the Authority. The Loan Commitment, when accepted by the Municipality through appropriate action of its governing body, shall be a “binding commitment” within the meaning of that term in the SRF Act.

“Municipal Bond Resolution” means the resolution(s) or ordinance(s) of the governing body of the Municipality authorizing the issuance of the Municipal Securities.

“Municipality” means the borrower under this Loan Agreement, which must be a “political subdivision,” as defined in section 6-09.4-03(5) of the Authority Act.

“Municipal Securities” means municipal securities, as such term is defined in the Authority Act, executed and delivered by the Municipality to the Authority to evidence the Loan in accordance with the Municipal Bond Resolution.

“Net Revenues” has the meaning assigned in the Municipal Bond Resolution.

“Pledged Revenues” has the meaning assigned in the Municipal Bond Resolution.

“Project” means the improvement or undertaking of the Municipality described in Exhibit A attached hereto, all or a portion of the Costs of which are financed or refinanced by the Authority from the SRF through the making of the Loan under this Loan Agreement.

“Sales Tax” has the meaning assigned in the Municipal Bond Resolution.

“SRF” means the revolving loan fund(s) created by the State Act.

“SRF Act” means, for purposes of the State Water Pollution Control Revolving Loan Fund Act, the Federal Clean Water Act, and for purposes of the State Safe Drinking Water Act, the Federal Safe Drinking Water Act, including any regulations and guidelines promulgated thereunder.

“State Act” means, for purposes of the Federal Clean Water Act, N.D.C.C. ch. 61-28.2 (the State Water Pollution Control Revolving Loan Fund Act), and, for purposes of the Federal Safe Drinking Water Act, N.D.C.C. ch. 61-28.1 (the State Safe Drinking Water Act).

“System Records” shall have the same meaning given in Section 3.01(f) of this Loan Agreement.

“Trustee” means the Trustee appointed by the Authority pursuant to the State Revolving Fund Program Master Trust Indenture and its successor or successors and any other trustee which may at any time be substituted in its place as Trustee pursuant to the Indenture.

“Utility” means the Municipality’s water utility and treatment and distribution system, including any improvements, betterments, additions, renewals and replacements thereto.

Section 1.02. Additional Terms. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

[The remainder of this page left intentionally blank.]

ARTICLE II

LOAN; OBLIGATIONS; DISCLAIMER; DELIVERY OF DOCUMENTS

Section 2.01. The Loan. The Authority hereby agrees to loan and disburse to the Municipality, and the Municipality agrees to borrow and accept from the Authority, the Loan in the principal amount of the Municipal Securities in the amount not to exceed the Loan Commitment, plus accrued interest, if any; provided that the Public Finance Authority shall be under no obligation to make the Loan if the Municipality does not deliver the documents listed in Section 2.06 to the Public Finance Authority on the Loan Closing in forms acceptable to the Public Finance Authority and its counsel or if an Event of Default under this Loan Agreement has occurred and is continuing. The Municipality shall use the proceeds of the Loan to pay the Costs of the Project in accordance with the Municipal Bond Resolution and this Loan Agreement.

Section 2.02. Disbursement of Loan Proceeds. The Authority will disburse the Loan upon (a) execution and delivery by the Municipality of the documents described in Section 2.06, (b) issuance and delivery by the Municipality of the Municipal Securities to the Authority, and (c) submission to and approval by the Department and the Authority of Requisitions for Payment in the form approved by the Department.

Section 2.03. Draws of Municipal Securities Proceeds. The proceeds of the Municipal Securities are appropriated by the Municipality to pay expenses necessarily incurred in the construction and completion of the Project and the issuance of the Municipal Securities. Requests for draws on the Loan, in the form of Requisitions for Payment, shall be submitted by the Municipality to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to the Authority and the Trustee for approval and funding. After all claims and expenses with respect to the Project and the issuance of the Municipal Securities have been duly paid and satisfied, the amortization schedule for the Municipal Securities shall be adjusted to reflect the total principal amount drawn under this Loan Agreement, and shall also be adjusted upon any loan forgiveness provided by the Public Finance Authority.

Interest and the Administrative Fee shall accrue on the outstanding amount of the Loan advanced by the Public Facilities Authority from the date of first advance.

Section 2.04. Unconditional Obligations. The Municipality shall not be obligated to make any payments required to be made by any other political subdivision with respect to the lending of funds by the Authority from the SRF.

Section 2.05. Disclaimer of Warranties. The Municipality acknowledges and agrees that (i) neither the Authority nor the Department has made or makes any warranty or representation, either express or implied as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto; and (ii) in no event shall the Authority, nor the Department or their respective officers, directors, employees, or agents be liable or responsible for any direct, incidental, indirect, special or consequential damages in connection with or arising

out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Project.

Section 2.06. Delivery of Documents. Concurrently with the execution and delivery of this Loan Agreement, the Municipality will cause each of the following items to be delivered to the Authority:

- (a) Executed counterparts of this Loan Agreement.
- (b) An executed lobbying and litigation certificate covering certain restrictions pertaining to the use of grant or loan funds awarded in connection with the Loan.
- (c) Copies of the Municipal Bond Resolution adopted December 12, 2023 by the governing body of the Municipality authorizing the execution and delivery of this Loan Agreement and the Municipal Securities, certified by an authorized officer of the Municipality.
- (d) An arbitrage certificate and a closing certificate covering such matters as may be agreed upon by the Municipality and the Authority.
- (e) An opinion or opinions of the Municipality's counsel which may be given by one or more counsel, covering such matters concerning the validity and tax status of the Municipal Securities as may be agreed upon by the Municipality and the Authority.
- (f) An additional bond certificate (or parity bond certificate) in a form satisfactory to the Authority certifying Pledged Revenues received by the Municipality during the most recent fiscal year-end were more than 1.10 times the average annual amount of principal and interest to become due each year on all outstanding municipal securities payable from the Pledged Revenues, including the Municipal Securities, during the remaining term of the outstanding municipal securities.
- (g) Such other certificates, documents, opinions and information as the Authority may require.

The documents referred to above must be prepared and provided by the Municipality to the Authority prior to the Loan Closing for review and approval.

[The remainder of this page left intentionally blank.]

ARTICLE III

COVENANTS AND REPRESENTATIONS

Section 3.01. Covenants and Representations of Municipality.

(a) Performance Under Loan Agreement. The Municipality covenants and agrees (i) to maintain the Project and Utility in good repair and operating condition and (ii) to cooperate with the Authority and the Department in the observance and performance of the respective duties, covenants, obligations and agreements of the Municipality and the Authority under this Loan Agreement.

(b) Completion of Project and Provision of Moneys Therefor. The Municipality covenants and agrees (i) to exercise its best efforts in accordance with prudent utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date; and (ii) to provide from its own fiscal resources all moneys in excess of the total amount of the Loan required to complete the Project.

(c) Disposition of Project. The Municipality covenants and agrees that it will not sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or the Utility or any other system which provides revenues for upkeep and maintenance of the Project except on ninety (90) days prior written notice to the Authority and, in any event, shall not sell, lease, abandon or otherwise dispose of the Project or Utility unless the following conditions are met: (i) the Municipality, with the approval of the Authority, shall assign this Loan Agreement and its rights and interests hereunder in accordance with Section 4.02 to the purchaser or lessee of the Project which must be a political subdivision as defined in the Authority Act, and such purchaser or lessee shall assume all duties, covenants, obligations and agreements of the Municipality under this Loan Agreement; and (ii) the Authority, in its sole discretion, by appropriate action determines that such sale, lease, abandonment or other disposition will not adversely affect (A) the ability of the Municipality or its assignees to meet its duties, covenants, obligations and agreements under the Municipal Bond Resolution, (B) the value of this Loan Agreement as security for the payment of Authority Bonds and interest thereon or (C) any agreement entered into by the Authority or the State through the Department with, or any condition of any grant received by the Authority or the State through the Department from, the United States of America, which is related to any SRF capitalization or EPA Bipartisan Infrastructure Law Emerging Contaminants grant received by the Authority or the State through the Department.

(d) Operation and Maintenance of Project. The Municipality covenants and agrees that it will, in accordance with prudent wastewater or drinking water treatment utility practice, as the case may be, (i) at all times operate the Utility, including the Project and the properties associated with and operated in conjunction with the Project and any business in connection therewith in an efficient manner, (ii) maintain the Utility and the Project in good repair, working order and operating condition, (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the Utility so that at all times the enterprise or business carried on in connection therewith shall be properly

and advantageously conducted; provided that this covenant shall not be construed as requiring the Municipality to expend any funds which are derived from sources other than the operation of the Utility or other receipts of such Utility which are not pledged under the Municipal Bond Resolution for such purpose, and provided further that nothing herein shall be construed as preventing the Municipality from doing so.

(e) The Municipality covenants and agrees that the proceeds of the Loan shall be used and expended in a manner consistent with the State Act and the SRF Act, all regulations and guidelines promulgated thereunder, and this Loan Agreement.

(f) Records; Accounts. The Municipality will, to the extent required by generally accepted government accounting principles, keep accurate records and accounts for the utility (the "System Records") separate from its other records and accounts (the "General Records"). The System Records will be maintained in accordance with generally accepted government accounting principles and will be audited annually or biennially by an independent accountant, which audit may be part of the annual or biennial audit of the General Records of the Municipality. The System Records and General Records will be made available for inspection by the Authority and the Department at any reasonable time. A copy of the Municipality's audited financial statements, including all written comments and recommendations of the auditor, will be furnished to the Authority within 150 days of the close of the fiscal year or years being audited. The Municipality agrees that its financial reports for the year or years which it receives draws under this Agreement shall be prepared in accordance with the Federal Single Audit Act and the Federal Office of Management and Budget's Circular A-133. A copy of the annual financial statement shall be submitted to the Authority.

(g) Inspections; Information. The Municipality will permit the Authority, the Department, and the Trustee, and any designated party to examine, visit and inspect, at any and all reasonable times, the property constituting the Project and the Utility generally, and to inspect and make copies of any accounts, books and records, including (without limitation) its Systems Records, General Records, and any other records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and will supply such reports and information as the Authority, the Department and the Trustee may reasonably require in connection therewith.

(h) Insurance. The Municipality shall maintain or cause to be maintained, in force, insurance policies with responsible insurers or self insurance programs providing against risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is usually carried by utilities constructing, operating and maintaining, works of the nature of the Project, including liability coverage, but in no case less than will satisfy all applicable regulatory requirements. The Authority, the Department and the Trustee may require the Municipality to provide them with evidence of insurance on the Project.

(i) Costs of Project. The Municipality certifies that the Costs of the Project provided to the Authority are a reasonable and accurate estimation, and upon direction of the Authority will provide a certificate from its engineer stating that such Costs are a reasonable and accurate estimation.

(j) Continuing Disclosure.

(i) So long as the Municipality shall constitute an obligated person within the meaning of S.E.C. Rule 15c2-12 (the "Rule") as in effect from time to time, the Municipality agrees to furnish to the Public Finance Authority any such information it requires in order to comply with the provisions of the Rule, including audited financial statements, and operating data with respect to the Municipality at such time and in such forms as the Public Finance Authority shall reasonably request. The Municipality consents to the inclusion of such information in the Public Finance Authority's official statement(s) used in connection with the issuance and sale or the re-marketing of its bonds or continuing disclosure with respect to its bonds (collectively, the "Disclosure Documents"), whether or not all or a portion of the proceeds of the bonds were or will be loaned to the Municipality.

(ii) The Municipality shall provide notice to the North Dakota Public Finance Authority of the occurrence of any of the following events with respect to the Municipal Securities in a timely manner not in excess of ten business days after the occurrence of the event:

- (A) Principal and interest payment delinquencies;
- (B) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (C) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (D) Substitution of credit or liquidity providers, if any, or their failure to perform;
- (E) Adverse tax opinions or the issuance by the Internal revenue Service of proposed or final determinations of taxability or of a Notice of Proposed Issue (IRS Form 5701-TEB);
- (F) Tender offers;
- (G) Defeasances;
- (H) Rating changes;
- (I) Bankruptcy, insolvency, receivership or similar event of the Municipality; or
- (J) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation, any of which reflect financial difficulties.

(iii) The Municipality shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Municipal Securities, if material, in a timely manner not in excess of ten business days after the occurrence of the event:

(A) Non-payment related defaults;

(B) Unless described in (ii)(E) above, other notices or determinations by the IRS with respect to the tax-exempt status of the Municipal Securities, or other events affecting the tax-exempt status of the Municipal Securities;

(C) Modifications to rights of holders of the Municipal Securities;

(D) Bond Calls;

(E) Release, substitution or sale of property securing repayment of the Municipal Securities;

(F) The consummation of a merger, consolidation or acquisition involving the Municipality or the sale of all or substantially all of the assets of the Municipality, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms;

(G) Appointment of a successor or additional trustee or the change of name of a trustee; or

(H) Incurrence of a Financial Obligation or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation, any of which affect security holders.

(iv) For the purposes of the event identified in subsection (ii)(I), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Municipality in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Municipality, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan or reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Municipality.

(v) Whenever the Municipality obtains knowledge of the occurrence of an event under subsection (iii), the Municipality shall as soon as possible determine if such event would constitute material information for holders of Municipal Securities. The Municipality shall submit the information in the format prescribed by the Public Finance Authority.

(vi) The Municipality agrees that from time to time it will also provide notice to the Public Finance Authority of the occurrence of other events, in addition to those listed above, if such other events are material with respect to the Municipal Securities.

(vii) The Municipality will provide, in a timely manner, to the Public Finance Authority, notice of a failure to satisfy the requirements of this Section.

(viii) At the request of the Public Finance Authority, the Municipality will certify and represent that the information with respect to the Municipality in any Disclosure Document does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; provided, however, that in no event will the Public Finance Authority require the Municipality to make any representation about any other information in the Disclosure Documents or as to any Disclosure Document in its entirety. If for any reason the Municipality determines that it is not able to make that certification and representation, it will provide to the Public Finance Authority the information for inclusion in the Disclosure Documents necessary for the Municipality to make the certification and representation.

(ix) If at any time during the period ending 90 days after the date the Municipality provides information to the Public Finance Authority for inclusion in a Disclosure Document any event occurs that the Municipality believes would cause the information with respect to the Municipality in the Disclosure Document to omit a material fact or make the statements therein misleading, the Municipality agrees to promptly notify the Public Finance Authority in writing of that event and provide information for inclusion in the Disclosure Document or an amendment thereof or a supplement thereto. At the request of the Public Finance Authority, the Municipality will also provide the certification and representation required in (viii) above with respect to that information.

(k) No Free Service. The Municipality will not furnish or supply, or cause to be furnished or supplied, any use, output, capacity or service of the Utility free of charge to any person, firm, corporation (public or private), public agency or instrumentality other than the Municipality itself.

(l) Commencement of Construction. The Municipality shall initiate construction of the Project within twelve (12) months after the Loan Closing.

(m) Archeological Artifacts. In the event that archaeological artifacts or historical resources are unearthed during construction excavation, the Municipality shall stop, or cause to be stopped, construction activities and will notify the superintendent of the State Historical Board of North Dakota and the Authority or the Department of such unearthing and follow all applicable state and federal laws and regulations governing such occurrence.

(n) Additional Covenants and Requirements. If necessary in connection with the Authority's issuance of the Authority Bonds or the making of the Loan, additional covenants and

requirements will be evidenced by certificates or other documents in the form or forms attached as an exhibit to, and made a part of, this Loan Agreement.

(o) Continuing Representations. The covenants and representations of the Municipality contained herein shall be true at the time of the execution of this Loan Agreement and the Municipality agrees that such covenants and representations will be binding and enforceable at all times during the term of this Loan Agreement.

(p) No Lobbying. No portion of the Loan may be used for lobbying or propaganda as prohibited by 18 U.S.C. §1913 or Section 607(a) of Public Law 96-74 or other federal restriction or regulation referenced in the form of North Dakota State Revolving Fund Program Certificate Relating to Lobbying and Litigation, including but not limited to Section 2 of such certificate, which is attached as Exhibit C to this Loan Agreement and shall be executed and delivered by the Municipality as a condition to closing pursuant to Section 2.06 of this Loan Agreement.

(q) Compliance with Federal Laws; Buy American Requirements. The Municipality covenants and agrees that it will comply with all federal law and requirements applicable to the Loan including, among others: (i) those imposed by the 2014 Appropriations Act, Public Law No: 113-76, related SRF regulations and policy guidelines; (ii) requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (a) the Municipality has requested and obtained a waiver from the Department pertaining to the Project or (b) the Department or Authority has otherwise advised the Municipality in writing that the American Iron and Steel Requirement is not applicable to the Project; and (iii) requirements imposed by the Infrastructure Investment and Jobs Act (“IIJA”), Public Law No. 117-58, which the Municipality understands includes, but is not limited to, the following requirements: that all of the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States (“Build America, Buy America Requirements”) unless (a) the Municipality has requested and obtained a waiver from the Department and the cognizant agency pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (b) the Department or Authority and the cognizant agency pertaining to the Project have otherwise advised the Municipality in writing that the Build America, Buy America Requirements are not applicable to the Project. In addition, the Municipality shall comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the Department, Public Finance Authority or any funding authority (such as the Environmental Protection Agency), such as performance indicators of program deliverables, information on costs and project progress. The Municipality understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Loan Agreement is a default hereunder.

(r) Record and Reporting Requirements. The Municipality will comply with all record keeping requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a federal agency, the Department or the Authority such as performance of program deliverables, information on costs and Project progress. The Municipality understands that (a) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (b) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Loan Agreement

may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Municipal Securities and/or other remedial actions.

(s) Compliance with Davis Bacon Act. The Municipality shall, to the extent applicable to the Loan or any related grant, comply with the Davis Bacon and Related Acts requirements. 40 U.S.C. 3141, et seq.

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ARTICLE IV

ASSIGNMENT

Section 4.01. Assignment and Transfer by Authority.

(a) The Municipality acknowledges that, other than the Administrative Fees payable pursuant to the Municipal Bond Resolution and this Loan Agreement, all interests of the Authority in and under this Loan Agreement and the Municipal Securities have been pledged as security for the Authority Bonds, and that if any Event of Default shall occur, the Authority or the Trustee shall be entitled to act hereunder. The Municipality hereby acknowledges and consents that the Authority or the Trustee may compel or enforce the right to receive payments required to be made by the Municipality hereunder and may compel or otherwise enforce observance and performance by the Municipality of its other duties, covenants, obligations and agreements hereunder, and that the right and authority to enforce such requirements may be further transferred, assigned, and reassigned in whole or in part to one or more assignees or subassignees without the necessity of obtaining the consent of, but after giving prior written notice to, the Municipality.

(b) In the event of any assignment or transfer of this Loan Agreement and the Municipal Securities, the Authority shall retain the right to compel or otherwise enforce observance and performance by the Municipality of its obligations and agreement to pay Administrative Fees.

Section 4.02. Assignment by Municipality.

(a) This Loan Agreement may not be assigned by the Municipality unless the following conditions shall be satisfied: (i) the Authority shall have approved the assignment in writing; (ii) the assignee shall be a governmental unit within the meaning of Section 141(c) of the Internal Revenue Code (unless waived in writing by the Authority), shall be a political subdivision as defined in the Authority Act and shall have expressly assumed in writing the full and faithful observance and performance of the Municipality's duties, covenants, agreements and obligations under this Loan Agreement; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Municipality under this Loan Agreement; and (iv) the Authority shall have received an opinion of its counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Authority or the State through the Department with, or any condition of any grant received by the Authority or the State through the Department from, the United States of America, which is related to any SRF capitalization or EPA Bipartisan Infrastructure Law Emerging Contaminants grant received by the Authority or the State through the Department.

(b) No assignment under this Section shall relieve the Municipality from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the Municipality shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

ARTICLE V

DEFAULTS AND REMEDIES

Section 5.01. Events of Default. If any of the following events occur, it is hereby defined and declared to be and to constitute an Event of Default:

(a) Failure by the Municipality to pay, or cause to be paid, any payment, including the payment of principal and interest on the Municipal Securities, required to be paid hereunder when due.

(b) Failure by the Municipality to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Municipality for borrowed money (other than the Loan and the Municipal Securities and after giving effect to any applicable grace period), the payments of which are secured by any revenues derived or to be derived from the Utility.

(c) Failure by the Municipality to pay, or cause to be paid, the Administrative Fee or any portion thereof when due or to perform or observe any other covenant, agreement or condition on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Municipality by the Authority, unless the Authority shall agree in writing to an extension of the time prior to its expiration; however, if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Authority may not unreasonably withhold its consent to an extension of time up to 120 days from the delivery of the written notice referred to above if corrective action is instituted by the Municipality within the applicable period and diligently pursued until the Event of Default is corrected.

(d) Default in the performance or breach of any covenant, warranty or representation made by or on behalf of the Municipality in this Loan Agreement or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan or in connection with the Municipal Securities.

(e) A petition is filed by or against the Municipality under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Municipality such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal; or the Municipality shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator or trustee of the Municipality or any of its property) shall be appointed by court order to take possession of the Municipality or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

Section 5.02. Notice of Default. The Municipality shall give the Authority prompt telephonic notice of the occurrence of any Event of Default at such time as the Municipality

becomes aware of the existence thereof. Any telephone notice pursuant to this Section 5.02 shall be confirmed in writing as soon as practicable by the Municipality.

Section 5.03. Remedies on Default. Whenever an Event of Default referred to in Section 5.01 shall have occurred and be continuing, the Authority shall have the right to take, or to direct the Trustee or its authorized agent to take, any action permitted or required under the Municipal Bond Resolution and this Loan Agreement and to exercise whatever other remedy at law or in equity available to the Authority to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Municipality hereunder. The Public Finance Authority may also exercise one or more of the following remedies: (i) withhold approval of any disbursement request, (ii) reject any pending application by the Municipality for financial assistance, and (iii) to the extent permitted by law, demand immediate payment of the Loan in full and, upon such demand, the outstanding principal amount of the Loan will be immediately due and payable, with interest accrued thereon to the date of payment.

Section 5.04. Application of Moneys. Any moneys collected by the Authority pursuant to Section 5.03 shall be applied (a) first, to pay interest due and payable on the Municipal Securities, (b) second, to pay principal due and payable on the Municipal Securities, (c) third, to pay any other amounts due and payable under this Loan Agreement.

Section 5.05. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Authority or the Trustee, if any, is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee, if any, to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

Section 5.06. Retention of Authority's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof or of the Municipal Bond Resolution, or anything else to the contrary contained herein, the Authority shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Municipality at law or in equity, as the Authority may, in its discretion, deem necessary to enforce the obligations of the Municipality to the Authority pursuant to this Loan Agreement and the Municipal Bond Resolution.

Section 5.07. Default by Authority. In the event of any default by the Authority under any covenant, agreement or obligation of this Loan Agreement, the Municipality may pursue any available remedy at law or in equity, including without limitation suit for damages or injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the Authority hereunder as may be necessary or appropriate.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Notices. All notices, certificates or other communications under this Loan Agreement shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Municipality, the Authority and the Department at the following addresses:

(a) Authority:

North Dakota Public Finance Authority
1200 Memorial Highway
P.O. Box 5509
Bismarck, North Dakota 58506-5509
Attention: Executive Director

(b) Department:

North Dakota Department of Environmental Quality
Municipal Facilities
4201 Normandy Street
Bismarck, ND 58503-1324

(c) Municipality:

City of Fargo
225 4th Street North
Fargo, ND 58102
Attention: Finance Director

AND

City of Fargo
Attention: Water Utility Director
435 14th Ave S.
Fargo, ND 58103

Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

Section 6.02. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Department, the Authority and the Municipality and their respective successors and assigns.

Section 6.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision.

Section 6.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the Authority and the Municipality.

Section 6.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6.06. Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

Section 6.07. Consents and Approvals. Whenever the written consent or approval of the Authority is required under the provisions of this Loan Agreement, such consent or approval may only be given by the Authority unless otherwise provided by law or by rules, regulations or resolutions of the Authority or unless expressly delegated to the Authority's agent.

Section 6.08. Captions. The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or Sections of this Loan Agreement.

Section 6.09. Further Assurances. The Municipality will, at the request of the Authority, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement and the Municipal Securities.

Section 6.10. Entire Agreement. This Loan Agreement constitutes the entire and exclusive agreement between the parties relating to the specific matters covered herein. All prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the specific matters herein are hereby superseded, revoked and rendered ineffective for any purpose.

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NORTH DAKOTA PUBLIC FINANCE
AUTHORITY

By: _____
DeAnn Ament, Executive Director

[Signature Page –Loan Agreement (Series [____])]]

CITY OF FARGO, NORTH DAKOTA

By: _____
Dr. Tim Mahoney, Mayor

(S E A L)

ATTEST:

Steven Sprague, City Auditor

[Signature Page – Loan Agreement (Series [])]

EXHIBIT A

DESCRIPTION OF PROJECT

Construction of filter modifications to the City's existing lime softening water treatment facility.

EXHIBIT B

MUNICIPAL SECURITIES PAYMENT SCHEDULE

[insert initial amortization schedule]

EXHIBIT C

**NORTH DAKOTA STATE REVOLVING FUND PROGRAM
CERTIFICATE RELATING TO LOBBYING AND LITIGATION**

The undersigned hereby certify that they are, respectively, the duly elected or appointed, qualified and acting Mayor and City Auditor of the Municipality (as defined in the North Dakota State Revolving Fund Program Loan Agreement of even date (the "Loan Agreement")), and as such officials, they are familiar with the Municipality's property, affairs, and records, and the undersigned, as such officials, hereby further acknowledge, agree, and certify as follows:

1. No grant or loan funds awarded under this State Revolving Fund Program will be used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The Municipality shall abide by OMB Circulars A-21, A-87, and A-122, which generally prohibit the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.

2. The Municipality will comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The Municipality shall incorporate or refer to the language of this provision in the Loan Agreement for all loans exceeding \$100,000.

3. In accordance with the Byrd Anti-Lobbying Amendment, any Municipality which makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

Dated: [____], 20[____].

CITY OF FARGO, NORTH DAKOTA

By _____
Mayor

By _____
City Auditor

\$6,400,000 TAXABLE WATER REVENUE BONDS, SERIES []
CITY OF FARGO, NORTH DAKOTA

[], 20[]

CLOSING CERTIFICATE

The undersigned hereby certify that they are, respectively, the duly appointed, qualified and acting Mayor and City Auditor of the City of Fargo, North Dakota (the “Issuer”), and as such officials they are familiar with the Issuer’s properties, affairs and records. The undersigned, as such officials, hereby further certify as follows:

1. The Issuer is a political subdivision duly organized and existing under the laws of North Dakota and the persons shown on the attached Exhibit A constitute the duly appointed, qualified and acting members of the governing body of the Issuer and other officers of the Issuer on the date on which the Resolution was adopted or on the date of this Certificate, or both. All of the officers have been duly elected or appointed and qualified for their respective offices, and all officers are now in lawful incumbency of their respective offices.

2. The transcript in which this Closing Certificate is included contains true, correct and complete copies of resolutions adopted by the Issuer. All regular or special meetings of the governing body of the Issuer held in conjunction with the issuance of the Municipal Securities (as that term is defined herein) were conducted with prior notice to the public in compliance with N.D.C.C. §§ 44-04-19 and 44-04-20 and the Home Rule Charter and ordinances of the Issuer. All formal actions relative to the adoption of the Resolution (as that term is defined herein) were taken in an open meeting of the governing body of the Issuer, and all deliberations of the governing body of the Issuer which resulted in formal action were in meetings open to the public.

3. Pursuant to law and a resolution adopted by the governing body of the Issuer on December 12, 2023 (the “Resolution”), there has been duly prepared and executed on behalf of the Issuer, the \$6,400,000 Taxable Water Revenue Bond, Series [], dated [], 20[] (the “Municipal Securities”), in the form of a single certificate as provided in Exhibit A to the Resolution, maturing according to Schedule A attached to the Municipal Securities. The Municipal Securities have been executed on behalf of the Issuer with the official manual or facsimile signatures of the undersigned Mayor and City Auditor and authenticated by the manual signature of the authorized representative of The Bank of North Dakota, as registrar. The Issuer has authorized delivery and due performance of the Municipal Securities by all necessary action and execution, and the Municipal Securities, as executed and delivered, are in the form approved by the Resolution.

4. There is no litigation pending or, to the knowledge of the undersigned, threatened, to restrain or enjoin the issuance, sale or delivery of the Municipal Securities, or in any way contesting or affecting any authority for the issuance of the Municipal Securities or the validity and binding legal obligation thereof or security therefor, or any substantive or procedural debt limit restrictions, or to prevent the execution, registration, certification or delivery thereof, or to amend, cancel or revoke any proceedings taken incidental to the issuance of the Municipal Securities and the imposition of rates and charges for the payment thereof, or in any way contesting the corporate

or statutory existence, boundaries or powers of the Issuer or the right of its officers to their respective offices.

5. The representations and covenants contained in Article III of the Loan Agreement between the Issuer and the North Dakota Public Finance Authority (the “Authority”) are correct on and as of the date of the Loan Agreement and of this Certificate, and no Event of Default (as defined in the Loan Agreement) has occurred and is continuing, or would result from the sale and delivery of the Municipal Securities.

6. All notifications, certifications, hearings and all other actions required to be taken by or on behalf of the Issuer have been given, made, held or otherwise performed as required by N.D.C.C. Chapter 40-35 and the Home Rule Charter and ordinances of the Issuer for the imposition and collection of rates and charges authorized by the Resolution for the payment of principal and interest on the Municipal Securities, when due.

7. All outstanding obligations of the Issuer, including the Municipal Securities, are within all applicable state constitutional and statutory debt limitations. The annual Pledged Revenues, as such term is defined in the Resolution, received during the 2022 fiscal year of the City equaled or exceeded 110% of the average annual principal and interest to become due and payable on the Municipal Securities and the Outstanding Bonds, as defined in the Resolution.

[The remainder of this page left intentionally blank.]

8. The persons named below further certify that they were on the date of the execution of the Municipal Securities, and are on the date hereof, the duly elected or appointed and qualified incumbents of the offices of the Issuer stated opposite their respective names and the signatures appearing at the right of their respective names are their genuine signatures:

<u>Office</u>	<u>Name</u>	<u>Signature</u>
Mayor	Dr. Tim Mahoney	_____
City Auditor	Steve Sprague	_____

IN WITNESS WHEREOF, we have hereunto subscribed our respective official manual signatures on the date first written above.

CITY OF FARGO, NORTH DAKOTA

By _____
Mayor

By _____
City Auditor

EXHIBIT A

<u>Name</u>	<u>Office</u>	<u>Expiration of Term</u>
Dr. Tim Mahoney	Mayor	June 2026
Alette Preston	Deputy Mayor & Commissioner	June 2024
Denise Kolpack	Commissioner	June 2026
Dave Piepkorn	Commissioner	June 2026
John Strand	Commissioner	June 2024
Steve Sprague	City Auditor	Appointed
Michael J. Redlinger	City Administrator	Appointed
Susan Thompson	Director of Finance	Appointed