

FARGO CITY COMMISSION AGENDA
Monday, December 30, 2019 - 5:00 p.m.

Executive Session at 4:00 p.m.

Roll call.

PLEASE NOTE: The City Commission will consider a motion to retire into Executive Session to discuss negotiating strategy and/or to provide negotiating instructions to its negotiator, the Mayor, and also to consult with its attorneys regarding the terms of an existing agreement with, and the negotiation of a revised agreement with, the Fargo Municipal Airport Authority, which matters are reasonably anticipated to result in civil litigation, said matters being authorized by N.D. Century Code 44-04-19.1 subsections 2 and 9 as it would create an adverse fiscal effect on the bargaining and/or litigation position of the City if discussions regarding offers to be made or accepted, negotiating strategy to be taken, or legal consultation about negotiations or litigation were to occur in an open meeting AND for the purpose of attorney consultation pursuant to N.D. Century Code § 44-04-19.1(5) in the threatened and reasonably certain litigation matter relating to Ordinance revisions pertaining to Fargo Municipal Code §1-0305.

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, December 16, 2019).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 2nd reading and final adoption of an Ordinance Regarding Vehicles for Hire; 1st reading, 12/16/19.
- 2. Resolution Authorizing Officers to Make Deposits and Withdrawals and approval of the designated depositories.
- 3. Precinct locations for the 2020 elections.
- 4. Site Authorizations for the ND Association for the Disabled, Inc. at Cowboy Jack's (amended) and Africa International Restaurant/Night Club.
- 5. Applications for Games of Chance:
 - a. Hope Blooms for a raffle and raffle board on 2/20/20.
 - b. Red River Valley Fraternal Order of Police for a raffle board on 1/18/20.
 - c. TNT Kid's Fitness for a raffle and raffle board on 1/16/20.
 - d. St. John Paul II Catholic Schools for a raffle on 4/25/20.

- e. United Chinese American Fargo Moorhead (UCAFM) for a raffle on 1/24/20.
- f. NDSU Saddle and Sirloin for a raffle on 4/24/20.
- 6. Exercising the option to piggyback on the contract with AVI Systems, Inc. for audiovisual installations in the Civic Memorial Auditorium second floor meeting chambers (PBC17110).
- 7. Task Order No. 1 with AE2S Nexus in the amount of \$96,900.00 for evaluation and development of a funding plan to assist with future CIPs.
- 8. Amendment (First) to Encroachment Agreement (Garage) with Block 9 Partners, LLC.
- 9. Purchase Agreement with Judie A. VandeVoort (Project No. FM-15-K0).
- 10. Software as a Service Agreement with Tyler Technologies, Inc.
- 11. Agreement with Richland County Health Department for nurse practitioner services.
- 12. Agreement for Services with Fargo-Moorhead Metropolitan Council of Governments.
- 13. Agreement with Ed's Towing Service Inc. for junk vehicle removal services for 2020.
- 14. Subrecipient Agreement with HomeField 3, LLLP Community Development Block Grant Property Acquisition – 4225 28th Avenue South (CDRA19182).
- 15. Allocation of the 2019 and 2020 Social Service Funds in the amount of \$56,000.00 to Valley Senior Services.
- 16. Bid award for one LP sweeper/scrubber (RFP20001).
- 17. Bid award for one 60HP 4WD front loader tractor (RFP20002).
- 18. Contract negotiations with Sentry Security, Inc. for services at the GTC and MTG (RFP19179).
- 19. Lease Agreement (Addendum for Inclement Weather) with Jefferson Partners, LP.
- 20. Bills.
- 21. Negative Final Balancing Change Order No. 3 in the amount of -\$3,759.05 for Improvement District No. BN-19-B1.
- 22. Settlement Agreement and Release with Shark Properties, LLC (Improvement District No. BR-17-F1).

REGULAR AGENDA:

- 23. Update from John Shockley regarding WIFIA and Diversion Project Financing.
- 24. Public Hearings - 5:15 pm:
 - a. CONTINUE to 1/13/20 - Hearing on a dangerous building located at 18 8th Avenue North.
 - b. Renaissance Zone Project for TLK Holdings for a commercial lease project located at 117 Broadway North.

- c. Application filed by Chipotle Mexican Grill of Colorado, LLC d/b/a Chipotle Mexican Grill for a Class "F" Alcoholic Beverage License at 1204 19th Avenue North.
 - d. Application filed by TLK Holdings d/b/a Taco Shop for a Class "F" Alcoholic Beverage License at 117 Broadway North.
 - e. Application filed by Bachman Catering, LLC d/b/a VIP Room for a Class "F" Alcoholic Beverage License at 624 Main Avenue #1.
25. 2nd reading and final adoption of an Ordinance Relating to Classification of Ordinance Violations; 1st reading on 12/2/19; delayed from the 12/16/19 Regular Meeting.
26. Resolution Amending Resolution Authorizing Promissory Note (subject to budget appropriation) and Authorizing Grant of Security.
27. Applications for property tax exemptions for improvements made to buildings:
- a. Valley Christian Counseling Center Inc., 1112 Nodak Drive South (3 year).
 - b. Thomas G. and Kristen E. Pratt, 2828 27th Street South (3 year).
 - c. Benjamin E. and Gwen A. Thomas, 3125 38th Avenue South (3 year).
 - d. Peter J. and Patricia J. Fullerton, 726 Ironwood Court South (3 year).
 - e. Dakota Family Properties LLC, 1375 10th Avenue North (5 year).
 - f. William P. Jr. and Barbara A. Suppa, 3359 16th Avenue South, Unit 5 (5 year).
 - g. Morris P. and Margaret A. Doyle, 609 9th Street South (5 year).
 - h. Jennifer R. Berntson, 909 25th Avenue North (5 year).
 - i. James V.W. and Heidi L. Meline, 3538 10th Street South (5 year).
28. Appointments to the Board of Health.

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

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

①

ORDINANCE NO. _____

**A MORATORIUM ORDINANCE REGARDING THE SUSPENSION OF THE
ISSUANCE OF BUSINESS LICENSES PURSUANT TO ARTICLE 25-04
REGARDING VEHICLES FOR HIRE**

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 purposes; and,

WHEREAS, Article 25-04 of the Fargo Municipal Code addresses various matters regarding Vehicles for Hire; however, since the last amendment to the Ordinance, approved under the provisions of said Article, certain technology has become available for ride hailing services and the Ordinance revisions in 2015 fail to adequately address public safety in said Article; and,

WHEREAS, the Board of City Commissioners hereby finds that present requirements and oversight for said Vehicle for Hire business license creates a legitimate concerns about safety and about the orderly and appropriate operation of such business; and,

WHEREAS, the Board of City Commissioners has requested that the City Auditor's office work toward the development of a proposal to revise Article 25-04 of the Fargo Municipal Code, which proposal is likely to contain language specifically addressing the licensing and enforcement of Vehicle for Hire services within the City of Fargo; and,

WHEREAS, it is expected that the City Auditor's office will have a proposal for revisions to the Vehicle for Hire Ordinance and regulations for presentation to the Board of City Commissioners before the end of February, 2020, and that the Board of City Commissioners will thereafter be in a position to take action on said proposal or any others that may be presented; and,

WHEREAS, until the Board of City Commissioners is in a position to take action on such a proposal, it is necessary and appropriate to modify the city ordinances to

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 suspend the issuance of new Vehicle for Hire licenses, and to extend the existing licenses
2 for a short period of time; and,

3 WHEREAS, the Board of City Commissioners deems it necessary and
4 appropriate to implement revisions to the City of Fargo ordinances by the adoption of this
5 ordinance; and,

6 WHEREAS, the Board of City Commissioners finds this moratorium promotes
7 the public good and safety, and is necessary for the protection of public health, property,
8 safety and welfare, and the public will be best served by the immediate implementation
9 of this moratorium.

10 NOW, THEREFORE, Be It Ordained by the Board of City Commissioners of the
11 City of Fargo:

12 Section 1. Moratorium Enactment.

13 The recitals set forth above are hereby adopted as the findings of the Board of City
14 Commissioners and are the basis for the immediate suspension of the issuance of new
15 business license applications under Article 25-04 of the Fargo Municipal Code, Vehicles for
16 Hire, until no later than March 31, 2020. There are presently no license applications
17 pending. Licenses in effect and existing shall continue in full force and effect until March
18 31, 2020, at which time the licenses are subject to renewal in the normal course.

19 Section 2. Effective Date.

20 This ordinance shall be in full force and effect immediately upon its approval and
21 shall remain in full force and effect until March 31, 2020, unless extended pursuant to law or
22 until enactment of revisions to Article 25-04 of the Fargo Municipal Code, whichever shall
23 first occur.

(SEAL)

Timothy J. Mahoney, M. D., Mayor

Attest:

First Reading:
Second Reading:
Final Passage:

Steven Sprague, City Auditor

(2)

AUDITOR'S OFFICE

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

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor SS

SUBJECT: Designated Depositories

DATE: December 12, 2019

At this time I would like to designate all financial institutions and brokerage firms located in the City of Fargo as designated depositories of the City of Fargo in addition please designate PFM Financial Advisors Group as asset managers. Also, it is time to renew the authorized signors of public funds.

Copies of the updated resolution will be forwarded to financial institutions located in the City.

If you have any questions, please call me at 241-1301

Recommended Motion:

Approve the Resolution Authorizing Officers to make Deposits and Withdrawals and approve the Designated Depositories.

**CITY OF FARGO RESOLUTION AUTHORIZING OFFICERS
TO MAKE DEPOSITS AND WITHDRAWALS**

WHEREAS, The City of Fargo, a Municipal Corporation existing under the laws of the State of North Dakota, must designate depositories of the funds of the City of Fargo.

NOW, THEREFORE, BE IS RESOLVED, That the Board of City Commissioners of the City of Fargo, North Dakota hereby designates any City of Fargo Financial Institution or Brokerage Firm and PFM Financial Advisors to be a depository of the funds of the City of Fargo, and that the said funds be subject to withdrawal upon checks, notes, drafts, bills of exchange, acceptances, undertakings or other orders for the payment of money when signed by two signatures of the following: Timothy J. Mahoney, Mayor; Kent Costin, Director of Finance; Jill Pagel, Deputy City Auditor and Steven Sprague, City Auditor with one of the signatures being either Steven Sprague or Kent Costin.

BE IT FURTHER RESOLVED, That the depository institution is authorized to pay any such checks, notes, drafts, bills of exchange, acceptances, undertakings or other orders and also to receive the same for the credit of or in payment from the payee or any other holder without inquiry as to the circumstance of issue or the disposition of the proceeds thereof, even if drawn to the individual order of any signing officer or payable to said firm or others for his account, or tendered in payment of his individual obligation.

BE IT FURTHER RESOLVED, That any and all endorsements for or on behalf of the City of Fargo upon checks, drafts, notes or instruments for deposit for collection made with the said Firm may be written or stamped endorsements of the City of Fargo without any designation of the person making such endorsements.

BE IT FURTHER RESOLVED, That said Firm be promptly notified in writing by the City Auditor or any other officer of the City of Fargo of any change in these Resolutions and that until it has actually received such notice in writing said Firm is authorized to act in pursuance of these Resolutions.

WE FURTHER CERTIFY, That these Resolutions are within the power of the Board of City Commissioners to pass as provided in the Home Rule Charter to the City of Fargo.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Fargo, North Dakota, to be affixed this 30th day of December, 2019.

Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

The following are the Signatures of the authorized officers of the City of Fargo to sign for the deposited funds as adopted on December 30, 2019.

Timothy J. Mahoney, Mayor

Kent Costin, Director of Finance

Steven Sprague, City Auditor

Jill Pagel, Deputy City Auditor

3

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Precinct Locations

DATE: December 30, 2019

Attached is a listing of precinct locations for the 2020 elections. At this time we are establishing the precinct boundaries, most of the listed locations will not change, however, there are a couple of locations the County Auditor's office is still confirming and are subject to change.

Most legislative districts will have two precinct locations. Following the School District's request, efforts have been made to avoid using schools due to security related issues. Finally, most of the precincts are larger facilities we have had to find new locations in some instances.

Please approve the precinct locations for the June 9th Primary Election and the November 3rd General Election

Recommended Motion:

Approve the precinct locations for the 2020 elections.

Precint #	Precinct Location
11-01	Olivet Lutheran Church 1330 Universtiy Drive South
11-02	Ramada Inn 3333 13th Avenue South
16-03	Scheels Arena 5225 31st Avenue South
21-01	Roger D Johnson Center 1104 2nd Avenue South
21-02	Fargo Main Library 102 3rd Street North
27-01	West Acres - Main Entrance 3902 13th Avenue South
27-02	Bethany on 42nd 4255 30th Avenue South
41-01	Carlson Library (Primary) 2801 32nd Avenue South Bethal Evangelical Free (General) 2702 30th Avenue South
41-02	First Assembly of God 3401 25th Street South
44-01	Broadway Senior Center 1459 Broadway
44-02	Grace Covenant 3030 Broadway
45-01	Fargodome 1800 University Drive North
46-01	Bowler 2630 University Drive South
46-02	Atonement Lutheran 4601 University Drive south
46-03	Riverview Place 5300 12th Street South



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

Amended

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

Full, Legal Name of Gaming Organization

North Dakota Association For The Disabled, Inc.

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

Name of Location Cowboy Jack's			
Street 506 Broadway	City Fargo	ZIP Code 58102	County Cass
Beginning Date(s) Authorized 12/11/19	Ending Date(s) Authorized 6/30/20	Number of twenty-one tables if zero, enter "0": 1	
Specific location where games of chance will be conducted and played at the site (required) Gaming will be conducted in the entire bar (excluding restrooms).			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known			

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

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

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

APPROVALS

Attorney General

Date

Signature of City/County Official

Date

12/30/19

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

Steve Sprague/City Auditor

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

46

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

Full, Legal Name of Gaming Organization North Dakota Association For The Disabled, Inc.

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

Name of Location Africa International Restaurant / Night Club			
Street 4554 7th Ave S	City Fargo	ZIP Code ND	County Cass
Beginning Date(s) Authorized 12/9/19	Ending Date(s) Authorized 6/30/20	Number of twenty-one tables if zero, enter "0": 0	
Specific location where games of chance will be conducted and played at the site (required) Gaming will be conducted in the entire bar (excluding restrooms).			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known			

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
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ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

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

APPROVALS

Attorney General	Date
Signature of City/County Official	Date
	12/30/19
PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor	

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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



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

CC 25.00
 12/17/19

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

Name of Nonprofit Organization or group of people permit is issued to Hope Blooms	Date(s) of Activity 2/20/2020 to 2/20/2020	For a raffle, provide drawing date(s): 2/20/2020	
Person Responsible for the Gaming Operation and Disbursement of Net Income Kelly Krenzel	Title Founder/ed	Business Phone Number (701) 491-8821	
Business Address 758 34th St. N.	City Fargo	State ND	Zip Code 58102-3094
Mailing Address (if different) Po Box 9705	City Fargo	State ND	Zip Code 58106-9705
Name of Site Where Game(s) will be Conducted Fargo Country Club	Site Address 509 26th Ave S		
City Fargo	State ND	Zip Code 58103-5727	County Cass
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit. <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input checked="" type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffle	Coffee gift card	\$25.00	Raffle Board	Vanity Bar GC	\$1,000.00
Raffle	Basket hair stuff	\$50.00			
Raffle	Heaven Nail gift	\$50.00			
Raffle	Amazon gift card	\$50.00			
Raffle	Beauty Counter	\$25.00			
Raffle	Mary Kay item	\$25.00			
			Total: \$ 1,225.00		

(Limit \$40,000 per year)

Intended uses of gaming proceeds: All dollars raised from raffle ticket and board sales will be donated to Hope Blooms to support the mission.

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

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

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

Signature of Organization or Group's Top Official <i>Kelly Krenzel</i>	Date 12/15/2019	Title Founder/ed	Business Phone Number (701) 491-8821
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(50)

\$75.00
CC 6890
12-18-19

☒ Local Permit

* ☐ Charity Local Permit (one event per year)

Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit.

Game Type	Description of Prize	Retail Value of Prize
Winter Raffle	Snow Blower	\$1439
Summer Raffle	Fire pit	\$454
Yeti Raffle	Cooler w/ alcohol	\$550
Cher Raffle	Cher Tickets	\$360
Large Raffle Board 1	Date Night	\$600
Large Raffle Board 2	Scheels Gift Card	\$500
Large Raffle Board 3	Meat Bundle & Portable Grill	\$400
Small Raffle Boards (3)	Recreational gifts from Schools	\$525

Game Type	Description of Prize	Retail Value of Prize
Total:		\$ (Limit \$12,000 per year)

Intended uses of gaming proceeds: Proceeds from games will help support ITN's programming for individuals of all abilities and help the school.

YN

☒Date _____

Title

Business Phone Number



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

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

Name of Nonprofit Organization or group of people permit is issued to St. John Paul II Catholic Schools	Date(s) of Activity to	For a raffle, provide drawing date(s): April 25, 2020	
Person Responsible for the Gaming Operation and Disbursement of Net Income Lee Hoedl	Title Auction Director	Business Phone Number 701.306.1266	
Business Address 5600 25th Street South	City Fargo	State ND	Zip Code 58104
Mailing Address (if different)	City	State	Zip Code
Name of Site Where Game(s) will be Conducted Fargo Holiday Inn	Site Address 3803 13th Avenue South		
City Fargo	State ND	Zip Code 58103	County Cass
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.			
<input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffle	\$500 Hornbachers Gift Card				
Raffle	\$500 West Acres Gift Card				
Paddle Game	\$1000 Cash Prize				
Paddle Game	\$1000 Cash Prize				
Total:					(Limit \$40,000 per year) \$ 3000

Intended uses of gaming proceeds: Annual fundraiser for the operating budget of the St. John Paul II Catholic Schools

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

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

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? ☐ No ☒ Yes-If "Yes," indicate the total value of all prizes previously awarded: \$ 6000 . This amount is part of the total prize limit of \$40,000 per year.

[Permit Number R0084-19 - Issued 08.12.19]

Signature of Organization or Group's Top Official 	Date 12.18.19	Title Auction Director	Business Phone Number 701.306.1266
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APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 OFFICE OF ATTORNEY GENERAL
 SFN 9338 (08/2019)

50
 \$25.00
 ✓1005
 12-20

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

Name of Nonprofit Organization or group of people permit is issued to <u>United Chinese American Fargo Moorhead (UCAFM)</u>		Date(s) of Activity <u>Jan 24, 2019</u>		For a raffle, provide drawing date(s): <u>Jan 24, 2019</u>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <u>Jun Yang</u>		Title <u>Co-Director of events</u>		Business Phone Number <u>701-781-0811</u>	
Business Address <u>3328 44th Ave. S</u>		City <u>Fargo</u>		State <u>ND</u>	Zip Code <u>58104</u>
Mailing Address (if different) <u>1214 42nd Ave N Fargo ND 5</u>		City <u>Fargo</u>		State <u>ND</u>	Zip Code <u>58102</u>
Name of Site Where Game(s) will be Conducted <u>Bethel church</u>		Site Address <u>2702 30th Ave S</u>			
City <u>Fargo</u>		State <u>ND</u>	Zip Code <u>58103</u>	County <u>Cass</u>	
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.					
<input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *					

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffle	Apple iPad	214.95			
Raffle	Zenovo Chromebook	106.43			
Raffle	Keurig Coffee Maker	110.70			
Raffle	Echo Dot x3	26.86 x3			
Total:					(Limit \$40,000 per year) \$ <u>512.66</u>

Intended uses of gaming proceeds: (1) Emergency and care Fund. (2) Volunteer Program Expense Fund (Ronald McDonald, Food Bank, Feed my starving children, Sandbagging etc.)

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

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

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

Signature of Organization or Group's Top Official <u>[Signature]</u>	Date <u>12/20/2019</u>	Title <u>Co-Director of event</u>	Business Phone Number <u>701-781-0811</u>
---	---------------------------	--------------------------------------	--

(5f)

✓ 1205
2500
12/23/19

☒ Local Permit

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED	
1st Prize	1000.00
2nd Prize	500.00
3rd Prize	250.00
4th Prize	100.00
5th Prize	50.00
6th Prize	25.00
7th Prize	10.00
8th Prize	5.00
9th Prize	2.50
10th Prize	1.00
11th Prize	0.50
12th Prize	0.25
13th Prize	0.10
14th Prize	0.05
15th Prize	0.01

	(Limit \$40,000 per year)
Total:	\$ 1000.00

Intended uses of gaming proceeds: 50% goes to raffle winner, 50% goes to picked charity.

Signature of Organization or Group's Top Official <i>James Kirsh</i>	Date <i>12/10/2019</i>	Title <i>Co-Advisor</i>	Business Phone Number <i>701-231-7665</i>
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(6)

REPORT OF ACTION**FINANCE COMMITTEE****Project:** Civic Second Floor Meeting Chambers**Type:** Audio Visual System Installation**Location:** Civic Memorial Auditorium**Date of Hearing:** December 23, 2019

<u>Routing</u>	<u>Date</u>
City Commission	12/30/2019
Project File	

At the request of Mayor Mahoney, Gregg Schildberger submitted a proposal for the installation of audio visual (AV) equipment in the former City Commission Chambers atop the Fargo Civic Center. The Mayor has been approached by several entities interested in utilizing this space if upgraded AV equipment was available within it. The equipment in the former Chambers is beyond repair and in need of replacement if the room is to be used.

These upgrades would allow the space to serve as a standalone conference room facility for City departments, Civic Center renters, City office space leasers and members of the public. Additionally, this room would have the potential to generate revenue through private (paid) events which would be curated through the Fargo Civic Center Office. The Civic Center has been lacking an AV-equipped conference space since the demolition of the former Centennial Hall. Also included in this process would be a renaming of the room to "Sky Commons," which reduces confusion with the new Chambers.

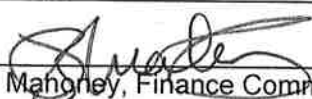
The total cost of the audio visual upgrade project is \$125,000. Finance staff members have identified sufficient funds within Fund 475 from the 2019 Budget for this project to be fully funded. In the event of a Civic Center modification or demolition in the future, the proposed system is wireless and could be fully moved from this space to another City facility without a loss of capital equipment investment.

It was suggested that the work be utilize a State contract piggyback procurement with AVI Systems, as they are currently under contract with the City as its AV provider and remain on-site. The City requested AVI utilize pieces of technology currently in use throughout the City which have proven effective for our usage. AVI System's knowledge of the network environment and needs of the City would save considerable dollars in discovery work, engineering schematics and product reviews.


MOTION:

On a motion by Michael Redlinger, seconded by Bruce Grubb, the Finance Committee voted unanimously to approve a sole source piggyback contract with AVI Systems, Inc. for audio visual installations in the second floor meeting room at the Civic Memorial Auditorium.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Tim Mahoney, Mayor	<u>X</u>			
Dave Piepkorn, City Commissioner	<u>X</u>			
Bruce Grubb, City Administrator	<u>X</u>			
Mike Redlinger, Assistant City Administrator	<u>X</u>			
Kent Costin, Director of Finance	<u>X</u>			
Steve Sprague, City Auditor	<u>X</u>			


 Tim Mahoney, Finance Committee Chair

TO: Members of the Finance Committee

FROM: Gregg Schildberger, Manager of Communications & Public Affairs 

DATE: 18 December 2019

RE: Proposal for Audio Visual Systems Within Sky Commons (Former Commission Chambers)

At the request of the Mayor, I have collaborated with the City's Information Services (IS) Department and our external vendors to assemble a proposal for installation of audio visual (AV) equipment in the former City Commission Chambers. This would allow the space to function as a standalone, high quality conference room for City departments, Civic Center renters, City office space leasers and members of the public. Also included in this process would be a renaming of the room to "Sky Commons," which acknowledges the proximity and convenience of the skyway. This will also help reduce confusion with the new City Commission Chambers.

As you are aware, the equipment in the former Chambers reached the end of its useful life several years ago. In the past six months, however, the backend audio processors, amplifiers and gooseneck microphones experienced catastrophic failure during a Planning Commission Meeting. This meeting was being held in the former Chambers due to other meetings being held in the new Chambers (which occurs quite often, requiring City departments to also utilize the Public Library's Community Room). The City's IS Team and I concur that the system is beyond repair and needs replacement if the room is to be used as a functioning conference room.

Various City departments and external entities (including the FM Diversion Authority) have expressed strong interest in utilizing this room if the AV technology was reliable and updated. This is especially relevant now that the Diversion Authority will begin renting the former City Administration/Commission Offices in January.

Additionally, this room would have the potential to generate revenue through private (paid) events which would be curated through the Fargo Civic Center Office. The Civic Center has been lacking a formal conference space since the demolition of the former Centennial Hall facilities. This amenity would be a welcome addition to its offerings and large events, especially TEDx and Drone Focus.

The proposal being recommended would utilize high quality wireless microphones to minimize the time and effort necessary to set up the room. In fact, the same microphone make and model used in the new Chambers is being proposed to utilize in this room. It would also be configured to be easily used by members of the public with little or no training (with our staff available to troubleshoot during meetings, as needed).

I have worked with the Finance Department on this proposal. The total cost of the audio visual upgrade project is \$125,000, which includes a 5% contingency line item. Finance staff members have identified sufficient residual funds within Fund 475 from the 2019 Budget for this project to be fully funded.

Fully cognizant of a potential performing arts center construction and the possible demolition of this space at some point in the next several years, we are proposing the installation of a system which can be fully moved from this space to another conference room within the arts center or another City facility without the loss of capital equipment investment. Of the \$125,000 proposal, only \$3,185 would be used for wall cabling and therefore not transferrable to another location. Your favorable approval of this project would be greatly appreciated. Please let me know if you have any questions or comments; I would be glad to address them.

REPORT OF ACTION
FINANCE COMMITTEE

⑦

Project:**Type:** Engineering and Utility CIP
Analysis**Location:** Citywide**Date of Hearing:** December 23, 2019

<u>Routing</u>	<u>Date</u>
City Commission	<u>12/30/19</u>
Project File	<u> </u>

The Committee received communication from City Engineer, Brenda Derrig, regarding Task Order #1 with AE2S Nexus for evaluation and development of a funding plan to assist with guidance on development of future CIPs. They currently manage the Water and Wastewater CIP funding model and can provide integration of all the models.

MOTION:

On a motion by Kent Costin, seconded by Michael Redlinger, the Finance Committee voted to approve Task Order #1 with AE2S Nexus in the amount of \$96,900 to be forwarded on to the City Commission with a recommendation for approval.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Tim Mahoney, Mayor	<u>X</u>	<u>X</u>		
Dave Piepkorn, City Commissioner	<u>X</u>	<u>X</u>		
Bruce Grubb, City Administrator	<u>X</u>	<u>X</u>		
Mike Redlinger, Assistant City Administrator	<u>X</u>	<u>X</u>		
Kent Costin, Director of Finance	<u>X</u>	<u>X</u>		
Steve Sprague, City Auditor	<u>X</u>	<u>X</u>		



Kent Costin, Finance Director

In accordance with paragraph 1.1 of the Task Order Agreement between Owner and Engineer for Master Professional Services, dated February 19, 2019 ("Agreement"), Owner and Engineer agree as follows:

1. Specific Project Data

- A. Project Title: Engineering and Utility Financial Modeling
- B. Description: This Task Order is completing an Engineering and Utility Capital Funding Analysis as outlined in Attachment A.

2. Services of Engineer

Services to be completed by the Engineer are as specified in the proposal submitted by AE2S dated November 18, 2019. Proposal is attachment A of this Task Order.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Master Services Agreement dated February 19, 2019.

4. Times for Rendering Services

Phase	Completion Date
Financial Modeling	Timeline for rendering services in provided Attachment A

5. Payments to Engineer

- A. Owner shall pay Engineer for services rendered as follows:

Phase	Compensation Method	Lump Sum, or Estimate of Compensation for Services
Financial Modeling	Hourly Not to Exceed	\$96,900
Total Services = \$96,900		

- B. The terms of payment are set forth in Article 3 of the Master Services Agreement.

6. Attachments

Attachment A – Proposal submitted by AE2S dated November 18, 2019.
Attachment B – Finance ROA dated December 23, 2019.

Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement, which is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is December 23, 2019.

Owner:

Engineer:

By: _____

By: _____

Name: Brenda Derrig

Name: Brian R. Bergantine

Title: City Engineer

Title: Operations Manager

Designated Representative for Task Order:

Designated Representative for Task Order:

Name: Brenda Derrig

Name: Jacob Strombeck

Title: City Engineer

Title: Project Manager

Approval Requirements

\$15,000 or less – City Engineer

\$15,001 - \$150,000 – PWPEC

Over \$150,000 – PWPEC & Commission



November 18, 2019

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

This is Attachment A to
Task Order No. 1 dated
December 23, 2019

**RE: Professional Engineering Services Proposal
Fargo Engineering and Utility Financial Modeling**

Dear Ms. Derrig:

As result of significant infrastructure needs over an approximately 20-year planning horizon related to the Fargo Engineering Department's (Client's) Capital Improvements Plan (CIP) and its integration with Utility funds (Water, Wastewater, Stormwater, and Street Light Utilities), Client intends to retain Advanced Engineering and Environmental Services, Inc. d/b/a "AE2S Nexus" for the purpose of completing an Engineering and Utility Capital Funding Analysis. The overall purpose of this project is to establish a prudent funding and implementation plan and policy for the identified infrastructure categories. In summary, AE2S Nexus will:

- a. Work with Client to develop a capital cost plan to address identified needs for each infrastructure category over the 20-year planning horizon.
- b. Identify and quantify potential revenue sources available to Client to address respective revenue requirements.
- c. Perform a capital revenue adequacy analysis for the purpose of determining the gap in available revenue compared to revenue requirements, considering each of the newly developed/refined CIPs and operating expense proformas, as well as a preliminary assignment of revenue sources.
- d. Perform up to five (5) scenario analyses considering the application of all identified and potentially available revenue sources to close the identified funding gap.
- e. Make recommendations regarding the funding scenario(s) to improve the long-term fiscal sustainability of Client.
- f. Prepare final presentations and funding policy recommendations to be considered as part of 2021 budget process.

Scope of Services

To accomplish the objectives of the study, AE2S Nexus has developed the following tasks to outline the project scope of services and estimate the fee required to complete the project.

Task 1 – Project Administration and Data Gathering

As part of this task, AE2S Nexus will perform general project administration activities including progress monitoring, scheduling, general correspondence, monitoring of project budgets and schedules, and invoicing. These activities include maintaining contact and liaison with the Client and project staff to ensure that the needs of the Client are met in a timely manner. Also, as part of this task, an initial information request document will be prepared with provided data reviewed

for request fulfillment. To define the requirements of Task 1, the following specific tasks have been developed:

- A. Project Administration and Coordination*
- B. Information Request Development*
- C. Data Review*

Task 2 – Infrastructure CIP Refinement

AE2S Nexus will work with Client to refine CIPs and applicable operating expense proformas for each of the respective infrastructure categories. The existing 2020-2023 Engineering and Water, Wastewater, and Stormwater Utility CIPs will be used as a starting point. Ultimately, the CIPs will be extended for the 20-year planning horizon. Existing operating expense proformas currently included to Water, Wastewater, and Stormwater Revenue Adequacy models will be utilized and/or updated, with 20-year operating expense proformas for remaining applicable funds developed using the 2020 budget as a basis. A Staff Input Meeting related to long-term CIP projections for each infrastructure category will be conducted, with series of five Staff Input Meetings anticipated. To define the requirements of Task 2, the following specific tasks have been developed:

- A. Staff Input Meeting*
- B. Operating Expense Proforma Refinement/Development*
- C. CIP Refinement/Development*

Task 3 – Revenue Projections

Potential revenue sources applicable to the Engineering and Water, Wastewater, and Stormwater Utility CIPs will be identified and quantified as part of this Task. Six potential revenue sources have been initially identified, including Federal Aid, Property Tax, Sales Tax, Special Assessments, Prairie Dog Funds, and Utility revenues (Water, Sewer, Storm, Traffic). Existing policy and use of these potential revenue sources will be reviewed, along with any rules and regulations regarding these revenue sources. Revenue projections for each identified revenue source will be made for the 20-year planning horizon. As a part of this Task, AE2S Nexus will evaluate alternative cost and use based fee schedules for the Traffic Utility. At the conclusion of this task, AE2S Nexus will conduct a progress meeting with Client's staff to ensure concurrence with revenue projections. To define the requirements of Task 3, the following specific tasks have been developed:

- A. Funding Policy Review*
- B. Revenue Source Quantification and Projection*
- C. Traffic Utility Fee Evaluation*
- D. Progress Meeting*

Task 4 – Develop Comprehensive Capital Revenue Adequacy Model

As part of this task, a Revenue Adequacy model will be developed for applicable City funds. This model will bring together multi-year revenue requirement and revenue projections, and ultimately a "Gap" will be identified where the projected revenues do not meet projected revenue requirements. Preliminary assignment of available revenue sources will be completed where revenue will be assigned to applicable operating expenses first, with remaining revenue applied

to the CIP. Existing Water, Wastewater, and Stormwater Revenue Adequacy models will be utilized, and a compiled Revenue Adequacy/Gap Analysis will be developed for all applicable infrastructure categories. Upon completion of the Revenue Adequacy/Gap Analysis, AE2S Nexus will plan and hold a Progress Meeting with Client to review the results of the analysis. To define the requirements of Task 4, the following specific tasks have been developed:

- A. Compiled Revenue Adequacy Model Development*
- B. Revenue Source Assignment*
- C. Revenue "Gap" Identification*
- D. Progress Meeting*

Task 5 – Scenario Analysis

To address the findings in Task 4, a series of scenarios will be analyzed with the goal of "gap elimination." Prior to completion of the scenario analysis, a series of scenario assumptions and variables will be reviewed with Client. It is anticipated that two Progress Meetings will be held under this Task with the intent of the first meeting being to review the results of the preliminary scenario analysis, and the second meeting being a review of the final results of the scenario analysis after the preliminary scenarios are refined. As part of the scenario analysis, we will evaluate how changes to the infrastructure funding sources may impact Engineering and Administrative Fee revenues. To define the requirements of Task 5, the following specific tasks have been developed:

- A. Establish Scenario Assumptions and Variables*
- B. Elimination of Gap Scenario Analysis*
- C. Engineering and Administrative Fee Impacts*
- D. Progress Meeting– Review Preliminary Scenarios*
- E. Scenario Refinement*
- F. Progress Meeting – Review Final Scenarios*

Task 6 – Final Presentation and Documentation

Upon completion of the study period, AE2S Nexus will prepare a presentation that documents the final results and recommendations to be presented at one PWPEC, one Utility Committee Meeting, and one Finance Committee meeting. AE2S Nexus will participate and present at each of these meetings as needed. Upon completion of Committee Meeting presentations, the Scenario Analysis will be refined based on feedback received at each of these meetings. Upon concurrence of final results and recommendations, AE2S Nexus will prepare an Executive Summary of Final Recommendations. To define the requirements of Task 6, the following specific tasks have been proposed.

- A. Final Presentation Preparation*
- B. Progress Meeting – Review Final Presentation*
- C. PWPEC Meeting Attendance and Presentation*
- D. Utility Committee Meeting Attendance and Presentation*
- E. Finance Committee Meeting Attendance and Presentation*
- F. Scenario Refinement based on feedback from PWPEC, Utility Committee, and Finance Committee*
- G. Develop Executive Summary of Final Recommendations*

City of Fargo, North Dakota

**RE: Professional Engineering Services Proposal
Fargo Engineering and Utility Financial Modeling**

November 18, 2019

Page 4 of 5

This is Attachment A to Task Order No. 1 dated December 23, 2019
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Fees

AE2S Nexus proposes to complete this projected on an **hourly plus expenses basis** to a maximum fee of **\$96,900**. A breakdown of the fee by task is as follows:

Task	Description	Fee
1	Project Administration and Data Gathering	\$9,800
2	Infrastructure CIP Refinement	\$18,700
3	Revenue Projections	\$16,300
4	Develop Comprehensive Capital Revenue Adequacy Model	\$19,400
5	Scenario Analysis	\$17,500
6	Final Presentation and Documentation	\$15,200
Total		\$96,900

Performance Schedule

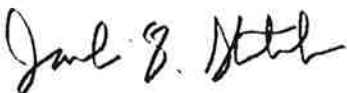
A tentative project schedule is as follows:

- Formal project kick-off – December 2019
- CIP development and refinement – January 2020
- Capital revenue adequacy model and CIP review – February 2020
- Scenario analyses and review – March and April 2020
- 2021 budgeting support – May and June 2020
- Final presentation – June 2020

AE2S Nexus greatly appreciated the opportunity to work with the City on this important project. If you are satisfied with our proposed scope and fee, please provide us with an executed Task Order in accordance with the City Engineering Master Services Agreement. We look forward to furthering our relationship with the Fargo Engineer Department and do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

AE2S Nexus



Jacob D. Strombeck, PE
Project Manager

Memorandum

To: Members of Finance
From: Brenda Derrig, City Engineer
Cc: Bruce Grubb, City Administrator
Date: December 18, 2019
Re: Engineering and Utility Capital Analysis

Background:

During the development of our four year Capital Improvement Plan (CIP), it was evident that to sustain the existing condition of the City's infrastructure, there is a need to evaluate and develop a funding plan that can be used for guidance on development of future CIPs. Through the years, funding for our Capital Improvement projects have been reduced with the removal of State funding and the allocation of portions of the sales tax proceeds to the Fargo-Moorhead Diversion.

Staff met with the AE2S Nexus group, who manages the Water and Wastewater Utility funding model, along with the Water and Wastewater Department Heads to discuss an Engineering funding analysis and integrating it with the Utility's funding model. I am requesting approval to use sales tax dollars to contract with AE2S Nexus in a not to exceed amount of \$96,900 to provide an Engineering funding analysis along with an integration into the Water and Wastewater Utility Funding Model.

Recommended Motion:

Approve Task Order #1 with AE2S Nexus in a not to exceed amount of \$96,900 to provide the Engineering Department a funding analysis for the CIP along with integration into the Water and Wastewater Utility Funding Model.

BED/jmg
Attachment



November 18, 2019

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

**RE: Letter Agreement between Client and AE2S Nexus
Fargo Engineering and Utility Financial Modeling**

Dear Ms. Derrig:

As result of significant infrastructure needs over an approximately 20-year planning horizon related to the Fargo Engineering Department's (Client's) Capital Improvements Plan (CIP) and its integration with Utility funds (Water, Wastewater, Stormwater, and Street Light Utilities), Client intends to retain Advanced Engineering and Environmental Services, Inc. d/b/a "AE2S Nexus" for the purpose of completing an Engineering and Utility Capital Funding Analysis. The overall purpose of this project is to establish a prudent funding and implementation plan and policy for the identified infrastructure categories. In summary, AE2S Nexus will:

- a. Work with Client to develop a capital cost plan to address identified needs for each infrastructure category over the 20-year planning horizon.
- b. Identify and quantify potential revenue sources available to Client to address respective revenue requirements.
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- d. Perform up to five (5) scenario analyses considering the application of all identified and potentially available revenue sources to close the identified funding gap.
- e. Make recommendations regarding the funding scenario(s) to improve the long-term fiscal sustainability of Client.
- f. Prepare final presentations and funding policy recommendations to be considered as part of 2021 budget process.

Scope of Services

To accomplish the objectives of the study, AE2S Nexus has developed the following tasks to outline the project scope of services and estimate the fee required to complete the project.

Task 1 – Project Administration and Data Gathering

As part of this task, AE2S Nexus will perform general project administration activities including progress monitoring, scheduling, general correspondence, monitoring of project budgets and schedules, and invoicing. These activities include maintaining contact and liaison with the Client and project staff to ensure that the needs of the Client are met in a timely manner. Also, as part of this task, an initial information request document will be prepared with provided data reviewed for request fulfillment. To define the requirements of Task 1, the following specific tasks have been developed:

City of Fargo, North Dakota

**RE: Letter Agreement between Client and AE2S Nexus
Fargo Engineering and Utility Financial Modeling**

November 18, 2019

Page 2 of 5

- A. Project Administration and Coordination*
- B. Information Request Development*
- C. Data Review*

Task 2 – Infrastructure CIP Refinement

AE2S Nexus will work with Client to refine CIPs and applicable operating expense proformas for each of the respective infrastructure categories. The existing 2020-2023 Engineering and Water, Wastewater, and Stormwater Utility CIPs will be used as a starting point. Ultimately, the CIPs will be extended for the 20-year planning horizon. Existing operating expense proformas currently included to Water, Wastewater, and Stormwater Revenue Adequacy models will be utilized and/or updated, with 20-year operating expense proformas for remaining applicable funds developed using the 2020 budget as a basis. A Staff Input Meeting related to long-term CIP projections for each infrastructure category will be conducted, with series of five Staff Input Meetings anticipated. To define the requirements of Task 2, the following specific tasks have been developed:

- A. Staff Input Meeting*
- B. Operating Expense Proforma Refinement/Development*
- C. CIP Refinement/Development*

Task 3 – Revenue Projections

Potential revenue sources applicable to the Engineering and Water, Wastewater, and Stormwater Utility CIPs will be identified and quantified as part of this Task. Six potential revenue sources have been initially identified, including Federal Aid, Property Tax, Sales Tax, Special Assessments, Prairie Dog Funds, and Utility revenues (Water, Sewer, Storm, Traffic). Existing policy and use of these potential revenue sources will be reviewed, along with any rules and regulations regarding these revenue sources. Revenue projections for each identified revenue source will be made for the 20-year planning horizon. As a part of this Task, AE2S Nexus will evaluate alternative cost and use based fee schedules for the Traffic Utility. At the conclusion of this task, AE2S Nexus will conduct a progress meeting with Client's staff to ensure concurrence with revenue projections. To define the requirements of Task 3, the following specific tasks have been developed:

- A. Funding Policy Review*
- B. Revenue Source Quantification and Projection*
- C. Traffic Utility Fee Evaluation*
- D. Progress Meeting*

Task 4 – Develop Comprehensive Capital Revenue Adequacy Model

As part of this task, a Revenue Adequacy model will be developed for applicable City funds. This model will bring together multi-year revenue requirement and revenue projections, and ultimately a "Gap" will be identified where the projected revenues do not meet projected revenue requirements. Preliminary assignment of available revenue sources will be completed where revenue will be assigned to applicable operating expenses first, with remaining revenue applied to the CIP. Existing Water, Wastewater, and Stormwater Revenue Adequacy models will be utilized, and a compiled Revenue Adequacy/Gap Analysis will be developed for all applicable infrastructure categories. Upon completion of the Revenue Adequacy/Gap Analysis, AE2S

City of Fargo, North Dakota

**RE: Letter Agreement between Client and AE2S Nexus
Fargo Engineering and Utility Financial Modeling**

November 18, 2019

Page 3 of 5

Nexus will plan and hold a Progress Meeting with Client to review the results of the analysis. To define the requirements of Task 4, the following specific tasks have been developed:

- A. Compiled Revenue Adequacy Model Development*
- B. Revenue Source Assignment*
- C. Revenue "Gap" Identification*
- D. Progress Meeting*

Task 5 – Scenario Analysis

To address the findings in Task 4, a series of scenarios will be analyzed with the goal of “gap elimination.” Prior to completion of the scenario analysis, a series of scenario assumptions and variables will be reviewed with Client. It is anticipated that two Progress Meetings will be held under this Task with the intent of the first meeting being to review the results of the preliminary scenario analysis, and the second meeting being a review of the final results of the scenario analysis after the preliminary scenarios are refined. As part of the scenario analysis, we will evaluate how changes to the infrastructure funding sources may impact Engineering and Administrative Fee revenues. To define the requirements of Task 5, the following specific tasks have been developed:

- A. Establish Scenario Assumptions and Variables*
- B. Elimination of Gap Scenario Analysis*
- C. Engineering and Administrative Fee Impacts*
- D. Progress Meeting– Review Preliminary Scenarios*
- E. Scenario Refinement*
- F. Progress Meeting – Review Final Scenarios*

Task 6 – Final Presentation and Documentation

Upon completion of the study period, AE2S Nexus will prepare a presentation that documents the final results and recommendations to be presented at one PWPEC, one Utility Committee Meeting, and one Finance Committee meeting. AE2S Nexus will participate and present at each of these meetings as needed. Upon completion of Committee Meeting presentations, the Scenario Analysis will be refined based on feedback received at each of these meetings. Upon concurrence of final results and recommendations, AE2S Nexus will prepare an Executive Summary of Final Recommendations. To define the requirements of Task 6, the following specific tasks have been proposed.

- A. Final Presentation Preparation*
- B. Progress Meeting – Review Final Presentation*
- C. PWPEC Meeting Attendance and Presentation*
- D. Utility Committee Meeting Attendance and Presentation*
- E. Finance Committee Meeting Attendance and Presentation*
- F. Scenario Refinement based on feedback from PWPEC, Utility Committee, and Finance Committee*
- G. Develop Executive Summary of Final Recommendations*

City of Fargo, North Dakota

**RE: Letter Agreement between Client and AE2S Nexus
Fargo Engineering and Utility Financial Modeling**

November 18, 2019

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Additional Services

Services resulting from significant changes in the general scope, extent, or character of the Assignment are not included as a part of the general Scope of Services. If authorized in writing by the Client, AE2S Nexus will provide services beyond the scope of this Agreement on an hourly basis in accordance with the Hourly Fee Schedule attached as Exhibit B.

Client's Responsibility

Client shall do the following in a timely manner, so as not to delay the services of AE2S Nexus:

1. Designate a person to act as Client's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define Client's policies and decisions with respect to services for the Assignment.
2. Provide all criteria and full information as to Client's requirements for the Assignment.

AE2S Nexus shall be entitled to use and rely upon all information provided by Client or others in performing AE2S Nexus's services under this Agreement. Client shall bear all costs incident to compliance with its responsibilities pursuant to this paragraph.

Fees

AE2S Nexus proposes to complete this project on an **hourly plus expenses basis** to a maximum fee of **\$96,900** in accordance with the 2019 Hourly Fees and Expense Schedule (updated January 1 of each year) attached as Exhibit B. Monthly invoices, as provided for in Exhibit A, will provide the Client with regular updates on the budget status and project progress. A breakdown of the fee by task is as follows:

Task	Description	Fee
1	Project Administration and Data Gathering	\$9,800
2	Infrastructure CIP Refinement	\$18,700
3	Revenue Projections	\$16,300
4	Develop Comprehensive Capital Revenue Adequacy Model	\$19,400
5	Scenario Analysis	\$17,500
6	Final Presentation and Documentation	\$15,200
Total		\$96,900

Standard Terms and Conditions

Standard terms and conditions of this Agreement between Client and AE2S Nexus are specified in Exhibit A.

City of Fargo, North Dakota

**RE: Letter Agreement between Client and AE2S Nexus
Fargo Engineering and Utility Financial Modeling**

November 18, 2019

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Performance Schedule

A tentative project schedule is as follows:

- Formal project kick-off – December 2019
- CIP development and refinement – January 2020
- Capital revenue adequacy model and CIP review – February 2020
- Scenario analyses and review – March and April 2020
- 2021 budgeting support – May and June 2020
- Final presentation – June 2020

This agreement may be terminated with at least seven days prior written notice to the other party. Unless terminated, this agreement shall be in effect through December 31, 2020.

Acceptance

If it satisfactorily sets forth your understanding of our agreement, please sign and return a copy to AE2S Nexus.

Sincerely,

AE2S Nexus

By: _____
Shawn Gaddie, PE
Nexus Division Manager

Accepted this _____ day of
_____, 2019

By: _____

Name and Title

Standard Terms and Conditions

The proposal is supplemented to include the following agreement of the parties:

1. **Standard of Care**
 - a. The standard of care for all professional services performed or furnished by AE2S Nexus under this Agreement will be the care and skill ordinarily used by members of AE2S Nexus's profession practicing under similar circumstances at the same time and in the same locality. AE2S Nexus makes no warranties, express or implied, under this Agreement or otherwise, in connection with AE2S Nexus's services.
 - b. Client shall be responsible for, and AE2S Nexus may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Client to AE2S Nexus pursuant to this Agreement. AE2S Nexus may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.
 - c. AE2S Nexus's services do not include serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission.
2. **Payments to AE2S Nexus**

Invoices will be prepared in accordance with AE2S Nexus's standard invoicing practices and will be submitted to CLIENT by AE2S Nexus monthly, unless otherwise agreed. Invoices are due and payable within 30 days. If CLIENT fails to make any payment due AE2S Nexus for services and expenses within 30 days, the amounts due AE2S Nexus will be increased at the rate of 1.75% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, AE2S Nexus may, after giving seven days written notice to CLIENT, suspend services under this Agreement until AE2S Nexus has been paid in full all amounts due for services, expenses, and other related charges. All payments shall be made in United States Dollars.
3. **Other Provisions Concerning Payment**
 - a. **Estimated Compensation Amounts**
 1. AE2S Nexus' estimate of the amounts that will become payable are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to AE2S Nexus under the Agreement.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to AE2S Nexus that a compensation amount thus estimated will be exceeded, AE2S Nexus shall give CLIENT written notice thereof. Promptly thereafter CLIENT and AE2S Nexus shall review the matter of services remaining to be performed and compensation for such services. CLIENT shall either agree to such compensation exceeding said estimated amount or CLIENT and AE2S Nexus shall agree to a reduction in the remaining services to be rendered by AE2S Nexus, so that total compensation for such services will not exceed said estimated amount when such services are completed.
 - b. **Adjustments**
 1. AE2S Nexus' compensation is conditioned on time to complete the Assignment not exceeding the time identified in this Agreement. Should the time to complete the Assignment be extended beyond this period due to reasons not the fault of and beyond the control of AE2S Nexus, the total compensation to AE2S Nexus shall be appropriately adjusted.
4. **Insurance**

AE2S Nexus will maintain insurance coverage for Workers' Compensation, Professional Liability, General Liability, and Automobile Liability and will provide certificates of insurance to CLIENT upon request.
5. **Indemnification and Allocation of Risk**
 - a. To the fullest extent permitted by law, AE2S Nexus shall indemnify and hold harmless CLIENT and CLIENT's officers, directors, members, and employees from any and all costs, losses, and damages (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of AE2S Nexus or AE2S Nexus's officers, directors, members, partners, employees, or Consultants. The parties expressly agree that AE2S Nexus or AE2S Nexus's officers, directors, members, partners, or employees have no duty to defend CLIENT and CLIENT's officers, directors, members, and employees against any claims, causes of action, demands, lawsuits, or proceedings of any kind.
 - b. To the fullest extent permitted by law, CLIENT shall indemnify and hold harmless AE2S Nexus, AE2S Nexus's officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) to the extent caused by the negligent acts or omissions of CLIENT or CLIENT's officers, directors, partners, employees, and consultants with respect to this Agreement.
 - c. In addition to the indemnity provided under paragraph 4.b. of this Exhibit, and to the fullest extent permitted by law, CLIENT shall indemnify and hold harmless AE2S Nexus and AE2S Nexus's officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other disputes resolution costs) caused by, arising out of, or resulting from Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this paragraph 4.c. shall obligate CLIENT to indemnify any individual or entity to the extent of that individual or entity's own negligence or willful misconduct.
 - d. To the fullest extent permitted by law, AE2S Nexus's total liability to CLIENT and anyone claiming by, through, or under CLIENT for any injuries, losses, damages and expenses caused in part by the negligence of AE2S Nexus and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the AE2S Nexus's negligence bears to the total negligence of CLIENT, AE2S Nexus, and all other negligent entities and individuals.
6. **Exclusion of Special, Incidental, Indirect, and Consequential Damages**

To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, AE2S Nexus and AE2S Nexus's officers, directors, partners, employees, agents, and Consultants, or any of them, shall not be liable to CLIENT or anyone claiming by, through, or under CLIENT for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Services or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranties, express or implied, of AE2S Nexus or AE2S Nexus's officers, directors, partners, employees, agents, or AE2S Nexus's Consultants, or any of them.
7. **Limit of Liability**

To the fullest extent permitted by law, notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of AE2S Nexus and AE2S Nexus's officers, directors, partners, employees, agents, and AE2S Nexus's Consultants, and any of them, to CLIENT and anyone claiming by, through, or under CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to

the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of AE2S Nexus or AE2S Nexus's officers, directors, partners, employees, agents, or AE2S Nexus's Consultants, or any of them, shall not exceed total compensation received by AE2S Nexus as part of this Agreement.

8. Termination of Contract

Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, CLIENT shall pay to AE2S Nexus all amounts owing to AE2S Nexus under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.

9. Access

CLIENT shall arrange for safe access to and make all provisions for AE2S Nexus and AE2S Nexus's Consultants to enter upon public and private property as required for AE2S Nexus to perform services under this Agreement.

10. Hazardous Environmental Conditions

It is acknowledged by both parties that AE2S Nexus's scope of services does not include any services related to a "Hazardous Environmental Condition," i.e. the presence at the site of asbestos, PCBs, petroleum, hazardous waste, or radioactive materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Assignment. In the event AE2S Nexus or any other party encounters a Hazardous Environmental Condition, AE2S Nexus may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Assignment affected thereby until CLIENT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the site is in full compliance with applicable laws and regulations. CLIENT acknowledges that AE2S Nexus is performing professional services for CLIENT and that AE2S Nexus is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the site in connection with AE2S Nexus's activities under this Agreement.

11. Patents

AE2S Nexus shall not conduct patent searches in connection with its services under this Agreement and assumes no responsibility for any patent or copyright infringement arising therefrom. Nothing in this Agreement shall be construed as a warranty or representation that anything made, used, or sold arising out of the services performed under this Agreement will be free from infringement of patents or copyrights.

12. Clientship and Reuse of Documents

All documents prepared or furnished by AE2S Nexus pursuant to this Agreement are instruments of service, and AE2S Nexus shall retain a Clientship and property interest therein. Reuse of any such documents by CLIENT shall be at CLIENT's sole risk; and CLIENT agrees to indemnify, and hold AE2S Nexus harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by CLIENT or by others acting through CLIENT.

13. Use of Electronic Media

a. Copies of Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by the AE2S Nexus. Files in electronic media format of text, data, graphics, or of other types that are furnished by AE2S Nexus to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

b. When transferring documents in electronic media format, AE2S Nexus makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by AE2S Nexus at the beginning of this Assignment.

c. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

d. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. AE2S Nexus shall not be responsible to maintain documents stored in electronic media format after acceptance by CLIENT.

14. Contractors

AE2S Nexus shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall AE2S Nexus have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at a project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work. AE2S Nexus neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between CLIENT and such contractor. AE2S Nexus shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except AE2S Nexus's own employees) at a project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by AE2S Nexus.

15. Force Majeure

AE2S Nexus shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond AE2S Nexus's reasonable control.

16. No Third Party Beneficiaries

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and AE2S Nexus and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or AE2S Nexus. AE2S Nexus's services under this Agreement are being performed solely for CLIENT's benefit, and no other entity shall have any claim against AE2S Nexus because of this Agreement or the performance or nonperformance of services hereunder.

17. Assignment

Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.

18. Binding Effect

This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.

19. Severability and Waiver of Provisions

Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and AE2S Nexus, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

20. Survival

All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

21. Headings

The headings used in this Agreement are for general reference only and do not have special significance.

22. Controlling Law

This Agreement is to be governed by the law of the State of North Dakota without regard to its conflicts of laws principles.

23. Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a

commercial courier service. All notices shall be effective upon the date of receipt.

24. Executed in Counterparts

This Agreement may be executed in counterparts, each of which together will constitute one and the same instrument. Delivery of an executed counterpart of this Agreement shall constitute effective delivery of this Agreement. Each party agrees that the delivery of the Agreement by facsimile or electronic mail shall have the same force and effect as delivery of original signature and that each Party may use such facsimile or electronic mail signatures as evidence of the execution and delivery of the Agreement by the parties to the same extent that an original signature could be used.

This is EXHIBIT B, consisting of 2 pages, referred to in and part of the Agreement between Client and AE2S Nexus for professional consulting services dated November 18, 2019.

2019 Hourly Fee and Expense Schedule

Labor Rates*

Administrative I	\$59.00	Project Coordinator I	\$98.00
Administrative II	\$73.00	Project Coordinator II	\$106.00
Administrative III	\$87.00	Project Coordinator III	\$119.00
		Project Coordinator IV	\$135.00
Communications Specialist I	\$90.00	Project Manager I	\$168.00
Communications Specialist II	\$103.00	Project Manager II	\$183.00
Communications Specialist III	\$118.00	Project Manager III	\$202.00
Communications Specialist IV	\$142.00		
Communications Specialist V	\$157.00		
Financial Analyst I	\$90.00	Senior Designer	\$190.00
Financial Analyst II	\$105.00	Senior Consultant I	\$212.00
Financial Analyst III	\$123.00	Senior Consultant II	\$234.00
Financial Analyst IV	\$139.00	Senior Consultant III	\$248.00
Financial Analyst V	\$157.00	Technical Assistant 1	\$69.00
Financial Analyst VI	\$178.00	Technical Assistant 2	\$89.00
Financial Analyst VII	\$194.00		
Financial Analyst VIII	\$212.00	Technical Advisor I	\$103.00
GIS Specialist I	\$88.00	Technical Advisor II	\$132.00
GIS Specialist II	\$105.00	Technical Advisor III	\$157.00
GIS Specialist III	\$126.00	Technical Advisor IV	\$178.00
GIS Specialist IV	\$141.00	Technical Advisor V	\$194.00
GIS Specialist V	\$155.00	Technical Advisor VI	\$218.00
Marketing Consultant I	\$83.00	Technical Advisor VII	\$233.00
Marketing Consultant II	\$105.00	Technical Advisor VIII	\$243.00
Marketing Consultant III	\$129.00	Technical Expert I	\$250.00
Marketing Consultant IV	\$147.00	Technical Expert II	\$272.00
Marketing Consultant V	\$166.00	Technical Expert III	Negotiable
Program Coordinator I	\$178.00		
Program Coordinator II	\$190.00		
Program Coordinator III	\$202.00		

**These rates are subject to adjustment each year on January 1*

Position titles are for labor rate grade purposes only.

Reimbursable Expense Rates

Transportation	\$0.65/mile
B&W Photocopies 8½" x11"	\$0.10/copy
B&W Laser Printouts 8½" x11"	\$0.20/page
Color Laser Printouts/Copies 8½" x11"	\$0.68/page
Plots – Color Bond	\$1.25/s.f.
Plots – Monochrome Bond/Vellum	\$0.75/s.f.
Plots – Film/Photo High Gloss	\$2.00/s.f.
Air Transportation - Pilatus	\$1,600/hour
Air Transportation – Cirrus	\$700/hour
In-house Lodging	\$150.00/day
Legal Services Reimbursement	\$224.00/hour
Outside Services**	cost *1.15
Out of Pocket Expenses***	cost*1.15
Rental Car	cost*1.20

** Includes laboratory testing, architectural and engineering consultants, surveying, etc.

*** Includes toll telephone, shipping, postage, subsistence, technical literature, equipment rental, etc.

These rates are subject to adjustment each year on January 1

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

8

Type: Encroachment Agreement

Location: Block 9 – Broadway btwn 2nd & 3rd Avenue

Date of Hearing: 8/5/2019

<u>Routing</u>	<u>Date</u>
City Commission	<u>12/30/2019</u>
PWPEC File	<u>X</u>
Project File	<u>Kristy Schmidt</u>

The Committee reviewed a communication from Civil Engineer, Kristy Schmidt, regarding a request for an Encroachment Agreement into the right of way on the south side of 3rd Avenue North adjacent to the parking ramp. The owner will be responsible for the maintenance and/or replacement of these landscaping items.

Staff is recommending formalizing this existing encroachment with the following stipulations:

- Hold the City harmless against all expenses, demands, claims or losses sustained by the City by use of the public right of way be the Encroacher.
- The Encroacher will be responsible for paying all costs beyond those the City would have incurred to return the area to a material similar to the adjacent surface.
- Application fee for the encroachment in the amount of \$500.
- Agreement expires upon the sale or transfer of the property.

On a motion by Nicole Crutchfield, seconded by Bruce Grubb, the Committee voted to recommend approval of the Encroachment Agreement at 226 5th Street North contingent upon \$500 application fee, Certificate of Insurance, and attorney review.

RECOMMENDED MOTION

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

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

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

COMMITTEE

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

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

ATTEST:


 Brenda E. Derrig, PE
 City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Kristy Schmidt, Project Engineer
Date: July 31, 2019
Re: Block 9 Parking Ramp Landscaping Encroachment – 226 5th St N

Background:

Attached you will find documents related to an encroachment agreement for landscaping elements for the Block 9 parking ramp at 226 5th St N. The Owner is asking for an Encroachment Agreement into the ROW on the south side of 3rd Avenue North adjacent to the parking ramp. The Owner will be responsible for the maintenance and/or replacement of these landscaping items. Please see the attached drawing showing the area of encroachment.

Staff is recommending formalizing this existing encroachment with the following stipulations:

- Hold the City harmless against all expenses, demands, claims or losses sustained by the City by use of the public right of way by the Encroacher.
- The Encroacher will be responsible for paying all costs beyond those the City would have incurred to return the area to a material similar to the adjacent surface.
- Application fee for the encroachment in the amount of \$500.
- Waive the annual fee.
- Agreement expires upon sale or transfer of the property.

Recommended Motion:

Approve the encroachment request at 226 5th St N contingent upon \$500 application fee, Certificate of Insurance, and attorney review.

KLS/klo
Attachment

C: Keith Leier, Kilbourne Group

AMENDMENT (FIRST) TO ENCROACHMENT AGREEMENT (GARAGE)

THIS AGREEMENT, made and entered by and between **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter referred to as “City”, and **Block 9 Partners, LLC**, hereinafter referred to as “Block 9” or “Owner”,

WITNESSETH:

WHEREAS, by Encroachment Agreement dated August 29, 2018, a copy of which is attached hereto as Exhibit A, the parties recognized and agreed that Block 9 would use a portion of the City right of way for the purpose of owning and operating the Mixed Use Project; and

WHEREAS, Block 9 wishes to similarly use a portion of the City right of way adjacent to the parking garage, located on the lot adjacent to the Mixed Use Project; and

WHEREAS, Block 9 desires to encroach on a portion of City right-of-way for purposes of installing stamped concrete sidewalk, pavers, and landscaping, as more fully described in Exhibit B attached hereto; and

WHEREAS, Block 9 has agreed to execute this agreement required by City for encroachment on City right-of-way.

NOW, THEREFORE, for good and valuable consideration hereby acknowledged, it is

agreed by and between the parties hereto as follows:

1. The parties agree and understand that all terms of that Encroachment Agreement attached hereto as Exhibit "A" shall remain in full force and effect unless modified herein, or as subsequently amended.

2. Block 9, its successors and assigns, is hereby granted the right to encroach and use a portion of the right-of-way, said encroachment being for the purpose of installing stamped concrete, pavers, and landscaping, as more fully described in Exhibit "B" attached hereto. The Encroachment area is immediately adjacent to the Garage located at 226 5th Street North, more fully described as follows:

That part of the public street right-of-way lying adjacent to Block 9, Keeney and Devitt's Addition to the City of Fargo, Cass County, North Dakota, described as follows:

COMMENCING at the Northwest Corner of said Block 9; thence North 87°07'24" East (assumed bearing), along the northerly line of said Block 9, for a distance of 177.29 feet to the TRUE POINT OF BEGINNING; thence continue North 87°07'24" East, along the northerly line of said Block 9, for a distance of 122.64 feet to the Northeast Corner of said Block 9; thence North 02°51'30" West for a distance of 3.06 feet; thence South 86°57'30" West for a distance of 83.78 feet; thence North 02°53'30" West for a distance of 15.41 feet; thence South 87°05'34" West for a distance of 38.87 feet; thence South 02°54'26" East for a distance of 18.20 feet to the TRUE POINT OF BEGINNING.

Said tract of land contains 954 square feet, more or less.

Said encroachment is more particularly described and indicated in attached Exhibit "C" showing the property involved and the location of the permitted encroaching features. Exhibits "B" and "C" are attached hereto and incorporated herein by reference.

3. It is the intent of this agreement that Owner may utilize City right-of-way for the limited purpose stated herein.

4. Owner, its successors and assigns will, during any use of said public right-of-way, use due care to protect City streets, utilities and all other public property, minimize disruption to

pedestrian travel in accordance with MUTCD Standards and Specifications; and that upon discontinuance of use, Owner will restore and replace all public property, or pay all costs above those that would be incurred by City to restore such surface.

5. It is understood and agreed by and between the parties that Owner, its successors and assigns, will be responsible for the repair or replacement of any public property which may be damaged or destroyed as a direct or indirect result of the use of the public rights-of-way.

6. Block 9, its successors and assigns, agree to accept all maintenance responsibility for all encroaching features, and shall take appropriate and timely measures to protect the traveling public. If repairs are not made by Block 9 in a timely and appropriate manner, as determined in Fargo's sole discretion, City shall repair or replace the offending encroachment feature to City standards, and the cost thereof shall be assessed against the Block 9 property. Fargo shall give Block 9 Notice of the deficiency if the same is made known to Fargo by report or observation, and Fargo shall provide a reasonable time to rectify the concern. In the event of an emergency as determined by Fargo, if Block 9 does not immediately repair the encroachment feature, Fargo will commence repairs immediately, such repairs to be accomplished in accordance with its standards. Fargo will notify owner for purposes of repair or replacement of owner designed sidewalk/paver.

7. Block 9 understands and agrees that in the event that any of the Encroachment features are in disrepair and Fargo determines it necessary to act to protect the public, Fargo shall restore the right of way to City standards and the property identified herein shall be assessed the full amount of the repair. Block 9, its successor's and assigns, hereby waives protest to the assessment levy and further waives any objection to the amount of the assessment for the work completed by Fargo in accordance with the terms of this agreement.

8. Owner, its successors and assigns, agrees to further hold the City harmless against

any and all expenses, demands, claims or losses of any kind that may be asserted against City or sustained by City, its officers, agents and employees, its property, streets, sidewalks, or any other municipal improvements by reason of the use of the public rights-of-way as aforesaid. Owner agrees to provide to the City a certificate of insurance indicating acceptance by its insurer of its obligation to defend and hold the City harmless as hereinabove stated.

9. This agreement is personal to Owner and cannot be sold, transferred or otherwise assigned. This agreement shall immediately terminate upon Owner's sale, transfer or assignment of the encroaching property. Subsequent owners may request permission to encroach, and enter into a separate agreement with City. City shall not withhold permission to encroach under the terms herein without due cause.

10. It is understood and agreed by and between the parties that this agreement and permission to encroach is given subject to any limitation on the authority of City to grant such permission, which may now or hereafter exist.

11. It is specifically understood and agreed that the City retains authority to operate and maintain existing above ground and underground municipal facilities in the encroachment area. In the event the City needs to permanently retake the encroachment area for public use, City will provide Owner written notice one hundred twenty (120) days in advance to remove the encroaching private facilities.

12. It is specifically agreed between the parties that this Encroachment Agreement shall be recorded.

13. Owner agrees to pay City a \$500 processing fee. The annual fee will be waived by the City.

(Remainder of this page intentionally left blank)

Dated this _____ day of _____, 2019.

BLOCK 9 PARTNERS, LLC

By _____

Its _____

STATE OF _____)
) ss:
COUNTY OF _____)

On this ____ day of _____, 2019, before me, a notary public in and for said county and state, personally appeared _____ to me known to be the _____ of **BLOCK 9 PARTNERS, LLC**, the entity described in and that executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)

Notary Public

County, _____

Dated this ____ day of _____, 2019.

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

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

ATTEST:

Steven Sprague, City Auditor

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

On this ____ day of _____, 2019, before me, a notary public in and for said county and state, personally appeared **TIMOTHY J. MAHONEY, M.D.** and **STEVEN SPRAGUE**, to me known to be the Mayor and Auditor, respectively, of the **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, North Dakota

The legal description was prepared by:
Curtis A. Skarpohl
Registered Land Surveyor No. 4723
Houston Engineering, Inc.
1401 21st Ave. N.
Fargo, ND 58102
(701) 237-5065

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

ENCROACHMENT AGREEMENT

(ADJACENT TO BLOCK NINE TOWER)

THIS AGREEMENT, is made and entered into as of the effective date below by and between the **CITY OF FARGO**, a North Dakota municipal corporation [hereinafter "City"] and **BLOCK 9 PARTNERS LLC**, a North Dakota limited liability company [referred to as "Block 9" or "Owner"]

WITNESSETH:

WHEREAS, the City and Owner entered into a Development Agreement dated May 23, 2016 which contemplated the development, design and construction of the "Project" as defined [the "Development Agreement"] in said Development Agreement, as "...the Block 9 Garage, the Plaza, the Skyway Work and the Mixed Use Project..." and in which the Owner is responsible for performing, or causing others to perform, the design, development and construction of the "Mixed Use Project" in accordance with the Development Agreement; and,

WHEREAS, the Mixed Use Project will be located on a parcel of real property owned by Owner and described on attached Exhibit A [the "Tower Parcel"]; and,

WHEREAS, the Tower Parcel has been subjected to N.D.C.C. Chapter 47-04.1 and thus the common areas to be constructed upon or adjacent to the Tower Parcel will be under the control and management of Block 9 Master Condominium Association [the "Association"]; and,

WHEREAS, the envelope for construction, use and operation of the Mixed Use Project will extend into the right-of-way adjacent to the Tower Parcel—on 3rd Avenue North and on Broadway; and,

WHEREAS, Owner anticipates that construction on the Mixed Use Project will commence soon, but a number of design details concerning canopies, blade signs, crosswalks, sidewalks and certain other street level features integral to the Mixed Use Project will not be fully developed for several months and, therefore, certain aspects of this Agreement will be refined and agreed between the parties by way of amendment to this Agreement; and,

WHEREAS, to the extent said Mixed Use Project elements extend into the public right-of-way, the parties wish to enter into an agreement memorializing the terms by which said encroachment is to be allowed;

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

1. **ENCROACHMENT OF MIXED USE PROJECT ONTO R-O-W.** Block 9, its successors and assigns, is hereby granted the right to encroach and use a portion of the right-of-way, said encroachment being for the purpose of owning and operating the Mixed Use Project, said portion of right-of-way being of varying depths adjoining the North and West boundaries of the Tower Parcel, the particular are be further identified and described by the parties pursuant to the amendment(s) contemplated in the recitals above [the "Encroachment Area"], and the particular items to be specified in such amendment(s).

2. Owner will submit to the City a detailed design of the Encroachment Area prior to taking possession of, commencing the demolition of, or commencing construction within the Encroachment Area, which design must be approved by the City before such possession, demolition or construction is commenced, which approval will not be unreasonably refused. At such time as the detailed design of the Encroachment Area for the Mixed Use Project is being submitted to the City for approval, the Owner and City will, in good faith, identify any detailed terms for the Mixed Use Project encroachment and incorporate these terms into an amendment to this Encroachment Agreement to be approved and executed by the Owner and City. The terms of said amendment will address some or all of the following:

A. A travelable sidewalk must be open at all times. There should never be an event or other obstruction that doesn't allow customary pedestrian travel. Said travel route must be compliant with the Americans with Disability Act, as the same is amended from time to time. The requirement to maintain compliance shall be ongoing and, to the extent that changes or improvements must be incorporated into the Encroachment Area, Owner shall be responsible for such changes or improvements. Generally, ADA compliance includes an unobstructed passage for pedestrian travel that is no less than six-foot-wide, which passage must essentially

be a straight pathway with any curvatures to be minimal in nature. In addition to said six-foot path, design of the Encroachment Area for the Mixed Use Project will include a buffer along the curblane that is at least two-feet in width and possibly wider if needed to accommodate the certain facilities.

B. The grant of this encroachment will not be interpreted to authorize the sale or consumption of alcoholic beverages on public right of way that is otherwise prohibited by law.

C. Owner will be responsible for maintenance repair replacement and ADA compliance with respect any items installed in the Encroachment Area. City has the right to enter the Encroachment Area and make repairs if the repairs haven't been made by the Owner and to specially assess the Tower Parcel for such costs.

D. With respect to the removal or demolition of existing city curb, street and sidewalk to accommodate the design of the Mixed Use Project and the Encroachment Area, Owner will pay all such costs for removal, demolition, design and reconstruction and Owner will also pay the reasonable out-of-pocket costs of City, if reasonably necessary, to provide supervision and oversight of such removal and replacement of curb, street and sidewalk.

3. Owner will directly contract for engineering and construction services for the construction, installation of the elements of the Mixed Use Project design within the Encroachment Area. Owner will make direct payment for the services. Owner's contractor(s) and engineer (s) must be licensed under the laws of the State of North Dakota, and otherwise be responsible contractors and engineers as reasonably determined by City.

4. Owner shall be responsible for compliance with all City construction standards and specifications, including but not limited to compliance with the City of Fargo Requirements for Engineering Services on Public Construction Projects, dated April 2007, which can be found at:

- [http://engineering.cityoffargo.com/07_PROJECT%20INFORMATIO
N/ COF%20Engineering%20Consultant%20Files/2007-
Requirements%20for%20Engineering%20Services%20on%20Publi
c%20Projects.pdf](http://engineering.cityoffargo.com/07_PROJECT%20INFORMATIO%20N/COF%20Engineering%20Consultant%20Files/2007-Requirements%20for%20Engineering%20Services%20on%20Public%20Projects.pdf)

- All barricades and traffic control measures shall comply with the latest edition of the Manual on Uniform Traffic Control Devices, which can be found at:
- http://mutcd.fhwa.dot.gov/pdfs/2009/pdf_index.htm

- Owner understands and agrees that all construction and modifications must match the existing special details of the Broadway Streetscape, including the square base of the street light and tooled joint sidewalk. Any additional costs shall be borne solely by Owner.

5. City shall have no obligation, liability, or responsibility for the costs incurred by the Owner to complete the Owner's work under this Agreement, including, but not limited to, contractor and engineering fees. In no event will City be responsible for any payments, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work. Nothing in this paragraph shall be interpreted or construed to limit the City's obligations as set forth in the Development Agreement.

6. Owner shall cause the Contractor to remain responsible for maintenance, repair and deficiency corrections for a period of one (1) year following City's acceptance of the work in the right of way not included in the Encroachment Area. Owner shall assign all warranties to City at the time of final acceptance.

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

8. Owner, its successors and assigns will, during any use of said public right-of-way, use due care to protect city streets, utilities and all other public property, minimize disruption to pedestrian travel in accordance with MUTCD Standards and Specifications.

9. To the extent Owner no longer occupies the Encroachment Area as contemplated by the Agreement, or if this Agreement is terminated, Owner will restore and replace all public property thereby affected to its pre-encroachment condition, or pay all costs above those that would be incurred by City to restore such surface. However, Owner shall not be required to re-construct any planter to its larger configuration or move the streetlight to its original location.

10. It is understood and agreed by and between the parties that Owner, its successors and assigns, will be responsible for the repair or replacement of any public property which may be damaged or destroyed as a direct or indirect result of the use of the public right of way. Owner agrees to accept all maintenance responsibility for the sidewalk.

11. Owner agrees to indemnify, release and hold harmless City for any and all design and construction deficiencies for a period of one year following the City's acceptance of any work and any damages arising as result thereof, including consequential and foreseeable damages.

12. Upon completion of the agreed modifications, Owner shall submit a written final inspection request, indicating substantial completion. Owner shall include as-built plans and specifications. City will promptly conduct a final inspection. The travel path shall be clean and free of debris at the time of inspection. The City, following its inspection, shall note deficiencies, if any, and indicate intended course and timing of resolution. City shall provide a Certificate of Acceptance letter upon final acceptance of any applicable work in a form reasonably acceptable to City.

13. Owner, its successors and assigns, agrees to further hold the City harmless against any and all expenses, demands, claims or losses of any kind that may be sustained by City, its officers, agents and employees, its property, streets, sidewalks, or any other municipal improvements by reason of the use of the public rights-of-way as aforesaid. Owner agrees to provide to the City a certificate of insurance indicating acceptance by its insurer of its obligation to defend and hold the City harmless as hereinabove stated.

14. Owner, its successors and assigns, agree to hold the City harmless for any expenses, damages, demands, claims or losses of any kind to any of Owner's property located in the Encroachment Area occasioned by normal City operations in the right of way, including but not limited to snow removal, light maintenance, and water or sewer repairs.

15. Except as provided in the following sentence: this Agreement is personal to Owner and cannot be sold, transferred or otherwise assigned; this Agreement shall immediately terminate upon Owner's sale, transfer or assignment of the Tower Parcel; and subsequent owners may request permission to encroach, and enter into a separate Agreement with City, in which case City will not unreasonably withhold permission to encroach under the terms herein. City hereby consents to the management and control of common areas of Mixed Use Project, including those that may be located in the Encroachment Area; the Association shall inure to and be bound by the rights and obligations of this Agreement.

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

17. **TERMINATION OF ENCROACHMENT.** The authorization from the City allowing the encroachment onto City right-of-way should extend and continue so long as the Mixed Use Project remains on the Tower Parcel. The provisions of this Agreement pertaining to the obligations of Owner to vacate the Encroachment Area, to restore the Encroachment Area, to allow the City to assess certain costs of restoration, et cetera, shall survive the termination of said authorization and this Agreement, itself, shall terminate only at such time as restoration of the right of way has been completed, all warranties for such work are expired and all costs to be paid by Owner have, in fact, been either paid or have been appropriately assessed against the benefitting parcel.

18. 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.

19. The failure or delay of City to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of the City to enforce each and every term of this Agreement.

20. 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.

21. 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.

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

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

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

BLOCK 9 PARTNERS LLC

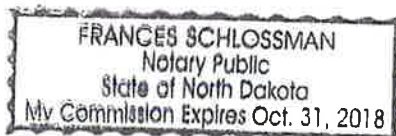
By F. Scott Neal
Its President

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

On this 29th day of August, 2018, before me, a notary public in and for said county and state, personally appeared F. Scott Neal to me known to be the President of **BLOCK 9 DEVELOPMENT LLC.**, the entity described in and that executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

[Signature]
Notary Public

(SEAL)



a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor


Steven Sprague, City Auditor

)

) SS:

2

Notary Public

Cass County, North Dakota

(SEAL)

~~[INSERT SURVEYOR NAME AND ADDRESS]~~

FRANCES SCHLOSSMAN
Notary Public
State of North Dakota
My Commission Expires Oct. 31, 2013

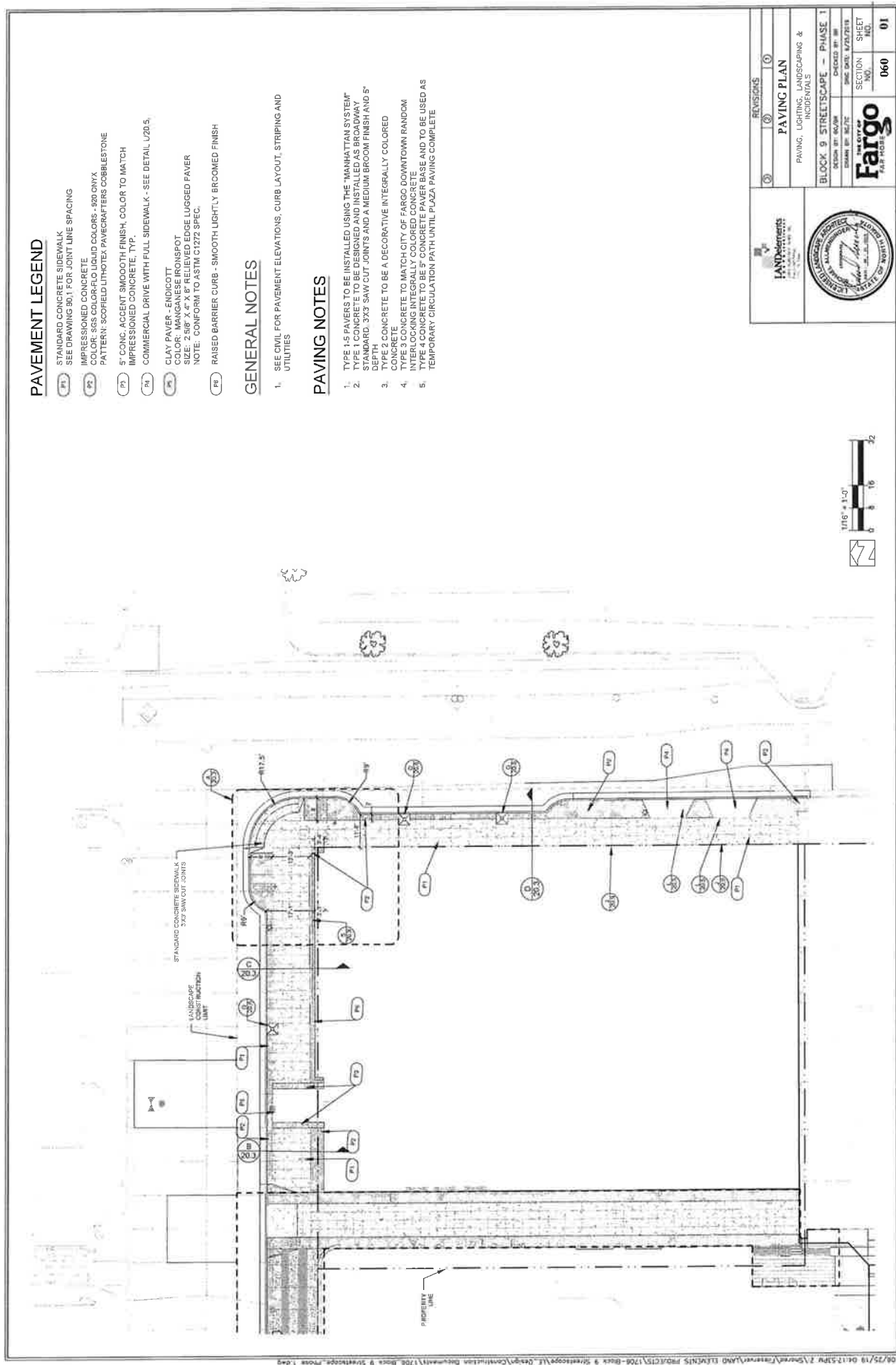
Erik R. Johnson
City of Fargo Attorney
505 Broadway Street North, Suite 206
Fargo, ND 58102
(701) 280-1901

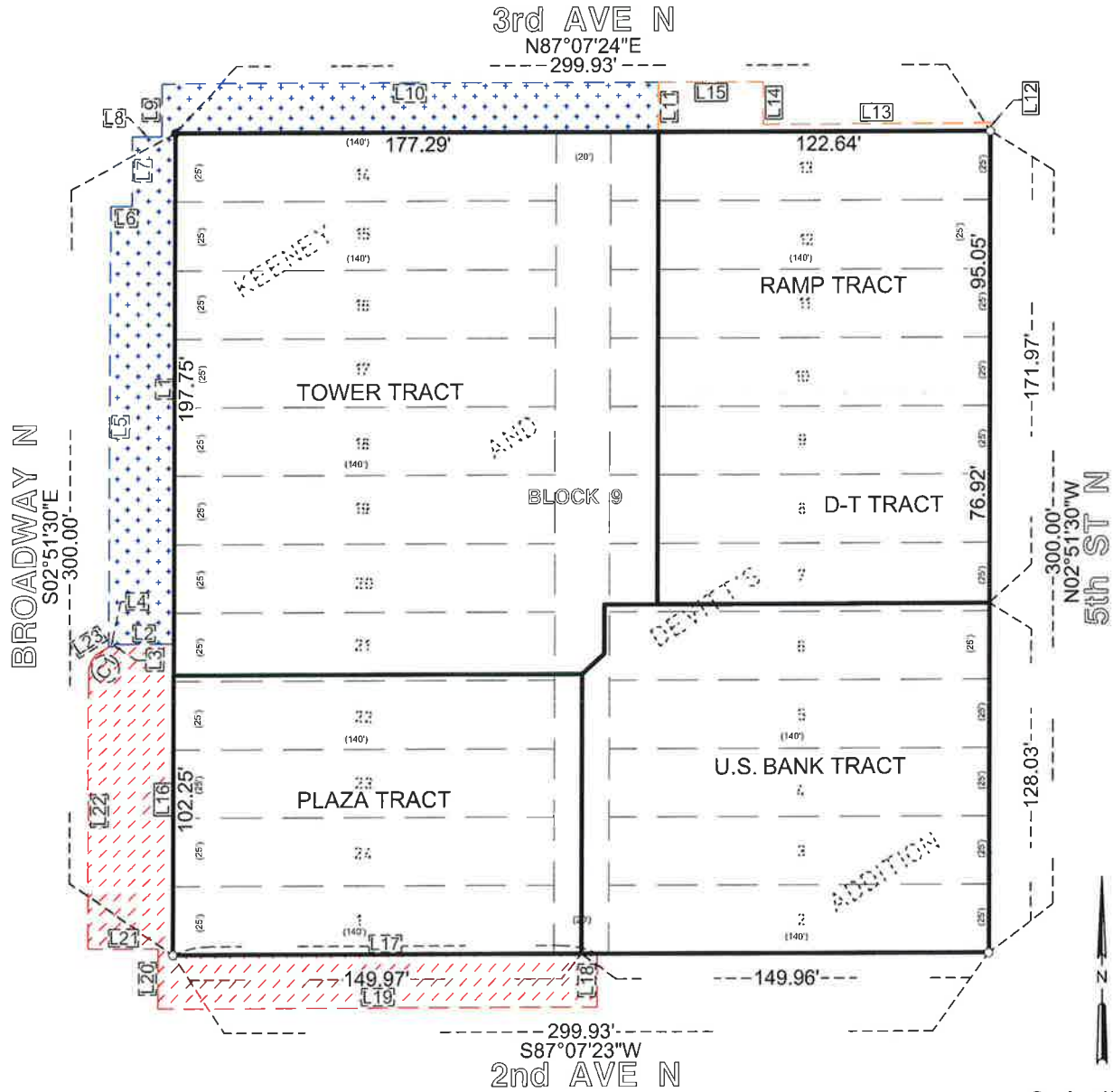
EXHIBIT A




Description of Tower Parcel

Units 1, 2, 3, 4 and 5, Block 9 Master Condominium, a condominium created pursuant to a Declaration Establishing a Plan for Condominium Ownership recorded in the office of the County Recorder for Cass County, North Dakota as Document Number _____.

Exhibit B





- ENCROACHMENT EASEMENT A 
- ENCROACHMENT EASEMENT B 
- ENCROACHMENT EASEMENT C 

ENCROACHMENT EASEMENT EXHIBIT



Fargo
P: 701.237.5065
F: 701.237.6101

Drawn by
KNS
Checked by
CAS

Date
6-28-19
Scale
AS SHOWN

KILBOURNE GROUP
BLOCK 9, KEENEY & DEVITT'S ADDITION
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
PROJECT NO. 7862-0002

SHEET
1 of 4

Parcel Line Table		
Line #	Length	Direction
L1	186.22	S02°51'30"E
L2	22.05	S87°13'01"W
L3	0.76	S02°46'59"E
L4	2.00	S86°47'26"W
L5	160.59	N02°46'56"W
L6	7.88	N87°06'30"E
L7	25.30	N02°45'21"W
L8	10.79	N87°25'22"E
L9	19.24	N02°54'42"W
L10	182.41	N87°05'34"E
L11	18.20	S02°54'26"E
L12	3.06	N02°51'30"W

Parcel Line Table		
Line #	Length	Direction
L13	83.78	S86°57'30"W
L14	15.41	N02°53'30"W
L15	38.87	S87°05'34"W
L16	113.78	S02°51'30"E
L17	155.97	N87°07'23"E
L18	19.50	S02°52'37"E
L19	161.43	S87°07'23"W
L20	21.94	N02°52'37"W
L21	25.58	S87°08'30"W
L22	100.99	N02°57'51"W
L23	3.72	N53°51'05"E

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	8.95	9.00	56°58'12"	N25°21'59"E	8.58

ENCROACHMENT EASEMENT EXHIBIT



Houston
Engineering Inc.

Fargo

P: 701.237.9065
F: 701.237.5101

Drawn by
KNS

Checked by
CAS

Date
6-28-19

Scale
AS SHOWN

KILBOURNE GROUP
BLOCK 9, KEENEY & DEVITT'S ADDITION
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
PROJECT NO. 7862-0002

SHEET

2 of 4

DESCRIPTION - ENCROACHMENT EASEMENT A:

That part of the public street right-of-way lying adjacent to Block 9, Keeney and Devitt's Addition to the City of Fargo, Cass County, North Dakota, described as follows:

COMMENCING at the Northwest Corner of said Block 9; thence North 87°07'24" East (assumed bearing), along the northerly line of said Block 9, for a distance of 177.29 feet to the TRUE POINT OF BEGINNING; thence continue North 87°07'24" East, along the northerly line of said Block 9, for a distance of 122.64 feet to the Northeast Corner of said Block 9; thence North 02°51'30" West for a distance of 3.06 feet; thence South 86°57'30" West for a distance of 83.78 feet; thence North 02°53'30" West for a distance of 15.41 feet; thence South 87°05'34" West for a distance of 38.87 feet; thence South 02°54'26" East for a distance of 18.20 feet to the TRUE POINT OF BEGINNING.

Said tract of land contains 954 square feet, more or less.

DESCRIPTION - ENCROACHMENT EASEMENT B:

That part of the public street right-of-way lying adjacent to Block 9, Keeney and Devitt's Addition to the City of Fargo, Cass County, North Dakota, described as follows:

BEGINNING at the Northwest Corner of said Block 9; thence South 02°51'30" East (assumed bearing), along the westerly line of said Block 9, for a distance of 186.22 feet; thence South 87°13'01" West for a distance of 22.05 feet; thence South 02°46'59" East for a distance of 0.76 feet; thence South 86°47'26" West for a distance of 2.00 feet; thence North 02°46'56" West for a distance of 160.59 feet; thence North 87°06'30" East for a distance of 7.88 feet; thence North 02°45'21" West for a distance of 25.30 feet; thence North 87°25'22" East for a distance of 10.79 feet; thence North 02°54'42" West for a distance of 19.24 feet; thence North 87°05'34" East for a distance of 182.41 feet; thence South 02°54'26" East for a distance of 18.20 feet to a point of intersection with the northerly line of said Block 9; thence South 87°07'24" West, along the northerly line of said Block 9, for a distance of 177.29 feet to the POINT OF BEGINNING.

Said tract of land contains 7,549 square feet, more or less.


DESCRIPTION - ENCROACHMENT EASEMENT C:

That part of the public street right-of-way lying adjacent to Block 9, Keeney and Devitt's Addition to the City of Fargo, Cass County, North Dakota, described as follows:

COMMENCING at the Northwest Corner of said Block 9; thence South 02°51'30" East (assumed bearing), along the westerly line of said Block 9, for a distance of 186.22 feet to the TRUE POINT OF BEGINNING; thence continue South 02°51'30" East, along the westerly line of said Block 9, for a distance of 113.78 feet to the Southwest Corner of said Block 9; thence North 87°07'23" East, along the southerly line of said Block 9, for a distance of 155.97 feet; thence South 02°52'37" East for a distance of 19.50 feet; thence South 87°07'23" West for a distance of 161.43 feet; thence North 02°52'37" West for a distance of 21.94 feet; thence South 87°08'30" West for a distance of 25.58 feet; thence North 02°57'51" West for a distance of 100.99 feet to a point of tangential curvature to the right, radius 9.00 feet; thence northeasterly, along said curve to the right for a distance of 8.95 feet, central angle 56°58'12", chord bearing North 25°21'59" East; thence North 53°51'05" East for a distance of 3.72 feet; thence North 86°47'26" East for a distance of 2.00 feet; thence North 02°46'59" West for a distance of 0.76 feet; thence North 87°13'01" East for a distance 22.05 feet to the TRUE POINT OF BEGINNING.

Said tract of land contains 6,601 square feet, more or less.


ENCROACHMENT EASEMENT EXHIBIT

 Houston Engineering Inc.	Fargo	Drawn by KNS	Date 6-28-19	KILBOURNE GROUP BLOCK 9, KEENEY & DEVITT'S ADDITION CITY OF FARGO, CASS COUNTY, NORTH DAKOTA PROJECT NO. 7862-0002	SHEET 3 of 4
	P: 701.237.5265 F: 701.237.5131	Checked by CAS	Scale AS SHOWN		

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

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

Dated this 28th day of JUNE, 20 19.


Curtis A. Skarphol
Registered Land Surveyor No. 4723




STATE OF NORTH DAKOTA)
COUNTY OF CASS) SS

On this 28th day of June, 20 19, before me, a notary public, personally appeared Curtis A. Skarphol, registered land surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: 

MEGAN DOYLE
Notary Public
State of North Dakota
My Commission Expires Nov. 23, 2022

ENCROACHMENT EASEMENT EXHIBIT

 Houston Engineering Inc.	Fargo	Drawn by KNS	Date 6-28-19	KILBOURNE GROUP BLOCK 9, KEENEY & DEVITT'S ADDITION CITY OF FARGO, CASS COUNTY, NORTH DAKOTA PROJECT NO. 7862-0002	SHEET 4 of 4
	P: 701.237.5065 F: 701.237.5101	Checked by CAS	Scale AS SHOWN		

Gregory B. Selbo
William P. Harrie*
Mark R. Hanson* •
Douglas W. Gigler*
Andrew L.B. Noah



*Jacqueline S. Anderson
*Thaddeus E. Swanson
Cloe A. Kilwein
*Colin A. Brown

*Also Licensed in Minnesota
• Also Licensed in South Dakota

December 10, 2019

Hand Delivered

Nancy J. Morris
Assistant City Attorney
505 N. Broadway, Suite 206
Fargo, ND 58102

RE: Block 9 Partners LLC/City of Fargo – Encroachment Agreement (Garage)
Our file no. 17067.006

Dear Nancy:

Enclosed are two originals of the Encroachment Agreement (Adjacent to Block Nine Garage) which have been executed by Block 9 Partners LLC. Please have both originals executed by the City, and return one of the fully-executed originals to me and I will have it recorded.

Sincerely,

A handwritten signature in blue ink, appearing to be "ALN", written over a circular blue ink stamp or seal.

Andrew L.B. Noah
ALN/tw
Encs.

ENCROACHMENT AGREEMENT

(ADJACENT TO BLOCK NINE GARAGE)

THIS AGREEMENT, is made and entered into as of the effective date below by and between the **CITY OF FARGO**, a North Dakota municipal corporation [hereinafter “City”] and **BLOCK 9 PARTNERS LLC**, a North Dakota limited liability company [referred to as “Owner”]

WITNESSETH:

WHEREAS, for background purposes only, and not because said agreement is integral to the interpretation or effectiveness of this Agreement, the City and Owner entered into a Development Agreement dated May 23, 2016, as amended [the “Development Agreement”], which contemplated the development, design and construction of the “Project” as defined in said Development Agreement, as “...the Block 9 Garage, the Plaza, the Skyway Work and the Mixed Use Project...” and in which the Owner is responsible for performing, or causing others to perform, the design, development and construction of the “Project” in accordance with the Development Agreement; and,

WHEREAS, the garage portion of the Project [the “Garage”] is located on a parcel of real property owned by Owner and described on attached Exhibit A [the “Garage Parcel”]; and,

WHEREAS, the envelope for construction, use and operation of the Garage extends into a portion of the right-of-way adjacent to the Garage Parcel on 3rd Avenue North and 5th Street North; and,

WHEREAS, to the extent said Garage elements extend into the public right-of-way, the parties wish to enter into an agreement memorializing the terms by which said encroachments are to be allowed;

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

1. **ENCROACHMENT OF GARAGE ONTO R-O-W.** City hereby grants Owner and its successors and assigns, for the benefit of the Garage Parcel, the right to encroach upon that part of the 3rd Avenue right-of-way described and depicted on attached Exhibit B [the “Encroachment Area”] only for the purposes of installing stamped concrete, pavers and planter boxes and other landscaping as depicted on Exhibit C [the “Permitted Encroachments”].

2. The rights granted by City to Owner under this Agreement are subject to the following terms and conditions.

A. A travelable sidewalk must be open at all times. There should never be an event or other obstruction that doesn’t allow customary pedestrian travel. Said travel route must be compliant with the Americans with Disability Act (“ADA”), as the same is amended from time to time. The requirement to maintain compliance shall be ongoing and, to the extent that changes or improvements must be incorporated into the Encroachment Area, Owner shall be responsible for such changes or improvements. Generally, ADA compliance includes an unobstructed passage for pedestrian travel that is no less than six-foot-wide, which passage must essentially be a straight pathway with any curvatures to be minimal in nature. If and to the extent required by the ADA, there shall also be a buffer along the curbline to accommodate the certain facilities.

B. The grant of this encroachment will not be interpreted to authorize the sale or consumption of alcoholic beverages on public right of way that is otherwise prohibited by law.

C. Owner acknowledges that a portion of the Encroachment Area serves as a sidewalk for public travel and Owner will be responsible for commercially reasonable maintenance, repair, and replacement of the encroachment features, and shall be responsible for ADA compliance with respect any Permitted Encroachments. If repairs are not made by Owner in a timely and appropriate manner, as reasonably determined by City, City shall repair or replace the offending encroachment feature to City Standards and Specifications, and the cost thereof shall be assessed to the Garage Parcel. City shall give Owner notice of any deficiency if the same is made known to City by report or observation, and City shall provide a reasonable time to Owner to rectify the concern. In the event of an emergency as determined by City, if repairs are not immediately accomplished by Owner, City shall repair or replace in accordance with City Standards and Specifications.

D. With respect to the removal or demolition of any sidewalk to accommodate the design, installation or repair of the Permitted Encroachments, Owner will pay

all costs for such removal, demolition, design and reconstruction and Owner will also pay the reasonable out-of-pocket costs of City, if reasonably necessary, to provide supervision and oversight of such removal and replacement of the sidewalk.

E. Aesthetics. Owner shall be responsible for the aesthetic features of the Permitted Encroachments, including plantings, weed eradication, removal and restoration, as well as trash removal and disposal. City shall have no responsibility for the plant materials. Complaints made to City, if any, shall be communicated to Owner and addressed by Owner in a timely and appropriate manner.

3. Owner will directly contract for engineering and construction services for the construction, installation of the elements of the Permitted Encroachments within the Encroachment Area. Owner will make direct payment for the services. Owner's contractor(s) and engineer (s) must be licensed under the laws of the State of North Dakota, and otherwise be responsible contractors and engineers as reasonably determined by City.

4. Owner shall be responsible for compliance with all City construction standards and specifications, including but not limited to compliance with the City of Fargo Requirements for Engineering Services on Public Construction Projects, dated April 2015, as modified by the City Engineer [the "City Standards and Specifications"]. All barricades and traffic control measures shall comply with the latest edition of the Manual on Uniform Traffic Control Devices, which can be found at http://mutcd.fhwa.dot.gov/pdfs/2009/pdf_index.htm ["MUTCD Standards and Specifications"].

5. City shall have no obligation, liability, or responsibility for the costs incurred by the Owner to complete the Owner's work under this Agreement, including, but not limited to, contractor and engineering fees. In no event will City be responsible for any payments, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work. Nothing in this paragraph shall be interpreted or construed to limit the City's obligations as set forth in the Development Agreement.

6. Owner agrees that, after written notice and reasonable opportunity to cure, failure to properly construct, maintain, repair or replace the Permitted Encroachments may result in City restoring the Encroachment Area to City Standards and Specifications and assessing the cost to the Garage Parcel. In such case: (a) Owner waives its right to protest the resolution of necessity

for the improvements and restoration or other provisions of NDCC Chapter 40-27 as the same may be amended for which such resolutions are required pursuant to North Dakota Century Code, Section 40-22-17; (b) Owner specifically consents to the restoration of the sidewalk to City Standards and Specifications upon termination of this Agreement; and (c) Owner further consents to the assessment of cost thereof to the Garage Parcel and waives any right to protest the benefit or other assessment attributed to the construction. Project costs which may be assessed against the Garage Parcel include all costs of the improvement that are authorized by North Dakota law, include; NDCC §40-23-05, such as engineering, fiscal agent's and attorney's fees for any services in connection with authorization and financing of the improvement, and all other costs as authorized by law.

7. Owner, its successors and assigns will, during any use of said public right-of-way, use due care to protect city streets, utilities and all other public property, minimize disruption to pedestrian travel in accordance with MUTCD Standards and Specifications.

8. To the extent Owner no longer occupies the Encroachment Area, Owner will remove all Permitted Encroachments and restore the City right of way to City Standards and Specifications, at Owner's cost.

9. It is understood and agreed by and between the parties that Owner, its successors and assigns, will be responsible for the repair or replacement of any public property which may be damaged or destroyed as a direct or indirect result of the use of the public right of way.

10. Owner agrees to indemnify, release and hold harmless City for any and all expenses, demands, claims or losses of any kind that may be asserted against City or sustained by City, its officers, agents and employees, its property, streets, sidewalks, or any other municipal improvements to the extent of Owner's negligence or willful misconduct in its use of the right of way permitted herein. Owner agrees to obtain a policy of insurance for public liability and property damage insurance with respect to this Agreement with coverage limits reasonably acceptable to City and that names City as an additional insured. Owner shall provide City with a certificate of insurance evidencing such insurance and coverages.

11. Owner, its successors and assigns, agree to hold the City harmless for any expenses, damages, demands, claims or losses of any kind to any of Owner's property located in the Encroachment Area occasioned by normal City operations in the right of way, including but not limited to snow removal, light maintenance, and water or sewer repairs.

12. This Agreement is personal to Owner and cannot be sold, transferred or otherwise assigned, except as provided for herein. The rights and obligations of Owner under this Agreement shall pass to any successor or assign, and this Agreement shall continue without interruption provided (1) City has not terminated the Agreement as provided herein; (2) Owner, its successors and assigns provide Notice to City of the change in ownership; and (3) proof that the insurance required herein continues uninterrupted, from either Owner or its successors and assigns. Failure to provide such Notice or Evidence of Insurance within 30 days of such transfer may be cause for Termination of this Agreement. The parties acknowledge that pursuant to the Development Agreement, upon completion of the Garage, Owner is to transfer the Garage Parcel to the City, and the City is to enter into a Contract for Deed to sell the Garage Parcel to Block 9 Ramp Owner LLC. The City, without further notice being provided to the City as provided in this Section 12, does hereby consent to and approve the transfer and assignment of the rights and obligations of Owner under this Agreement from Block 9 Partners LLC to Block 9 Ramp Owner LLC in conjunction with transfers contemplated by the Development Agreement.

13. Owner understands and agrees that City construction in the right of way may be necessary from time to time and when necessary may damage or otherwise impact the Permitted Encroachments. In such event, Owner shall be responsible for the repair or replacement of the Permitted Encroachments. City shall provide Owner Notice of the work to be completed and provide Owner a reasonable time, not less than 10 days, to repair or replace the Permitted Encroachment.

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

15. **TERMINATION OF ENCROACHMENT.** The authorization from the City allowing the encroachment onto City right-of-way should extend and continue so long as the Garage remains on the Garage Parcel. The provisions of this Agreement pertaining to the obligations of Owner to vacate the Encroachment Area, to restore the Encroachment Area, to allow the City to assess certain costs of restoration, et cetera, shall survive the termination of said authorization and this Agreement, itself, shall terminate only at such time as restoration of the right of way has been completed, all warranties for such work are expired and all costs to be paid by Owner have, in fact, been either paid or have been appropriately assessed against the benefitting parcel.

It is specifically understood and agreed that the City retains authority to operate and maintain existing above ground and underground municipal facilities in the Encroachment Area. The intent of this Agreement is to allow the Permitted Encroachments to remain in place for so long as the use of the Garage Parcel remains the same. In the extraordinary event that City determines a public need for some or all of the Encroachment Area without a change in use of the Garage Parcel, including but not limited to the provision of public services such as street widening, storm and sanitary sewer repair and installation, water main repair and installation, sidewalk repair and installation and/or street and traffic lighting repair and installation, and the continued presence of some or all of the Permitted Encroachments is no longer practicable under the circumstances, City may, as determined by the City Commission, terminate Owner's rights, in whole or in part, under this Agreement.

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

17. The failure or delay of City to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of the City to enforce each and every term of this Agreement.

18. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.

19. This Agreement, together with any related documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement.

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

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

22. Owner agrees to pay City a \$500 processing fee. The annual fee will be waived by the City.

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

Dated this 9th day of Dec., 2019.

**BLOCK 9 PARTNERS LLC, a North Dakota
Limited Liability Company**

By F. Scott Neal

Its President

STATE OF NORTH DAKOTA)

) ss:

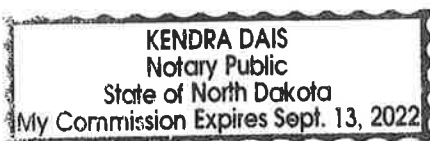
COUNTY OF CASS)

On this 9th day of December, 2019, before me, a notary public in and for said county and state, personally appeared F. Scott Neal to me known to be the President of **BLOCK 9 PARTNERS LLC**, the entity described in and that executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

Kendra Davis

Notary Public

(SEAL)



Dated this ____ day of ____, 2019.

CITY OF FARGO
a North Dakota municipal corporation

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

ATTEST:

Steven Sprague, City Auditor

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

On this ____ day of _____, 2019, before me, a notary public in and for said county and state, personally appeared **TIMOTHY J. MAHONEY, M.D.** and **STEVEN SPRAGUE**, to me known to be the Mayor and Auditor, respectively, of the **CITY OF FARGO**, a North Dakota municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, North Dakota

EXHIBIT A

Legal Description of Garage Parcel

That part of Lots 7 through 13, Block 9, Keeney and Devitt's Addition to the City of Fargo, Cass County, North Dakota, described as follows:

COMMENCING at the Southeast Corner of said Block 9; thence North 02°51'30" West (assumed bearing) along the easterly line of said Block 9, for a distance of 128.03 feet to a point hereinafter described as "Point A" and being the TRUE POINT OF BEGINNING; thence South 86°59'36" West for a distance of 103.92 feet to a point hereinafter described as "Point B"; thence continue South 86°59'36" West for a distance of 18.59 feet; thence North 02°54'12" West for a distance of 172.25 feet to a point of intersection with the northerly line of said Block 9; thence North 87°07'24" East, along the northerly line of said Block 9, for a distance of 122.64 feet to the Northeast Corner of said Block 9; thence South 02°51'30" East, along the easterly line of said Block 9, for a distance of 95.05 feet to a point hereinafter described as "Point E"; thence continue South 02°51'30" East, along the easterly line of said Block 9, for a distance of 45.08 feet to a point hereinafter described as "Point F"; thence continue South 02°51'30" East, along the easterly line of said Block 9, for a distance of 31.84 feet to the TRUE POINT OF BEGINNING.

LESS THE FOLLOWING 3-DIMENSIONAL PORTION OF THE ABOVE TRACT:

That part of Lots 7, 8, 9 and 10, Block 9, Keeney and Devitt's Addition to the City of Fargo, Cass County, North Dakota, described as follows:

COMMENCING at the Southeast Corner of said Block 9; thence North 02°51'30" West (assumed bearing) along the easterly line of said Block 9, for a distance of 128.03 feet to a point hereinafter described as "Point A" and being the TRUE POINT OF BEGINNING; thence South 86°59'36" West for a distance of 103.92 feet to a point hereinafter described as "Point B"; thence North 02°54'12" West for a distance of 32.02 feet to a point hereinafter described as "Point C"; thence continue North 02°54'12" West for a distance of 16.25 feet; thence South 87°05'48" West for a distance of 6.00 feet; thence North 02°54'12" West for a distance of 28.83 feet to a point hereinafter described as "Point D"; thence North 87°05'48" East for a distance of 109.99 feet to a point of intersection with the easterly line of said Block 9, said point hereinafter described as "Point E"; thence South 02°51'30" East, along the easterly line of said Block 9, for a distance of 45.08 feet to a point hereinafter described as "Point F"; thence continue South 02°51'30" East, along the easterly line of said Block 9, for a distance of 31.84 feet to the TRUE POINT OF BEGINNING.

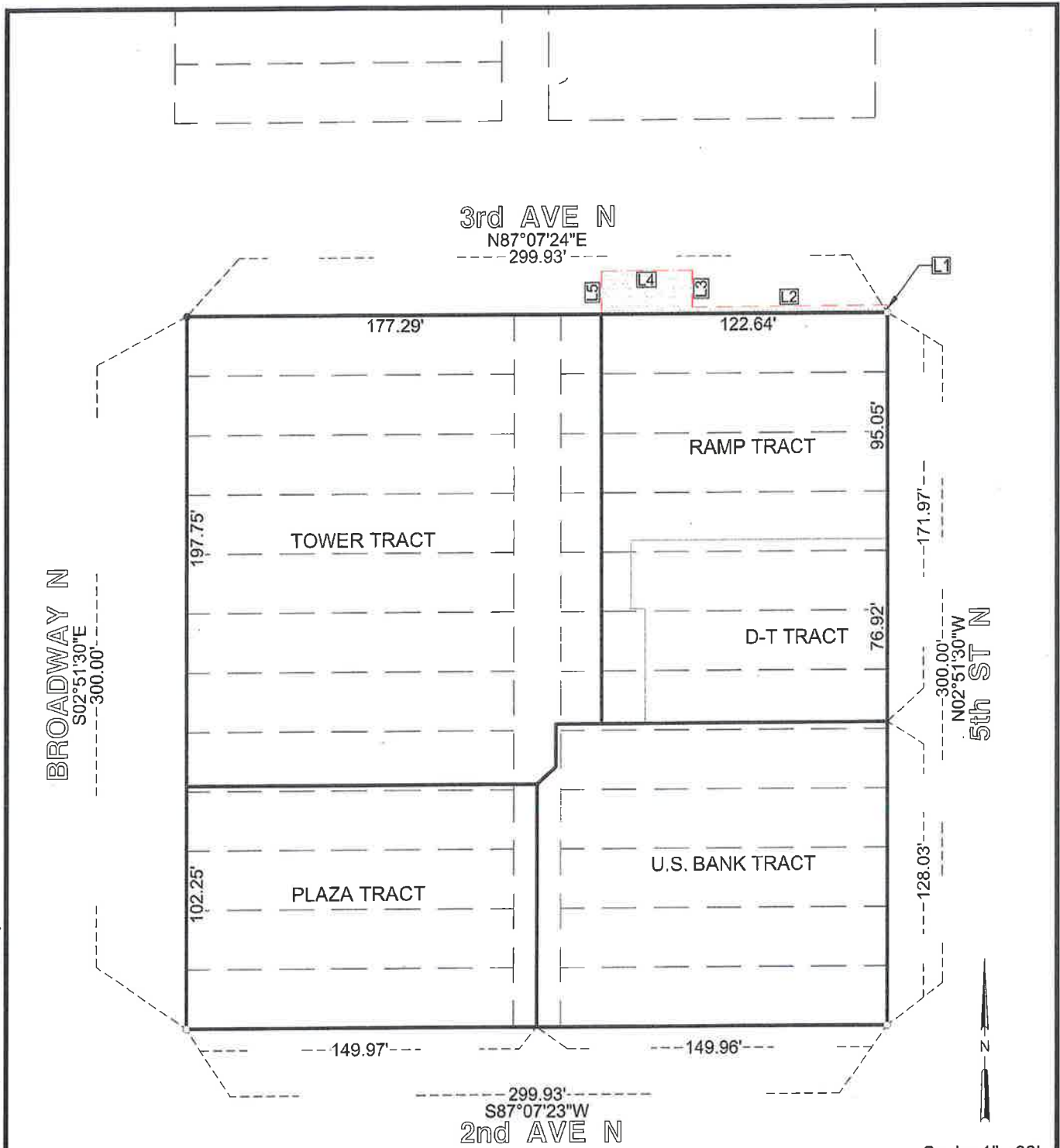
Said tract of land has an upper vertical boundary consisting of two planar surfaces hinged together along a level line connecting Points C and F, said level line being located at an elevation of 915.92'. The first planar surface defined by its corners at Points A, B, C and F is level in both directions, and is located at an elevation of 915.92'. The second planar surface slopes down as it goes north, with its south edge being a level line connecting Points C and F, said level line being located at an elevation of 915.92'. The north edge of the sloped planar surface is a level line connecting Points D and E, said level line being located

at an elevation of 913.25'. The above elevations use the North American Vertical Datum of 1988, are in feet and are referenced to an elevation of 903.00' for the ground level finished floor surface elevation at Point F.

THE ABOVE LEGAL DESCRIPTION WAS OBTAINED FROM A PREVIOUSLY RECORDED DOCUMENT.

EXHIBIT B

Legal Description and Depiction of Encroachment Area



ENCROACHMENT AREA - GARAGE PARCEL

EXHIBIT B - ENCROACHMENT AREA



**Houston
Engineering Inc.**

Fargo

P: 701.237.5065
F: 701.237.5101

Drawn by
KNS

Checked by
CAS

Date
8-29-19

Scale
AS SHOWN

KILBOURNE GROUP
BLOCK 9, KEENEY & DEVITT'S ADDITION
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
PROJECT NO. 7862-0002

SHEET

1 of 2

Parcel Line Table		
Line #	Length	Direction
L1	3.06	N02°51'30"W
L2	83.78	S86°57'30"W
L3	15.41	N02°53'30"W
L4	38.87	S87°05'34"W
L5	18.20	S02°54'26"E

DESCRIPTION - ENCROACHMENT AREA - GARAGE:

That part of the public street right-of-way lying adjacent to Block 9, Keeney and Devitt's Addition to the City of Fargo, Cass County, North Dakota, described as follows:

COMMENCING at the Northwest Corner of said Block 9; thence North 87°07'24" East (assumed bearing), along the northerly line of said Block 9, for a distance of 177.29 feet to the TRUE POINT OF BEGINNING; thence continue North 87°07'24" East, along the northerly line of said Block 9, for a distance of 122.64 feet to the Northeast Corner of said Block 9; thence North 02°51'30" West for a distance of 3.06 feet; thence South 86°57'30" West for a distance of 83.78 feet; thence North 02°53'30" West for a distance of 15.41 feet; thence South 87°05'34" West for a distance of 38.87 feet; thence South 02°54'26" East for a distance of 18.20 feet to the TRUE POINT OF BEGINNING.

Said tract of land contains 954 square feet, more or less.

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

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

Dated this 29th day of August, 20 19.



Curtis A. Skarphol
Registered Land Surveyor No. 4723



STATE OF NORTH DAKOTA)
COUNTY OF CASS) SS

On this 29 day of August, 20 19, before me, a notary public, personally appeared Curtis A. Skarphol, registered land surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

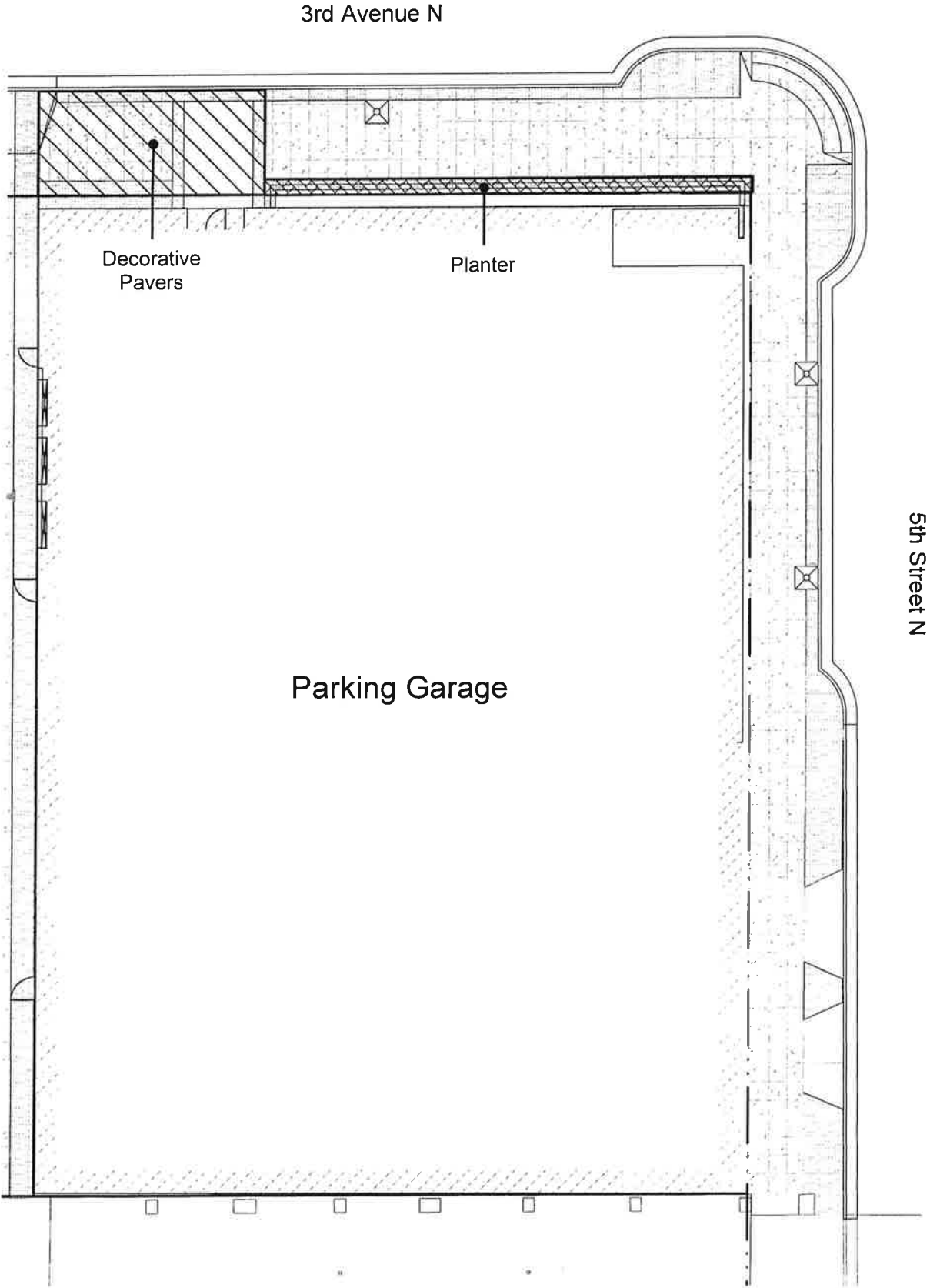
Notary Public: 

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

EXHIBIT B - ENCROACHMENT AREA

 Houston Engineering Inc.	Fargo	Drawn by KNS	Date 8-29-19	KILBOURNE GROUP BLOCK 9, KEENEY & DEVITT'S ADDITION CITY OF FARGO, CASS COUNTY, NORTH DAKOTA PROJECT NO. 7862-0002	SHEET 2 of 2
	P: 701.237.5065 F: 701.237.5101	Checked by CAS	Scale -		

EXHIBIT C
Drawing Showing Permitted Encroachments



ENCROACHMENT AGREEMENT

(ADJACENT TO BLOCK NINE GARAGE)

THIS AGREEMENT, is made and entered into as of the effective date below by and between the **CITY OF FARGO**, a North Dakota municipal corporation [hereinafter “City”] and **BLOCK 9 PARTNERS LLC**, a North Dakota limited liability company [referred to as “Owner”]

WITNESSETH:

WHEREAS, for background purposes only, and not because said agreement is integral to the interpretation or effectiveness of this Agreement, the City and Owner entered into a Development Agreement dated May 23, 2016, as amended [the “Development Agreement”], which contemplated the development, design and construction of the “Project” as defined in said Development Agreement, as “...the Block 9 Garage, the Plaza, the Skyway Work and the Mixed Use Project...” and in which the Owner is responsible for performing, or causing others to perform, the design, development and construction of the “Project” in accordance with the Development Agreement; and,

WHEREAS, the garage portion of the Project [the “Garage”] is located on a parcel of real property owned by Owner and described on attached Exhibit A [the “Garage Parcel”]; and,

WHEREAS, the envelope for construction, use and operation of the Garage extends into a portion of the right-of-way adjacent to the Garage Parcel on 3rd Avenue North and 5th Street North; and,

WHEREAS, to the extent said Garage elements extend into the public right-of-way, the parties wish to enter into an agreement memorializing the terms by which said encroachments are to be allowed;

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

1. **ENCROACHMENT OF GARAGE ONTO R-O-W.** City hereby grants Owner and its successors and assigns, for the benefit of the Garage Parcel, the right to encroach upon that part of the 3rd Avenue right-of-way described and depicted on attached Exhibit B [the “Encroachment Area”] only for the purposes of installing stamped concrete, pavers and planter boxes and other landscaping as depicted on Exhibit C [the “Permitted Encroachments”].

2. The rights granted by City to Owner under this Agreement are subject to the following terms and conditions.

A. A travelable sidewalk must be open at all times. There should never be an event or other obstruction that doesn’t allow customary pedestrian travel. Said travel route must be compliant with the Americans with Disability Act (“ADA”), as the same is amended from time to time. The requirement to maintain compliance shall be ongoing and, to the extent that changes or improvements must be incorporated into the Encroachment Area, Owner shall be responsible for such changes or improvements. Generally, ADA compliance includes an unobstructed passage for pedestrian travel that is no less than six-foot-wide, which passage must essentially be a straight pathway with any curvatures to be minimal in nature. If and to the extent required by the ADA, there shall also be a buffer along the curbline to accommodate the certain facilities.

B. The grant of this encroachment will not be interpreted to authorize the sale or consumption of alcoholic beverages on public right of way that is otherwise prohibited by law.

C. Owner acknowledges that a portion of the Encroachment Area serves as a sidewalk for public travel and Owner will be responsible for commercially reasonable maintenance, repair, and replacement of the encroachment features, and shall be responsible for ADA compliance with respect any Permitted Encroachments. If repairs are not made by Owner in a timely and appropriate manner, as reasonably determined by City, City shall repair or replace the offending encroachment feature to City Standards and Specifications, and the cost thereof shall be assessed to the Garage Parcel. City shall give Owner notice of any deficiency if the same is made known to City by report or observation, and City shall provide a reasonable time to Owner to rectify the concern. In the event of an emergency as determined by City, if repairs are not immediately accomplished by Owner, City shall repair or replace in accordance with City Standards and Specifications.

D. With respect to the removal or demolition of any sidewalk to accommodate the design, installation or repair of the Permitted Encroachments, Owner will pay

all costs for such removal, demolition, design and reconstruction and Owner will also pay the reasonable out-of-pocket costs of City, if reasonably necessary, to provide supervision and oversight of such removal and replacement of the sidewalk.

E. Aesthetics. Owner shall be responsible for the aesthetic features of the Permitted Encroachments, including plantings, weed eradication, removal and restoration, as well as trash removal and disposal. City shall have no responsibility for the plant materials. Complaints made to City, if any, shall be communicated to Owner and addressed by Owner in a timely and appropriate manner.

3. Owner will directly contract for engineering and construction services for the construction, installation of the elements of the Permitted Encroachments within the Encroachment Area. Owner will make direct payment for the services. Owner's contractor(s) and engineer (s) must be licensed under the laws of the State of North Dakota, and otherwise be responsible contractors and engineers as reasonably determined by City.

4. Owner shall be responsible for compliance with all City construction standards and specifications, including but not limited to compliance with the City of Fargo Requirements for Engineering Services on Public Construction Projects, dated April 2015, as modified by the City Engineer [the "City Standards and Specifications"]. All barricades and traffic control measures shall comply with the latest edition of the Manual on Uniform Traffic Control Devices, which can be found at http://mutcd.fhwa.dot.gov/pdfs/2009/pdf_index.htm ["MUTCD Standards and Specifications"].

5. City shall have no obligation, liability, or responsibility for the costs incurred by the Owner to complete the Owner's work under this Agreement, including, but not limited to, contractor and engineering fees. In no event will City be responsible for any payments, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work. Nothing in this paragraph shall be interpreted or construed to limit the City's obligations as set forth in the Development Agreement.

6. Owner agrees that, after written notice and reasonable opportunity to cure, failure to properly construct, maintain, repair or replace the Permitted Encroachments may result in City restoring the Encroachment Area to City Standards and Specifications and assessing the cost to the Garage Parcel. In such case: (a) Owner waives its right to protest the resolution of necessity

for the improvements and restoration or other provisions of NDCC Chapter 40-27 as the same may be amended for which such resolutions are required pursuant to North Dakota Century Code, Section 40-22-17; (b) Owner specifically consents to the restoration of the sidewalk to City Standards and Specifications upon termination of this Agreement; and (c) Owner further consents to the assessment of cost thereof to the Garage Parcel and waives any right to protest the benefit or other assessment attributed to the construction. Project costs which may be assessed against the Garage Parcel include all costs of the improvement that are authorized by North Dakota law, include; NDCC §40-23-05, such as engineering, fiscal agent's and attorney's fees for any services in connection with authorization and financing of the improvement, and all other costs as authorized by law.

7. Owner, its successors and assigns will, during any use of said public right-of-way, use due care to protect city streets, utilities and all other public property, minimize disruption to pedestrian travel in accordance with MUTCD Standards and Specifications.

8. To the extent Owner no longer occupies the Encroachment Area, Owner will remove all Permitted Encroachments and restore the City right of way to City Standards and Specifications, at Owner's cost.

9. It is understood and agreed by and between the parties that Owner, its successors and assigns, will be responsible for the repair or replacement of any public property which may be damaged or destroyed as a direct or indirect result of the use of the public right of way.

10. Owner agrees to indemnify, release and hold harmless City for any and all expenses, demands, claims or losses of any kind that may be asserted against City or sustained by City, its officers, agents and employees, its property, streets, sidewalks, or any other municipal improvements to the extent of Owner's negligence or willful misconduct in its use of the right of way permitted herein. Owner agrees to obtain a policy of insurance for public liability and property damage insurance with respect to this Agreement with coverage limits reasonably acceptable to City and that names City as an additional insured. Owner shall provide City with a certificate of insurance evidencing such insurance and coverages.

11. Owner, its successors and assigns, agree to hold the City harmless for any expenses, damages, demands, claims or losses of any kind to any of Owner's property located in the Encroachment Area occasioned by normal City operations in the right of way, including but not limited to snow removal, light maintenance, and water or sewer repairs.

12. This Agreement is personal to Owner and cannot be sold, transferred or otherwise assigned, except as provided for herein. The rights and obligations of Owner under this Agreement shall pass to any successor or assign, and this Agreement shall continue without interruption provided (1) City has not terminated the Agreement as provided herein; (2) Owner, its successors and assigns provide Notice to City of the change in ownership; and (3) proof that the insurance required herein continues uninterrupted, from either Owner or its successors and assigns. Failure to provide such Notice or Evidence of Insurance within 30 days of such transfer may be cause for Termination of this Agreement. The parties acknowledge that pursuant to the Development Agreement, upon completion of the Garage, Owner is to transfer the Garage Parcel to the City, and the City is to enter into a Contract for Deed to sell the Garage Parcel to Block 9 Ramp Owner LLC. The City, without further notice being provided to the City as provided in this Section 12, does hereby consent to and approve the transfer and assignment of the rights and obligations of Owner under this Agreement from Block 9 Partners LLC to Block 9 Ramp Owner LLC in conjunction with transfers contemplated by the Development Agreement.

13. Owner understands and agrees that City construction in the right of way may be necessary from time to time and when necessary may damage or otherwise impact the Permitted Encroachments. In such event, Owner shall be responsible for the repair or replacement of the Permitted Encroachments. City shall provide Owner Notice of the work to be completed and provide Owner a reasonable time, not less than 10 days, to repair or replace the Permitted Encroachment.

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

15. **TERMINATION OF ENCROACHMENT.** The authorization from the City allowing the encroachment onto City right-of-way should extend and continue so long as the Garage remains on the Garage Parcel. The provisions of this Agreement pertaining to the obligations of Owner to vacate the Encroachment Area, to restore the Encroachment Area, to allow the City to assess certain costs of restoration, et cetera, shall survive the termination of said authorization and this Agreement, itself, shall terminate only at such time as restoration of the right of way has been completed, all warranties for such work are expired and all costs to be paid by Owner have, in fact, been either paid or have been appropriately assessed against the benefitting parcel.

It is specifically understood and agreed that the City retains authority to operate and maintain existing above ground and underground municipal facilities in the Encroachment Area. The intent of this Agreement is to allow the Permitted Encroachments to remain in place for so long as the use of the Garage Parcel remains the same. In the extraordinary event that City determines a public need for some or all of the Encroachment Area without a change in use of the Garage Parcel, including but not limited to the provision of public services such as street widening, storm and sanitary sewer repair and installation, water main repair and installation, sidewalk repair and installation and/or street and traffic lighting repair and installation, and the continued presence of some or all of the Permitted Encroachments is no longer practicable under the circumstances, City may, as determined by the City Commission, terminate Owner's rights, in whole or in part, under this Agreement.

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

17. The failure or delay of City to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of the City to enforce each and every term of this Agreement.

18. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.

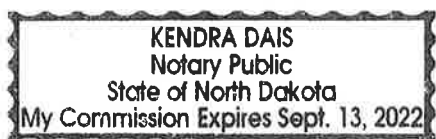
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20. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

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

22. Owner agrees to pay City a \$500 processing fee. The annual fee will be waived by the City.

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



Dated this _____ day of _____, 2019.

CITY OF FARGO
a North Dakota municipal corporation

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

ATTEST:

Steven Sprague, City Auditor

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

On this _____ day of _____, 2019, before me, a notary public in and for said county and state, personally appeared **TIMOTHY J. MAHONEY, M.D.** and **STEVEN SPRAGUE**, to me known to be the Mayor and Auditor, respectively, of the **CITY OF FARGO**, a North Dakota municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, North Dakota

EXHIBIT A

Legal Description of Garage Parcel

That part of Lots 7 through 13, Block 9, Keeney and Devitt's Addition to the City of Fargo, Cass County, North Dakota, described as follows:

COMMENCING at the Southeast Corner of said Block 9; thence North 02°51'30" West (assumed bearing) along the easterly line of said Block 9, for a distance of 128.03 feet to a point hereinafter described as "Point A" and being the TRUE POINT OF BEGINNING; thence South 86°59'36" West for a distance of 103.92 feet to a point hereinafter described as "Point B"; thence continue South 86°59'36" West for a distance of 18.59 feet; thence North 02°54'12" West for a distance of 172.25 feet to a point of intersection with the northerly line of said Block 9; thence North 87°07'24" East, along the northerly line of said Block 9, for a distance of 122.64 feet to the Northeast Corner of said Block 9; thence South 02°51'30" East, along the easterly line of said Block 9, for a distance of 95.05 feet to a point hereinafter described as "Point E"; thence continue South 02°51'30" East, along the easterly line of said Block 9, for a distance of 45.08 feet to a point hereinafter described as "Point F"; thence continue South 02°51'30" East, along the easterly line of said Block 9, for a distance of 31.84 feet to the TRUE POINT OF BEGINNING.

LESS THE FOLLOWING 3-DIMENSIONAL PORTION OF THE ABOVE TRACT:

That part of Lots 7, 8, 9 and 10, Block 9, Keeney and Devitt's Addition to the City of Fargo, Cass County, North Dakota, described as follows:

COMMENCING at the Southeast Corner of said Block 9; thence North 02°51'30" West (assumed bearing) along the easterly line of said Block 9, for a distance of 128.03 feet to a point hereinafter described as "Point A" and being the TRUE POINT OF BEGINNING; thence South 86°59'36" West for a distance of 103.92 feet to a point hereinafter described as "Point B"; thence North 02°54'12" West for a distance of 32.02 feet to a point hereinafter described as "Point C"; thence continue North 02°54'12" West for a distance of 16.25 feet; thence South 87°05'48" West for a distance of 6.00 feet; thence North 02°54'12" West for a distance of 28.83 feet to a point hereinafter described as "Point D"; thence North 87°05'48" East for a distance of 109.99 feet to a point of intersection with the easterly line of said Block 9, said point hereinafter described as "Point E"; thence South 02°51'30" East, along the easterly line of said Block 9, for a distance of 45.08 feet to a point hereinafter described as "Point F"; thence continue South 02°51'30" East, along the easterly line of said Block 9, for a distance of 31.84 feet to the TRUE POINT OF BEGINNING.

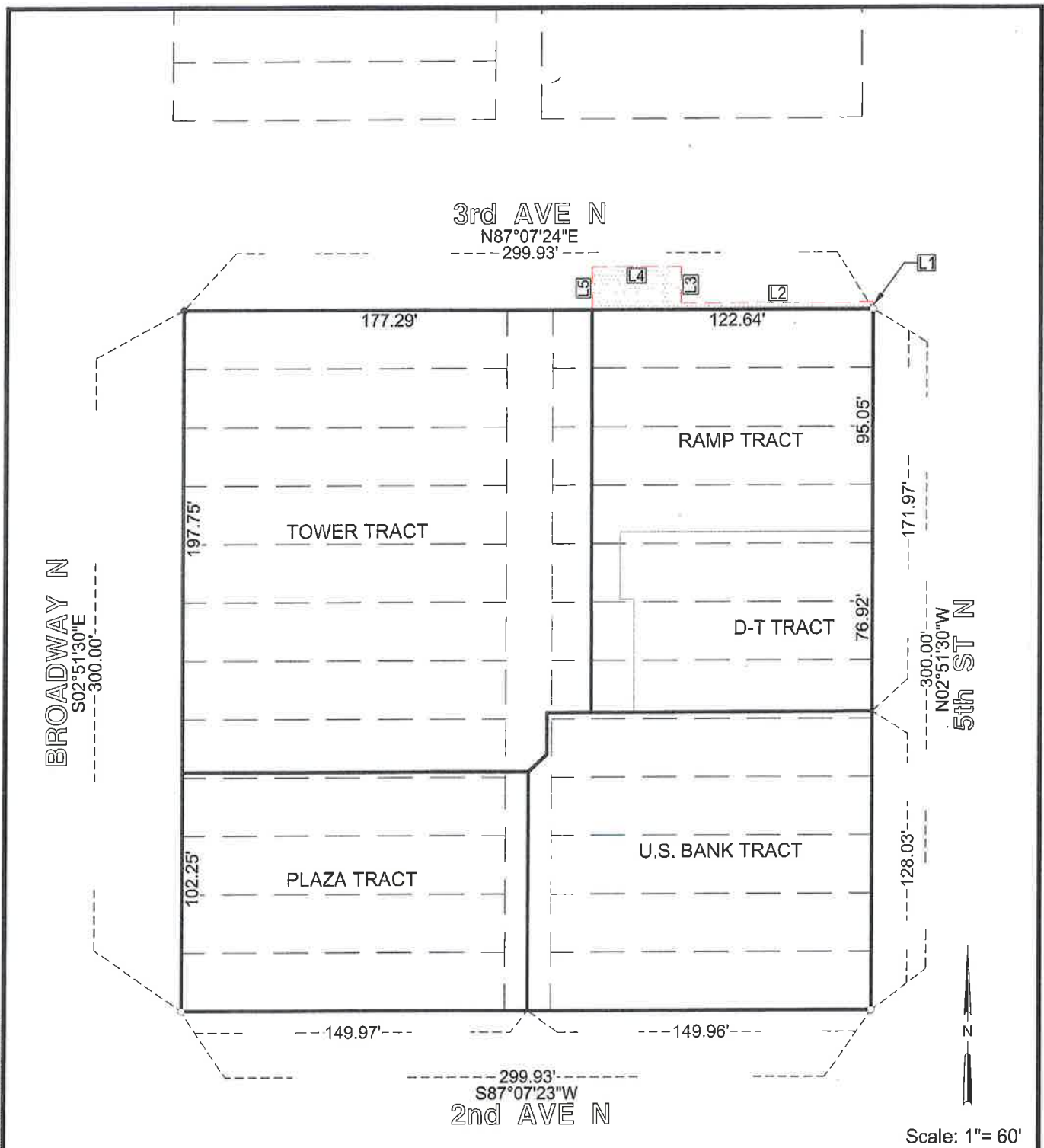
Said tract of land has an upper vertical boundary consisting of two planar surfaces hinged together along a level line connecting Points C and F, said level line being located at an elevation of 915.92'. The first planar surface defined by its corners at Points A, B, C and F is level in both directions, and is located at an elevation of 915.92'. The second planar surface slopes down as it goes north, with its south edge being a level line connecting Points C and F, said level line being located at an elevation of 915.92'. The north edge of the sloped planar surface is a level line connecting Points D and E, said level line being located

at an elevation of 913.25'. The above elevations use the North American Vertical Datum of 1988, are in feet and are referenced to an elevation of 903.00' for the ground level finished floor surface elevation at Point F.

THE ABOVE LEGAL DESCRIPTION WAS OBTAINED FROM A PREVIOUSLY RECORDED DOCUMENT.

EXHIBIT B

Legal Description and Depiction of Encroachment Area



ENCROACHMENT AREA - GARAGE PARCEL

EXHIBIT B - ENCROACHMENT AREA



Houston
Engineering Inc.

Fargo

P: 701.237.5065
F: 701.237.5101

Drawn by
KNS

Checked by
CAS

Date
8-29-19

Scale
AS SHOWN

KILBOURNE GROUP
BLOCK 9, KEENEY & DEVITT'S ADDITION
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
PROJECT NO. 7862-0002

SHEET

1 of 2

Parcel Line Table		
Line #	Length	Direction
L1	3.06	N02°51'30"W
L2	83.78	S86°57'30"W
L3	15.41	N02°53'30"W
L4	38.87	S87°05'34"W
L5	18.20	S02°54'26"E

DESCRIPTION - ENCROACHMENT AREA - GARAGE:

That part of the public street right-of-way lying adjacent to Block 9, Keeney and Devitt's Addition to the City of Fargo, Cass County, North Dakota, described as follows:

COMMENCING at the Northwest Corner of said Block 9; thence North 87°07'24" East (assumed bearing), along the northerly line of said Block 9, for a distance of 177.29 feet to the TRUE POINT OF BEGINNING; thence continue North 87°07'24" East, along the northerly line of said Block 9, for a distance of 122.64 feet to the Northeast Corner of said Block 9; thence North 02°51'30" West for a distance of 3.06 feet; thence South 86°57'30" West for a distance of 83.78 feet; thence North 02°53'30" West for a distance of 15.41 feet; thence South 87°05'34" West for a distance of 38.87 feet; thence South 02°54'26" East for a distance of 18.20 feet to the TRUE POINT OF BEGINNING.

Said tract of land contains 954 square feet, more or less.

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT:

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

Dated this 29th day of AUGUST, 20 19.

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



STATE OF NORTH DAKOTA)
COUNTY OF CASS) SS

On this 29 day of August, 20 19, before me, a notary public, personally appeared Curtis A. Skarphol, registered land surveyor, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

Notary Public: Bridget Kessler

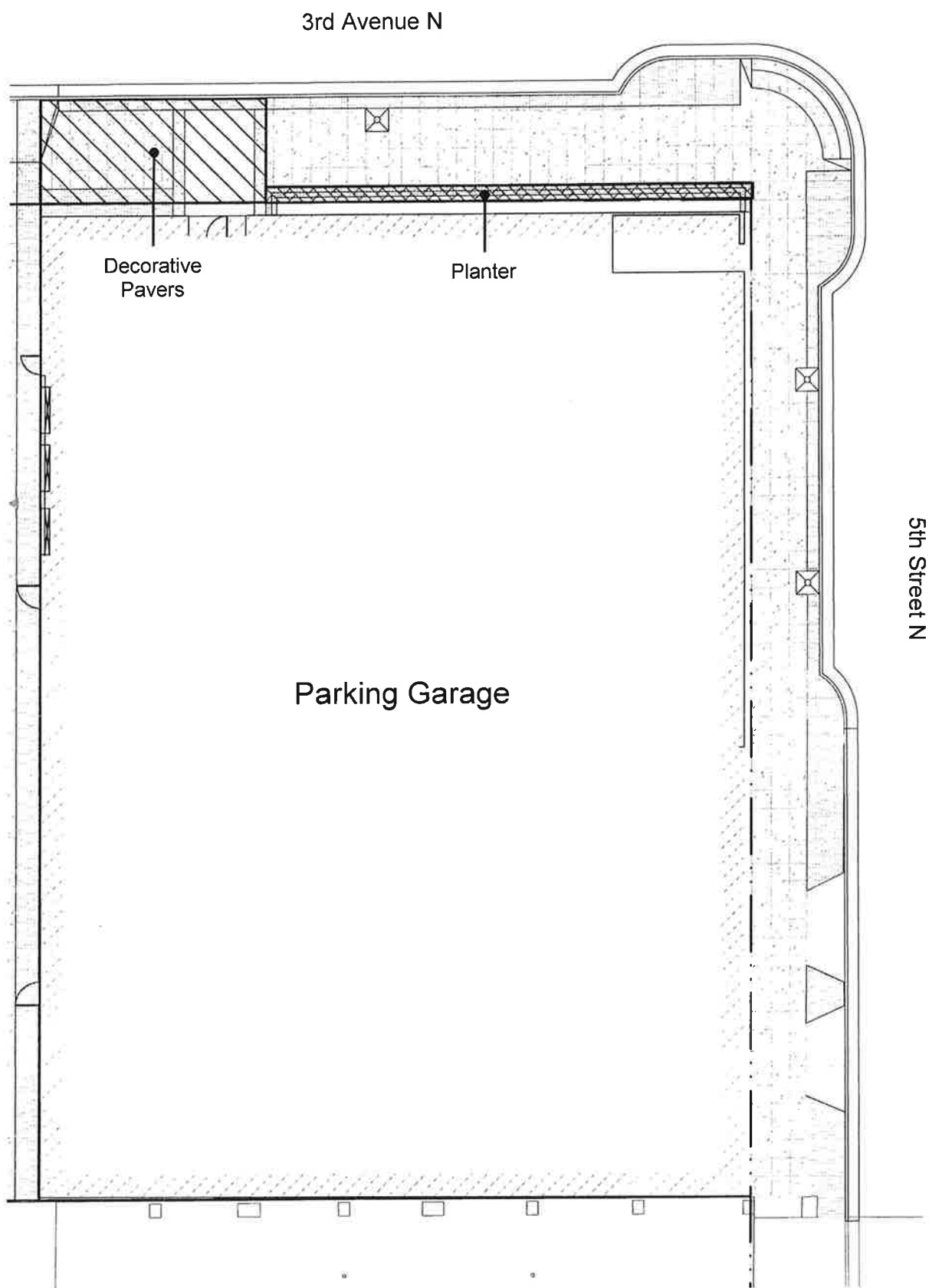
BRIDGET KESSLER
Notary Public
State of North Dakota
My Commission Expires July 10, 2023

EXHIBIT B - ENCROACHMENT AREA

	Fargo	Drawn by KNS	Date 8-29-19	KILBOURNE GROUP BLOCK 9, KEENEY & DEVITT'S ADDITION CITY OF FARGO, CASS COUNTY, NORTH DAKOTA PROJECT NO. 7862-0002	SHEET 2 of 2
	P: 701.237.5065 F: 701.237.5101	Checked by CAS	Scale -		

EXHIBIT C
Drawing Showing Permitted Encroachments

14





December 16, 2019

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

Re: Purchase Agreement - Project #FM-15-K0

Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Purchase Agreement for the acquisition of property in association with Project #FM-15-K0. 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 property from **Judie A. VandeVoort** in association with Project #FM-15-K0 and that the Mayor is instructed to execute the Purchase Agreement on behalf of the City of Fargo.

Please return a copy of the signed original.

Respectfully submitted,

Shawn G. Bullinger
Land Acquisition Specialist

C: Jody Bertrand
Nancy J. Morris

PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into by and between **JUDIE A. VANDEVOORT**, Trustee of the Julie A. Vandervoort Revocable Living Trust, the identified owner of the property located at 4121 17th Street South in Fargo, North Dakota hereinafter "Seller", whether one or more, and the **CITY OF FARGO**, a North Dakota municipal corporation, hereinafter "City" or "Buyer",

WITNESSETH:

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

That part of Lot 21, Block 2, ROSEWOOD PARK ADDITION, to the City of Fargo, Cass County, North Dakota, described as follows:

Beginning at the southeasterly corner of said Lot 21; thence South 86 degrees 09 minutes 07 seconds West, along the southerly line of said Lot 21, a distance of 67.96 feet to the southwesterly corner of Lot 21; thence North 15 degrees 06 minutes 42 seconds East, along the westerly line of said Lot 21, a distance of 89.86 feet to a point on a tangential curve concave to the northwest; thence northeasterly 16.22 feet, along said westerly lot line and said curve having a radius of 1969.86 feet and a central angle of 00 degrees 28 minutes 18 seconds; thence South 22 degrees 54 minutes 35 seconds East a distance 44.84 feet; thence North 73 degrees 05 minutes 53 seconds East a distance of 107.00 feet to the easterly line of said Lot 21; thence South 42 degrees 14 minutes 32 seconds West, along said easterly lot line, a distance of 118.44 feet to the point of beginning.

Said tract of land contains 6,680 square feet, more or less. Said acquisition is pictorially represented in Exhibit A attached hereto.

WHEREAS, the City of Fargo is currently engaged in acquiring properties to mitigate future flood damages; and,

WHEREAS, the project number is FM-15-K0; and,

WHEREAS, Seller accepted Buyer's offer to purchase in accordance with the terms herein;

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

1. Subject Matter. The subject matter of this agreement is the real estate described.
2. Purchase Price. The purchase price for the Property is Eighty-Seven Thousand One Hundred Seventy-Five Dollars and Seventy-Five Cents (\$87,175.75).
3. Reimbursement. City agrees to reimburse Seller the amount of Two Thousand Seven Hundred and Forty Dollars (\$2,740) for tree planting Seller voluntarily undertook to mitigate concerns regarding the use of the acquired property. A copy of the tree planting invoice is attached

hereto as Exhibit B.

4. Payment of Purchase Price and Reimbursement. The mortgage, if any, as well as any liens or encumbrances, shall be released and/or paid and Seller shall receive the balance of the purchase price in cash on the date of closing.

5. Abstract. Buyer shall pay for the cost of continuation of the property abstract to a recent date. Said abstract must show good and marketable title in Seller free and clear of all liens and encumbrances (other than those that will be handled at closing).

6. Deed. Seller shall sign a Warranty Deed prepared by Buyer. Buyer will take title as follows: City of Fargo, North Dakota, a municipal corporation.

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

DATED this 13 day of December, 2019.

(Signatures on following page.)

SELLER:

A handwritten signature in cursive script that reads "Judie A. VandeVoort". The signature is written in dark ink and is positioned above the printed name of the seller.

**Judie A. VandeVoort, Trustee of the
Judie A. VandeVoort Revocable Living
Trust**

DATED this ____ day of _____, 2019.

BUYER:

City of Fargo, a North Dakota
municipal corporation

Timothy J. Mahoney M.D., Mayor

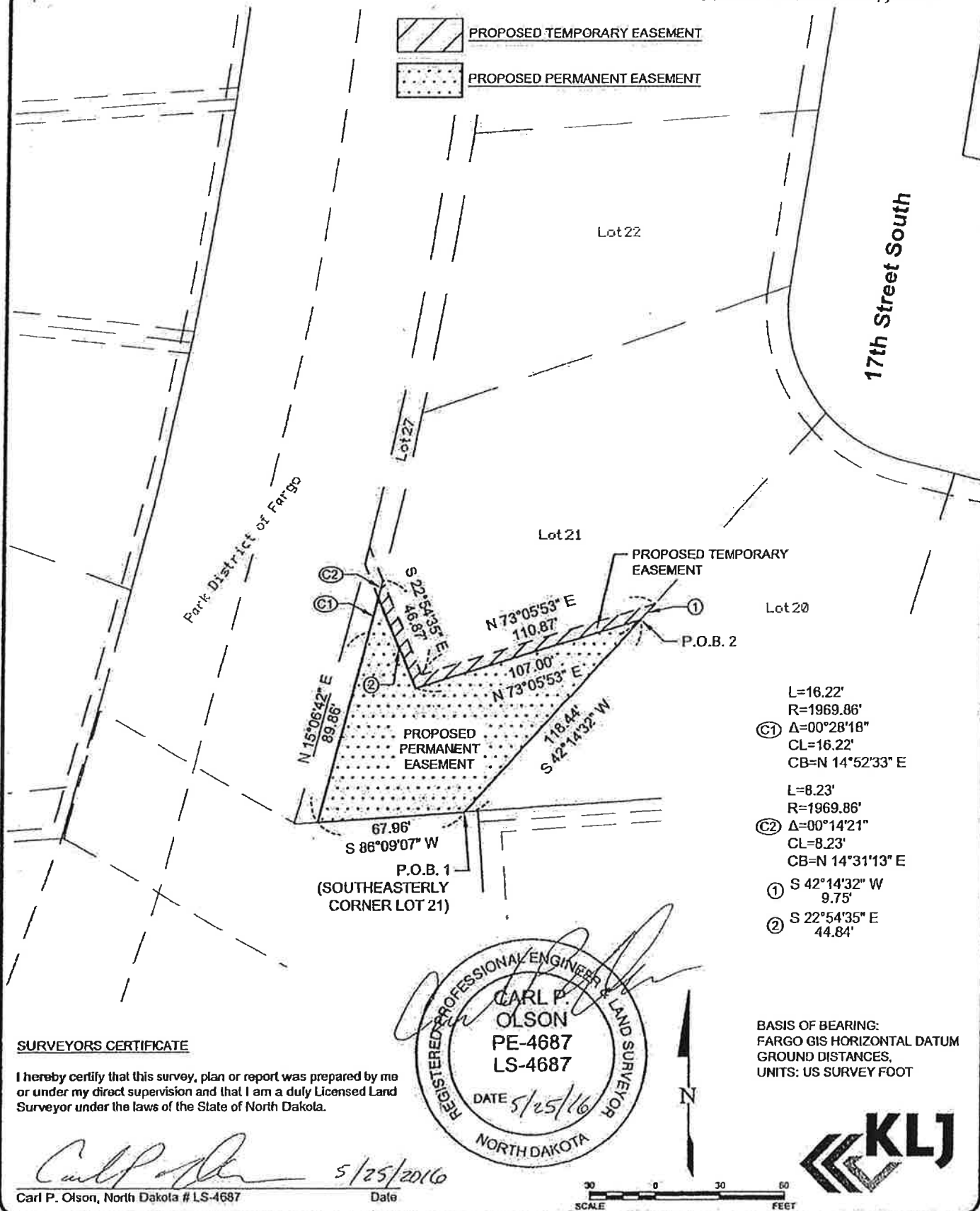
ATTEST:

Steve Sprague, City Auditor

PAGE 1 OF 2

EXHIBIT "A"

PART OF LOT 21, BLOCK 2
ROSEWOOD PARK ADDITION TO
THE CITY OF FARGO
IN CASS COUNTY, NORTH DAKOTA
OWNER: VANDEVOORT, JUDIE A



PAGE 2 OF 2

EXHIBIT "A"

PART OF LOT 21, BLOCK 2
ROSEWOOD PARK ADDITION TO
THE CITY OF FARGO
IN CASS COUNTY, NORTH DAKOTA
OWNER: VANDEVOORT, JUDIE A

Permanent Easement

That part of Lot 21, Block 2, ROSEWOOD PARK ADDITION, to the City of Fargo, Cass County, North Dakota, described as follows:

Beginning at the southeasterly corner of said Lot 21; thence South 86 degrees 09 minutes 07 seconds West, along the southerly line of said Lot 21, a distance of 67.96 feet to the southwesterly corner of Lot 21; thence North 15 degrees 06 minutes 42 seconds East, along the westerly line of said Lot 21, a distance of 89.86 feet to a point on a tangential curve concave to the northwest; thence northeasterly 16.22 feet, along said westerly lot line and said curve having a radius of 1969.86 feet and a central angle of 00 degrees 28 minutes 18 seconds; thence South 22 degrees 54 minutes 35 seconds East a distance 44.84 feet; thence North 73 degrees 05 minutes 53 seconds East a distance of 107.00 feet to the easterly line of said Lot 21; thence South 42 degrees 14 minutes 32 seconds West, along said easterly lot line, a distance of 118.44 feet to the point of beginning.

Said tract of land contains 6,680 square feet, more or less.

Temporary Easement

That part of Lot 21, Block 2, ROSEWOOD PARK ADDITION, to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the southeasterly corner of said Lot 21; thence North 42 degrees 14 minutes 32 seconds East, along the easterly line of said Lot 21, a distance of 118.44 feet to the true point of beginning; thence South 73 degrees 05 minutes 53 seconds West a distance of 107.00 feet; thence North 22 degrees 54 minutes 35 seconds West a distance of 44.84 feet to the westerly line of said Lot 21 and a point on a non-tangential curve concave to the northwest with a chord that bears North 14 degrees 31 minutes 13 seconds East; thence northeasterly 8.23 feet, along said westerly lot line and said curve having a radius of 1969.86 feet and a central angle of 00 degrees 14 minutes 21 seconds; thence South 22 degrees 54 minutes 35 seconds East a distance of 46.87 feet; thence North 73 degrees 05 minutes 53 seconds East a distance of 110.87 feet to the easterly line of said Lot 21; thence South 42 degrees 14 minutes 32 seconds West, along said easterly lot line, a distance of 9.75 feet to the point of beginning.

Said tract of land contains 774 square feet, more or less. Temporary easement shall expire upon the completion of City of Fargo Project No. FM-15-KO or five years from signing date, whichever occurs first.

SURVEYORS CERTIFICATE

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

Carl P. Olson, North Dakota # LS-4687

Date





2777 Fiechtner Drive
 Fargo, ND 58103-2332
 (701) 235-1515

BILL Cash
 TO

Bank ID: 2642
 Merchant ID: 6872
 Term ID: 002

S&S LANDSCAPING INC.
 2777 FIECHTNER DR S
 FARGO, ND 58103
 701-235-1515



Hunter



RAIN BIRD



Sale

XXXXXXXXXXXX0911
 VISA

Entry Method: Chip

Total: \$ 2,740.00

10/16/19

Inv #: 000000

Apprvd: Online

Retrieval Ref. #: 11259255

10:35:00

Appr Code: 016175

Batch#: 289001

VISA CREDIT
 AID: A000000000000000
 ISI: 6800
 IVR: 0000000000

Customer Copy

JUDIE VANDEVROOT

GARY BULTMAN (PHONE CONTACT)

4121 17TH ST S FARGO

PLANTING ON 10/18/19 - 6 EVERGREEN TREES ALONG INSIDE OF FENCE

112200
 111555
 PLANTINGCHG

3EA SPRUCE COLORADO GREEN 6' BB
 3EA SPRUCE MEYER 6" BB
 6 PLANTING CHARGE - 100%
 WARRANTY ON TREE PRICE ONLY

UNIT PRICE	EXTENDED PRICE
300.00	900.00
300.00	900.00
25.00	750.00



PLEASE PAY FROM THIS INVOICE

Signature _____ Printed Name _____

ALL SALES FINAL ON PLANTS - NO RETURNS/REFUNDS

A 1-1/2% SERVICE CHARGE (18% ANNUAL)
 WILL BE CHARGED ON PAST DUE AMOUNTS.
 AMOUNTS ARE PAST DUE 30 DAYS AFTER DATE OF INVOICE.

SALES AMOUNT 2,550.00

TAX 190.00

TOTAL \$2,740.00



(10)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

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

DATE: DECEMBER 18, 2019

RE: SOFTWARE SERVICE AGREEMENT (TYLER TECHNOLOGIES INC.)

The Environmental Health Division, Fargo Cass Public Health, request the Commission approve the agreement between the City of Fargo (FCPH) and Tyler Technologies Inc. associated with their software services.

If you have any questions please contact me directly at (701) 241-1388.

Suggested Motion: Move to receive and approve the agreement between the City of Fargo and Tyler Technologies Inc.

GL
Enclosure



SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement is made between Tyler Technologies, Inc. and Client.

WHEREAS, Client selected Tyler to provide certain products and services set forth in the Investment Summary, including providing Client with access to Tyler's proprietary software products, and Tyler desires to provide such products and services under the terms of this Agreement;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

SECTION A – DEFINITIONS

- **"Agreement"** means this Software as a Services Agreement.
- **"Business Travel Policy"** means our business travel policy.
- **"Client"** means the Fargo Department of Public Health.
- **"Data"** means your data necessary to utilize the Tyler Software.
- **"Data Storage Capacity"** means, if applicable, the contracted amount of storage capacity for your Data identified in the Investment Summary.
- **"Defect"** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **"Defined Named Users"** means the number of named users that are authorized to use the SaaS Services. The Defined Named Users under this Agreement are set forth in the Investment Summary.
- **"Developer"** means a third party who owns the intellectual property rights to Third Party Software.
- **"Documentation"** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **"Effective Date"** means the date on which your authorized representative signs the Agreement.
- **"Force Majeure"** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **"Investment Summary"** means the agreed upon cost proposal for the products and services included in this Agreement.
- **"Invoicing and Payment Policy"** means the invoicing and payment policy setting forth the payment terms for the products and services in the Investment Summary.
- **"SaaS Fees"** means the fees for the SaaS Services identified in the Investment Summary.
- **"SaaS Services"** means software as a service consisting of system administration, system

management, and system monitoring activities that Tyler performs for the Tyler Software, and includes the right to access and use the Tyler Software, receive maintenance and support on the Tyler Software, and Data storage and archiving. SaaS Services do not include support of an operating system or hardware, support outside of our normal business hours, or training, consulting or other professional services.

- **"SLA"** means the service level agreement.
- **"Statement of Work"** means the industry standard implementation plan describing how our professional services will be provided to implement the Tyler Software, and outlining your and our roles and responsibilities in connection with that implementation.
- **"Support Call Process"** means the support call process applicable to all of our customers who have licensed the Tyler Software.
- **"Third Party Terms"** means, if any, the end user license agreement(s) or similar terms for the Third Party Software, as applicable.
- **"Third Party Hardware"** means the third party hardware, if any, identified in the Investment Summary.
- **"Third Party Products"** means the Third Party Software and Third Party Hardware.
- **"Third Party Software"** means the third party software, if any, identified in the Investment Summary.
- **"Tyler"** means Tyler Technologies, Inc., a Delaware corporation.
- **"Tyler Software"** means our proprietary software, including any integrations, custom modifications, and/or other related interfaces identified in the Investment Summary and licensed by us to you through this Agreement.
- **"we", "us", "our"** and similar terms mean Tyler.
- **"you"** and similar terms mean Client.

SECTION B – SAAS SERVICES

1. **Rights Granted.** We grant to you the non-exclusive, non-assignable limited right to use the SaaS Services solely for your internal business purposes for the number of Defined Named Users only. The Tyler Software will be made available to you according to the terms of the Service Level Agreement ("SLA") exhibit or the Annual Support and Hosting statement of Work (the "Support SOW"), as applicable. You acknowledge that we have no delivery obligations and we will not ship copies of the Tyler Software as part of the SaaS Services. You may use the SaaS Services to access updates and enhancements to the Tyler Software, as further described in Section C(8) or the Support SOW, as applicable.
2. **SaaS Fees.** You agree to pay us the SaaS Fees. Those amounts are payable in accordance with our Invoicing and Payment Policy. The SaaS Fees are based on the number of Defined Named Users and amount of Data Storage Capacity. You may add additional named users or additional Data storage capacity on the terms set forth in Section H(1). In the event you regularly and/or meaningfully exceed the Defined Named Users or Data Storage Capacity, we reserve the right to charge you additional fees commensurate with the overage(s).
3. **Ownership.**
 - 3.1 We retain all ownership and intellectual property rights to the SaaS Services, the Tyler Software, and anything developed by us under this Agreement. You do not acquire under this Agreement

any license to use the Tyler Software in excess of the scope and/or duration of the SaaS Services.

3.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.

3.3 You retain all ownership and intellectual property rights to the Data.

4. Restrictions. You may not: (a) make the Tyler Software or Documentation resulting from the SaaS Services available in any manner to any third party for use in the third party's business operations; (b) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the SaaS Services; (c) access or use the SaaS Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to us; or (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the SaaS Services, Tyler Software, or Documentation available to any third party other than as expressly permitted by this Agreement.
5. Software Warranty. We warrant that the Tyler Software will perform without Defects during the term of this Agreement. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the maintenance and support process set forth in either the Support SOW or Section C(8), below. For maintenance and support services provided pursuant to Section C (8), the SLA and our then current Support Call Process will also apply.
6. SaaS Services.
 - 6.1 Our SaaS Services are audited at least yearly in accordance with the AICPA's Statement on Standards for Attestation Engagements ("SSAE") No. 16, Type 2. We have attained, and will maintain, Type II SSAE compliance, or its equivalent, for so long as you are timely paying for SaaS Services. Upon execution of a mutually agreeable Non-Disclosure Agreement ("NDA"), we will provide you with a summary of our SSAE-16 compliance report or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which you make a written request, we will provide that same information.
 - 6.2 You will be hosted on shared hardware in a Tyler data center or Tyler managed data center via third party, but in a database for operational data dedicated to you, which is inaccessible to our other customers. Configuration data and/or username/passwords may be stored in a shared database, as needed with a hosted solution.
 - 6.3 We have fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Tyler Software in the event of a disaster or component failure. In the event any of your data has been lost or damaged due to an act or omission of Tyler or its subcontractors or due to a defect in Tyler's software, we will use best commercial efforts to restore all the data on servers in accordance with the architectural design's capabilities and with the goal of minimizing any data loss as greatly as possible. In no case shall the recovery point objective ("RPO") exceed a maximum of twenty-four (24) hours from declaration of disaster. For purposes of this subsection, RPO represents the maximum tolerable period during which your data may be lost, measured in relation to a disaster we declare, said declaration will not be unreasonably withheld.

- 6.4 In the event we declare a disaster, our Recovery Time Objective ("RTO") is twenty-four (24) hours. For purposes of this subsection, RTO represents the amount of time, after we declare a disaster, within which your access to the Tyler Software must be restored.
- 6.5 We conduct annual penetration testing of either the production network and/or web application to be performed. We will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. We will provide you with a written or electronic record of the actions taken by us in the event that any unauthorized access to your database(s) is detected as a result of our security protocols. We will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at your written request. You may not attempt to bypass or subvert security restrictions in the SaaS Services or environments related to the Tyler Software. Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of our network and systems (hosted or otherwise) is prohibited without the prior written approval of our IT Security Officer.
- 6.6 We test our disaster recovery plan on an annual basis. Our standard test is not client-specific. Should you request a client-specific disaster recovery test, we will work with you to schedule and execute such a test on a mutually agreeable schedule.
- 6.7 We will be responsible for importing back-up and verifying that you can log-in. You will be responsible for running reports and testing critical processes to verify the returned data. At your written request, we will provide test results to you within a commercially reasonable timeframe after receipt of the request.
- 6.8 We provide secure data transmission paths from each of your workstations to our servers.
- 6.9 For at least the past twelve (12) years, all of our employees have undergone criminal background checks prior to hire. All employees sign our confidentiality agreement and security policies. Our data centers are accessible only by authorized personnel with a unique key entry. All other visitors must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure no unauthorized access.

SECTION C – OTHER PROFESSIONAL SERVICES

1. **Other Professional Services.** We will provide you the various implementation-related services itemized in the Investment Summary and described in our industry standard implementation plan. We will finalize that documentation with you upon execution of this Agreement. If a Statement of Work has been generated as part of this Agreement, we will provide implementation-related services as described in the Statement of Work.
2. **Professional Services Fees.** You agree to pay us the professional services fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy. You acknowledge that the fees stated in the Investment Summary are good-faith estimates of the amount of time and materials required for your implementation. We will bill you the actual fees incurred based on the in-scope services provided to you. Any discrepancies in the

total values set forth in the Investment Summary will be resolved by multiplying the applicable hourly rate by the quoted hours.

3. **Additional Services.** The Investment Summary contains, and, if applicable, the Statement of Work describes, the scope of services and related costs (including programming and/or interface estimates) required for the project based on our understanding of the specifications you supplied. If additional work is required, or if you use or request additional services, we will provide you with an addendum or change order, as applicable, outlining the costs for the additional work. The price quotes in the addendum or change order will be valid for thirty (30) days from the date of the quote.
4. **Cancellation.** If travel is required, we will make all reasonable efforts to schedule travel for our personnel, including arranging travel reservations, at least two (2) weeks in advance of commitments. Therefore, if you cancel services less than two (2) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) non-refundable expenses incurred by us on your behalf, and (b) daily fees associated with cancelled professional services if we are unable to reassign our personnel. We will make all reasonable efforts to reassign personnel in the event you cancel within two (2) weeks of scheduled commitments.
5. **Services Warranty.** We will perform the services in a professional, workmanlike manner, consistent with industry standards. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.
6. **Site Access and Requirements.** At no cost to us, you agree to provide us with full and free access to your personnel, facilities, and equipment as may be reasonably necessary for us to provide implementation services, subject to any reasonable security protocols or other written policies provided to us as of the Effective Date, and thereafter as mutually agreed to by you and us.
7. **Client Assistance.** You acknowledge that the implementation of the Tyler Software is a cooperative process requiring the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with us to schedule the implementation-related services outlined in this Agreement. We will not be liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such cooperation and assistance (either through action or omission).
8. **Maintenance and Support.** For clients hosted in a Tyler data center, and for so long as such clients timely pay SaaS Fees according to the Invoicing and Payment Policy, then in addition to the terms set forth in the SLA and the Support Call Process, we will:
 - 8.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects in the Tyler Software (limited to the then-current version and the immediately prior version);
 - 8.2 provide telephone support during our established support hours;
 - 8.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;

8.4 make available to you all major and minor releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and

8.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with our then-current release life cycle policy.

We will use all reasonable efforts to perform support services remotely. Currently, we use third-party secure unattended connectivity tools, such as Bomgar, GotoAssist by Citrix and Logmeinrescue by Logmein, Inc. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain your VPN for backup connectivity purposes.

For the avoidance of doubt, SaaS Fees do not include the following services: (a) onsite support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (b) application design; (c) other consulting services; or (d) support outside our normal business hours as listed in our then-current Support Call Process. Requested services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) weeks' advance notice.

SECTION D – THIRD PARTY PRODUCTS

1. **Third Party Hardware.** We will sell, deliver, and install onsite the Third Party Hardware, if you have purchased any, for the price set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.

2. **Third Party Software.** As part of the SaaS Services, you will receive access to the Third Party Software and related documentation for internal business purposes only. Your rights to the Third Party Software will be governed by the Third Party Terms.

3. **Third Party Products Warranties.**

3.1 We are authorized by each Developer to grant access to the Third Party Software.

3.2 The Third Party Hardware will be new and unused, and upon payment in full, you will receive free and clear title to the Third Party Hardware.

3.3 You acknowledge that we are not the manufacturer of the Third Party Products. We do not warrant or guarantee the performance of the Third Party Products. However, we grant and pass

through to you any warranty that we may receive from the Developer or supplier of the Third Party Products.

SECTION E - INVOICING AND PAYMENT; INVOICE DISPUTES

1. **Invoicing and Payment.** We will invoice you the SaaS Fees and fees for other professional services in the Investment Summary per our Invoicing and Payment Policy, subject to Section E(2).
2. **Invoice Disputes.** If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice. You may withhold payment of the amount(s) actually in dispute, and only those amounts, until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will remit full payment of the invoice. We reserve the right to suspend delivery of all SaaS Services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within fifteen (15) days of notice of our intent to do so.

SECTION F – TERM AND TERMINATION

1. **Term.** The initial term of this Agreement is three (3) years commencing February 1, 2020, unless earlier terminated as set forth below. Upon expiration of the initial term, this Agreement will renew automatically for additional one (1) year renewal terms at our then-current SaaS Fees unless terminated in writing by either party at least sixty (60) days prior to the end of the then-current renewal term. Your right to access or use the Tyler Software and the SaaS Services will terminate at the end of this Agreement.
2. **Termination.** This Agreement may be terminated as set forth below. In the event of termination, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. Disputed fees and expenses in all terminations other than your termination for cause must have been submitted as invoice disputes in accordance with Section E(2).
 - 2.1 **Failure to Pay SaaS Fees.** You acknowledge that continued access to the SaaS Services is contingent upon your timely payment of SaaS Fees. If you fail to timely pay the SaaS Fees, we may discontinue the SaaS Services and deny your access to the Tyler Software. We may also terminate this Agreement if you don't cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate.
 - 2.2 **For Cause.** If you believe we have materially breached this Agreement, you will invoke the Dispute Resolution clause set forth in Section H(3). You may terminate this Agreement for cause in the event we do not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section H(3).

- 2.3 Force Majeure. Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of the SaaS Services for a period of forty-five (45) days or more.
- 2.4 Lack of Appropriations. If you should not appropriate or otherwise make available funds sufficient to utilize the SaaS Services, you may unilaterally terminate this Agreement upon thirty (30) days written notice to us. You will not be entitled to a refund or offset of previously paid, but unused SaaS Fees. You agree not to use termination for lack of appropriations as a substitute for termination for convenience.
- 2.5 Fees for Termination without Cause during Initial Term. If you terminate this Agreement during the initial term for any reason other than cause, Force Majeure, or lack of appropriations, or if we terminate this Agreement during the initial term for your failure to pay SaaS Fees, you shall pay us the following early termination fees:
- a. if you terminate during the first year of the initial term, 100% of the SaaS Fees through the date of termination plus 25% of the SaaS Fees then due for the remainder of the initial term;
 - b. if you terminate during the second year of the initial term, 100% of the SaaS Fees through the date of termination plus 15% of the SaaS Fees then due for the remainder of the initial term; and
 - c. if you terminate after the second year of the initial term, 100% of the SaaS Fees through the date of termination plus 10% of the SaaS Fees then due for the remainder of the initial term.

SECTION G – INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

1. Intellectual Property Infringement Indemnification.

- 1.1 We will defend you against any third party claim(s) that the Tyler Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 1.2 Our obligations under this Section G(1) will not apply to the extent the claim or adverse final judgment is based on your use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties, or your willful infringement.
- 1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you may continue to use the Tyler Software consistent with the terms of this Agreement.

1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; (c) replace it with a functional equivalent; or (d) terminate this Agreement and refund you the prepaid but unused SaaS Fees for the year in which the Agreement terminates. We will pursue those options in the order listed herein. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

2. General Indemnification.

2.1 We will indemnify and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by our negligence or willful misconduct; or (b) our violation of a law applicable to our performance under this Agreement. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

2.2 To the extent permitted by applicable law, you will indemnify and hold harmless us and our agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for personal injury or property damage to the extent caused by your negligence or willful misconduct; or (b) your violation of a law applicable to your performance under this Agreement. We will notify you promptly in writing of the claim and will give you sole control over its defense or settlement. We agree to provide you with reasonable assistance, cooperation, and information in defending the claim at your expense.

3. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4. **LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (A) DURING THE INITIAL TERM, AS SET FORTH IN SECTION F(2), TOTAL FEES PAID AS OF THE TIME OF THE CLAIM; OR (B) DURING ANY RENEWAL TERM, THE THEN-CURRENT ANNUAL SAAS FEES PAYABLE IN THAT RENEWAL TERM. THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS G(1) AND G(2).

5. **EXCLUSION OF CERTAIN DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. **Insurance.** During the course of performing services under this Agreement, we agree to maintain the following levels of insurance: (a) Commercial General Liability of at least \$1,000,000; (b) Automobile Liability of at least \$1,000,000; (c) Professional Liability of at least \$1,000,000; (d) Workers Compensation complying with applicable statutory requirements; and (e) Excess/Umbrella Liability of at least \$5,000,000. We will add you as an additional insured to our Commercial General Liability and Automobile Liability policies, which will automatically add you as an additional insured to our Excess/Umbrella Liability policy as well. We will provide you with copies of certificates of insurance upon your written request.

SECTION H – GENERAL TERMS AND CONDITIONS

1. **Additional Products and Services.** You may purchase additional products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date by executing a mutually agreed addendum. If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional products and services at our then-current list price, also by executing a mutually agreed addendum. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum.
2. **Optional Items.** Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.
3. **Dispute Resolution.** You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, either of us may assert our respective rights and remedies in a court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.
4. **Taxes.** The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.
5. **Nondiscrimination.** We will not discriminate against any person employed or applying for employment concerning the performance of our responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. We will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.

6. E-Verify. We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.
7. Subcontractors. We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.
8. Binding Effect; No Assignment. This Agreement shall be binding on, and shall be for the benefit of, either your or our successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not required for an assignment by us as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.
9. Force Majeure. Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.
10. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement. This provision does not affect the rights of third parties under any Third Party Terms.
11. Entire Agreement; Amendment. This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Purchase orders submitted by you, if any, are for your internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force or effect. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.
12. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.
13. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.
14. Independent Contractor. We are an independent contractor for all purposes under this Agreement.
15. Notices. All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail,

return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.

16. Client Lists. You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.
17. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (e.g., social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:
 - (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
 - (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
 - (c) a party receives from a third party who has a right to disclose it to the receiving party; or
 - (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.
18. Business License. In the event a local business license is required for us to perform services hereunder, you will promptly notify us and provide us with the necessary paperwork and/or contact information so that we may timely obtain such license.
19. Governing Law. This Agreement will be governed by and construed in accordance with the laws of your state of domicile, without regard to its rules on conflicts of law.
20. Multiple Originals and Authorized Signatures. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.
21. Cooperative Procurement. To the maximum extent permitted by applicable law, we agree that this Agreement may be used as a cooperative procurement vehicle by eligible jurisdictions. We reserve

the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, to the scope and circumstances of that cooperative procurement.

22. Client Trademarks. For clients licensing DHD Tyler Software only:

22.1 During the Term, Client hereby grants Tyler a nonexclusive, paid-up, nontransferable right to use Client's trademarks, trade names, service marks, logos, trade dress, trade name, or other indicia of sources or origin of Client ("Client Marks") for purposes of providing the SaaS Services pursuant to the Agreement. The Client Marks are and will remain the exclusive property of Client and this Agreement gives Tyler no rights therein except for a limited license to reproduce the Client Marks for the sole purpose of allowing Tyler to provide services pursuant to the terms of this Agreement and as otherwise contemplated by this Agreement. All goodwill associated with the Client Marks will inure to the benefit of Client.

22.2 Client warrants that Client Marks and Data furnished by Client to Tyler will not infringe or misappropriate any patent, copyright, trademark, or other proprietary right of any third party. To the extent necessary to provide the SaaS Services, Client represents and warrants that it will provide all access to and information about Client Marks and Data in a timely manner. Client represents and warrants that (a) it has all rights necessary and appropriate to allow Tyler and its contractors to access and use the Client Marks and Data, and (b) it will not take or allow to be taken and action that would result in any harmful code or materials to be provided or submitted to Tyler.

23. Contract Documents. This Agreement includes the following exhibits:

Exhibit A	Investment Summary
Exhibit B	Invoicing and Payment Policy
	Schedule 1: Business Travel Policy
Exhibit C	Annual Support and Hosting Statement of Work

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Address for Notices:

Tyler Technologies, Inc.
One Tyler Drive
Yarmouth, ME 04096
Attention: Chief Legal Officer

Fargo Cass Public Health

By: Desi Fleming _____

Name: Desi Fleming _____

Title: Director of Public Health _____

Date: 12/23/2019 _____

Address for Notices:

Fargo Department of Public Health
401 3rd Ave. North
Fargo, ND 58102
Attention: _____

City of Fargo

By: _____

Name: Timothy J. Mahoney _____

Title: Mayor, City of Fargo _____

Date: _____

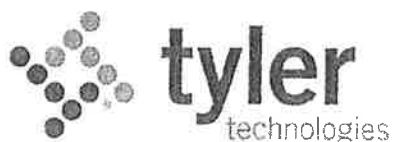


Exhibit A Investment Summary

The following Investment Summary details the software and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.



Quoted By:	Chris Harpenau
Date:	8.12.2019
Quote Expiration:	2.8.2020
Quote Name:	Fargo Health DHD Renewal
Quote Number:	2019-91297
Quote Description:	Fargo Health Tyler DHD Renewal

Sales Quotation For
Fargo Department of Health
401 3rd Ave. North
Fargo, ND
Phone (701) 241-1360

EnerGov

Description	Term	Monthly Fee	Users/Units	Annual Fee
Core Software:				
Tyler DHD Annual SaaS Renewal	1	\$1,042.00	1	\$12,500.00
TOTAL:				\$12,500.00

Summary	One Time Fees	Recurring Fees
Total SaaS	\$0.00	\$12,500.00
Total Tyler Software	\$0.00	\$0.00
Total Tyler Services	\$0.00	\$0.00
Total 3rd Party Hardware, Software and Services	\$0.00	\$0.00
Summary Total	\$0.00	\$12,500.00
Year One Contract Total	\$12,500.00	
Contract Total	\$12,500.00	

2019-91297 - Fargo Health Tyler DHD Renewal

CONFIDENTIAL

1 of 3



Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held for six (6) months from the Quote date or the Effective Date of the contract, whichever is later.

Customer Approval: _____ Date: _____

Print Name: _____ P.O. #: _____

All primary values quoted in US Dollars

Comments

- Includes all hosting and data center services
- Includes up to (3) annual modifications to Reports, Forms, Printable Documents for Permits, Inspections and Complaints
- Annual SaaS Renewal Year 1 (February 1, 2020-January, 31 2021) =\$12,500
- Annual SaaS Renewal Year 2 (February 1, 2021-January 31, 2022) =\$13,125
- Annual SaaS Renewal Year 3 (February 1, 2022-January 31 2023 = \$13,781



Exhibit B Invoicing and Payment Policy

We will provide you with the software and services set forth in the Investment Summary of the Agreement. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

Invoicing: We will invoice you for the applicable software and services in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in the Agreement.

1. **SaaS Fees.** SaaS Fees are invoiced on an annual basis, beginning with the commencement of the Term as indicated in Section F(1). SaaS Fees for the initial term, as defined in Section F (1) of this Agreement, are set forth in the Investment Summary. Upon expiration of the initial term, your annual SaaS Fees will be at our then-current rates.
2. **Implementation Services.** Implementation and other professional services (including training) are billed and invoiced as delivered, at the rates set forth in the Investment Summary.
3. **Expenses.** The service rates in the Investment Summary do not include travel expenses. Expenses will be billed as incurred and only in accordance with our then-current Business Travel Policy, plus a 10% travel agency processing fee. Our current Business Travel Policy is attached to this Exhibit B at Schedule 1. Copies of receipts will be provided upon request; we reserve the right to charge you an administrative fee depending on the extent of your requests. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.

Payment. Payment for undisputed invoices is due within forty-five (45) days of the invoice date. We prefer to receive payments electronically. Our electronic payment information is:

Bank:	Wells Fargo Bank, N.A. 420 Montgomery San Francisco, CA 94104
ABA:	121000248
Account:	4124302472
Beneficiary:	Tyler Technologies, Inc. – Operating

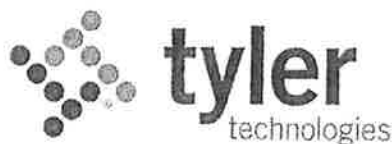


Exhibit B
Schedule 1
Business Travel Policy

1. Air Travel

A. Reservations & Tickets

Tyler's Travel Management Company (TMC) will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within \$100 (each way) of the lowest logical fare. If a net savings of \$200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven (7) day advance booking requirement is mandatory. When booking less than seven (7) days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is six (6) or more consecutive hours in length, only economy or coach class seating is reimbursable. Employees shall not be reimbursed for "Basic Economy Fares" because these fares are non-refundable and have many restrictions that outweigh the cost-savings.

B. Baggage Fees

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five (5) days = one (1) checked bag
- Six (6) or more days = two (2) checked bags

Baggage fees for sports equipment are not reimbursable.

2. Ground Transportation

A. Private Automobile

Mileage Allowance – Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who

have been designated a home office should calculate miles from their home.

B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a "mid-size" or "intermediate" car. "Full" size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; except for employees traveling to Alaska and internationally (excluding Canada), additional insurance on the rental agreement should be declined.

C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

3. Lodging

Tyler's TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

"No shows" or cancellation fees are not reimbursable if the employee does not comply with the hotel's cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

Employees are not authorized to reserve non-traditional short-term lodging, such as Airbnb, VRBO, and HomeAway. Employees who elect to make such reservations shall not be reimbursed.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status within the continental U.S. are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem

rates are available at www.gsa.gov/perdiem.

Per diem for Alaska, Hawaii, U.S. protectorates and international destinations are provided separately by the Department of Defense and will be determined as required.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon

Lunch and dinner

Depart after 12:00 noon

Dinner

Return Day

Return before 12:00 noon

Breakfast

Return between 12:00 noon & 7:00 p.m.

Breakfast and lunch

Return after 7:00 p.m.*

Breakfast, lunch and
dinner

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

Breakfast	15%
Lunch	25%
Dinner	60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.*

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

5. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.

6. International Travel

All international flights with the exception of flights between the U.S. and Canada should be reserved through TMC using the "lowest practical coach fare" with the exception of flights that are six (6) or more consecutive hours in length. In such event, the next available seating class above coach shall be reimbursed.

When required to travel internationally for business, employees shall be reimbursed for photo fees, application fees, and execution fees when obtaining a new passport book, but fees related to passport renewals are not reimbursable. Visa application and legal fees, entry taxes and departure taxes are reimbursable.

The cost of vaccinations that are either required for travel to specific countries or suggested by the U.S. Department of Health & Human Services for travel to specific countries, is reimbursable.

Section 4, Meals & Incidental Expenses, and Section 2.b., Rental Car, shall apply to this section.



Exhibit C

Annual Support and Hosting Statement of Work

In the event of a conflict between the terms of this Statement of Work and the Agreement, the terms and conditions of this Statement of Work shall prevail. This Statement of Work and the Agreement represents the complete agreement regarding the subject matter and replaces any oral or written communications between the Client and Tyler.

I. Overview

As more particularly described in the Agreement, the DHD System Maintenance includes a non-transferrable, limited, nonexclusive limited right to use the SaaS Services for named Client staff. This includes:

- The use of the Client Production System in the offices,
- The use of the offline version of the System ("Field Client"),
- Software support, i.e. correction of System-generated errors and identified bugs in the approved and implemented System functionality, and work stoppage issues created by these errors,
- Hosting of Client data and complete System application,
- Technical support to Client staff handled through Client and Tyler Maintenance Support team for modules on the current production System.
- Software Support

A. Software Version Releases

1. Although there are no formal software version releases, the DHD system is periodically updated to include system-wide improvements and features. As these updates are completed, they are implemented to the live system at no additional charge to the Client.
2. Tyler will notify the Client of any software modifications and revisions. The notification shall include, but may not be limited to, a statement describing the effect of including the software change on the system, application programs, data files, workstation functions and services, and personnel training recommendations.

B. Client Issue Tracker

The System includes the Client Issue Tracker module. The Client System Administrators (CSAs) are able to enter issues, open tickets, and enter requests. CSAs can also monitor the progress of the ticket as it moves through the system and are alerted when the issue is resolved. Each issue is assigned a priority level and a status, so pending issues can be addressed in order from highest priority to lowest as defined by Client and specified to Tyler staff.

C. Bug/Error/Break Fixes

1. Bugs, errors, and breaks are defects in the product, that is, a deviation between the functionality of the product and its actual performance. A bug fix is required to change the code to repair the bug. Bug fixes could be associated with a single line of code or large portions of code thus requiring more development time.
2. Critical Bugs are defined as problems that create a Client work stoppage, problems that affect the Client's ability to use the System as it was designed, problems that prevent the Client from doing business, or problems that prevent the Client from submitting data to the System.
 - a) If the Client reports an issue as a Critical Bug, Tyler staff will review and verify the status. If the issue does not qualify as a Critical Bug as defined above, Tyler staff will update the issue status, assign it to a Work Order, and notify Client.
3. Escalated Issues are defined as those issues that do not meet the qualifications of a Critical System Bug but still need to be addressed and corrected as soon as possible, e.g. before all other issues in Issue Tracker except Critical Bugs. Only Tyler staff is able to Escalate Issues. The types of issues that can be elevated to an Escalated Issues status are:
 - a) Time-sensitive or urgent report requests that have a hard date and/or time deadline, such as media requests or legislative reports,
 - b) Time-sensitive or urgent change requests that have a hard date and/or time deadline, such as state-mandated changes regarding permit renewals, licensing, or billing. Additional charges may apply to escalated change requests that fall outside the original Scope of Work.
4. Critical Bugs and Escalated Issues receive top priority in the maintenance schedule. When Critical Bugs and Escalated Issues are reported, they are verified by Tyler, acknowledged, and typically resolved within twenty-four (24) hours. If a Critical Bug will take longer than twenty-four (24) hours to correct, the Client will be notified of the proposed correction within twenty-four (24) hours. If there are more than three (3) Escalated Issues in the Client System at one time, a Work Order will be created containing only the Escalated Issues, and will be moved into the development schedule as soon as possible. The estimated turnaround for Escalated Issues is seven (7) business days.
5. A Work Order is defined as a list of issues, grouped by issue priority and system module, created by Tyler staff and approved by the Client. Work Orders may contain up to twenty (20) issues and must be approved by Client signature before added to the maintenance schedule. Once a Work Order is complete, the Client will have 30 calendar days to review, test, and accept the Work Order by Client signature, or reject the changes in writing, with detailed documentation of the reasons for rejection. Once the Client accepts the Work Order, the changes will be pushed to the Client Production System within two (2) business days. All items within a Work Order will be pushed to production at one time, not piecemeal. The estimated turnaround time for Work Orders is sixty (60) to ninety (90) business days.
 - a) Once a Work Order is pushed to the production system and verified by Client, the Client will sign a completion form, indicating acceptance of all the issues within the Work Order.

No additional Work Orders will be moved into development until the completion form is signed.

D. State-Mandated Changes

1. During the course of this contract, the federal, state, or county laws, ordinances, policies, or procedures may be changed or updated, and require the addition of fields to system screens and/or format changes to printable forms, or a change in the format in which the data is collected or output on a standard form directly relating to a module included in the Client Production System. Tyler will accommodate up to one (1) form change and ten (10) field changes per module annually. Further changes will be quoted on a case-by-case basis at the standard rate of \$200 per hour.
2. In the event that major functionality or report changes are required as the result as a law or ordinance change, the upgrade may require additional funding and will be quoted on a case-by-case basis at the standard rate of \$200 per hour.

E. System Enhancements

1. System Enhancements are defined as change requests and feature requests, which affect System appearance and/or functionality not included in the existing System functionality or that fall outside the system Scope of Work and/or approved system documentation.
2. The Tyler Project Team on a case-by-case basis evaluates change requests. Each change request will be reviewed against the original System scope of work and approved specifications, and will be quoted to the Client at the standard per-hour development rate.
3. Feature requests are evaluated by the Tyler Project Team on a case-by-case basis. Each request will be reviewed against the original scope of work and approved system specifications, and will be quoted to the Client at the standard per-hour development rate.
4. All changes and enhancements to the system will be quoted to the client on a case-by-case basis. No billable work will be performed until both parties sign a written agreement that includes scope of work, project timeline, and approved payment milestones.
5. Changes and features are first implemented and tested on Tyler's Development server. After the change is approved internally, it is pushed to the Testing server. This server is the Client's testing environment, which is an exact replica of the production system. This testing environment is standard in the system, and there is no extra fee for this feature. Once the enhancements have been fully tested and approved by the Client, they are pushed to the production system where they are immediately available to all users. There is no downtime for any user, and no extra software installations are necessary.
6. Change and feature requests will be addressed in ninety (90) to one hundred and twenty (120) working days, depending on type of request, complexity, and current development schedule.

F. Priorities

The Priority field helps define an issue's importance to the Client and is used to determine delivery dates. The options are: Very High, High, Medium, Low, and Very Low.

1. The "Very High" status is reserved for Work Stoppage bugs only. The status of a Work Stoppage is strictly reserved for bugs that are preventing use of the system. Work Stoppage Bugs are corrected within 24 hours unless otherwise notified by the Tyler Maintenance Team.
2. In the event of a major issue that impacts production, procedures are in place to allow immediate attention to focus on that item whether it requires programming resources or other Tyler staff participation.
3. All escalation is handled through Tyler technical support. Depending on the type of issue, the system may escalate an item to one department or another (for example, Database Administration, Project Management, or Development). Any time an issue is escalated to senior technical staff the Client will receive an estimated correction time and a reason for the escalation to senior tech staff.

G. Project Procedures

Each deliverable document or Work Order will be approved in accordance with the following procedure:

1. One printed draft of the deliverable document is submitted to the Client Project Manager, with a deliverable acceptance document including an approval signature page. It is the Client Project Manager's responsibility to make and distribute additional copies to the other reviewers.
2. Within five (5) business days the Client Project Manager will either approve the deliverable or provide the Tyler Project Team written documentation of the discrepancies.
3. The Tyler Project Manager will resubmit, in electronic form, the final version of the deliverable document to the Client Project Manager for approval. The Client Project Manager will provide final written approval within five (5) working days.
4. Reasonable delays in this approval process will be considered and allowed if agreed by the Tyler and the Client Project Manager.

H. Escalation Procedure

When a conflict arises between Client and Tyler, the project team member(s) will first strive to resolve the problem internally. The following procedure will be followed if resolution is required to a conflict arising during the performance of this SOW:

1. Level 1: If the project team cannot resolve the conflict within five (5) working days, the Client Project Manager and Tyler Project Manager will meet to resolve the issue.

2. Level 2: If the conflict is not resolved within five (5) working days after being escalated to Level 1, the Client Project Sponsor will meet with the Tyler Project Executive and Project Manager to resolve the issue.
3. Level 3: If the conflict remains unresolved after Level 2 intervention, resolution will be addressed in accordance with the Project Change Control Procedures or termination of this SOW, the Hosting SOW, and contract under the terms of the Agreement.
4. During any conflict resolution, Tyler agrees to provide services relating to items not in dispute, to the extent practicable pending resolution of the conflict.

I. Rate for Additional Work

1. Changes to the system appearance and functionality will be quoted on a case-by-case basis at a rate of \$200 per hour. This price covers all project management and development staff time. Travel and other expenses are not included in the per-hour price and may be quoted separately as necessary. No billable work or travel will be performed until both parties sign a written agreement that includes scope of work, project timeline, and approved payment milestones.

II. System Hosting

System Hosting includes hardware support and maintenance for all Tyler-controlled equipment involved in hosting the Client's system, data and application storage, data and application backups, and disaster recovery.

A. Connectivity

The DHD system is accessed through an Internet browser and an Internet connection. No additional Client connectivity is required to access the full functionality of the production DHD system.

B. Data Storage

The data storage subsystem is configured with 9 terabytes of storage and can be expanded at any time if necessary for the term of the contract.

C. Backups

The System is 100% web-browser based and is hosted on servers that Tyler maintains. Tyler is responsible for backups, security administrations, and problem resolutions. Tyler will run nightly backups of all data. The following backups are performed:

1. Nightly differentials,
2. Weekly move backup,
3. Monthly backup rotation.

D. Disaster Recovery

In the event that data recovery is necessary following a disaster that would render data in the primary database unrecoverable, Tyler would look first to the most recent incremental backup of data and attempt to restore. In the event that both the primary database and the incremental backup experienced a catastrophic failure, Tyler would restore from the nightly incremental backup. In the event that all three of these data sources were unavailable or had catastrophic failures, Tyler would retrieve the most recent daily or weekly backup from the long-term backup storage and restore. An exception to this process would be if data were available from another backup source maintained at the Client site – at that point, if the client felt their copy was the most up-to-date, Tyler would restore data from the copy the Client deemed appropriate.

E. Hardware Support

Hardware is defined as the processor(s), RAM, hard disk(s), motherboard, NIC card, and other related components included in the Tyler server assigned to the Client System. All hardware components directly relating to the Client System will function properly and any failed component will be replaced immediately at no additional Client cost. The replacement process will begin when the cause of the problem has been determined. Hardware replacement is guaranteed to take no more than four (4) hours.

F. Network Availability

Network uptime occurs when the functionality of all Tyler network infrastructure including cabling, switches, and routers, is operating as designed. Network downtime occurs if the Tyler servers are unable to transmit and/or receive data, and if the Client opens a service ticket for the incident in the System ticket-tracking module. Network downtime is measured from the time the Client ticket is opened to the time the issues is resolved and the Tyler network comes back online. The Tyler network will be available 99.9% of the time, excluding scheduled maintenance or upgrades approved by both Client and Tyler.

G. Infrastructure Guarantee

Critical systems include all power and HVAC infrastructure, UPS equipment, and cabling. Power supplies of individual servers are not included (see below for Hardware Guarantee). Critical systems downtime occurs when a Tyler server assigned to Client System is shut down because of power or heat problems, and if the Client opens a service ticket for the incident in the Client System ticket tracking module. Critical system downtime is measured from the time the Client ticket is opened to the time the issue is resolved and the Tyler server comes back online. Tyler critical systems, including power and HVAC, are available 99.9% of the time, excluding scheduled maintenance periods.

H. Maintenance and escalation (scheduled and unscheduled)

1. Tyler will notify Client at least 48 hours in advance of any scheduled network downtime for System maintenance and service.

2. In the event of an unscheduled outage, Tyler will immediately notify the Client contact, informing them of the outage and its estimated length. Should the outage last more than four hours Tyler will provide an update to Client every four hours as to the system status.
3. All updates and notifications will be delivered via email to the Client contact.

I. Remedies

1. Should a Tyler outage occur that results in Client system unavailability in excess of the guaranteed uptimes, Tyler will credit Client 5% of the monthly SaaS fee for every 5% of downtime with 95% as the first credit threshold. Credits will be applied toward future SaaS payments.

J. Exceptions

1. Delinquent customers may not take advantage of our uptime guarantee. Client must request all credits in writing within three (3) calendar days of the reported downtime, and the downtime must be from a single occurrence.

III. Customer Support

- A. On-line Support: System includes online text based help down to the field level. Users can hover the mouse over a field and popup text help for that field will appear.
- B. Telephone Support: Telephone support for Client System Administrators between the hours of 8:00 AM and 6:00 PM EST. There is a 24-hour emergency support line available for Client System Administrators, but not general staff. General staff issues should be first directed to the Client District System Administrator to determine that the issue does not pertain to Client policy. If the issue is a legitimate system use issue and the Client District System Administrator is unable to assist the user, the Client District System Administrator may call the Support line to receive additional assistance from a Tyler staff member.
- C. Virtual Support: Tyler technical staff can remote in to the application so that they can see the exact screen that an employee is on at any time. This allows them the ability to assist as if they were sitting next to the employee. The Client has to allow access to the system through the Client firewall.
- D. User Manual: Electronic user manual documentation is configured to reflect the custom features of Client's specific version on the application.

IV. Roles and Responsibilities

Role	Responsibilities
Application Support (Table Maintenance)	The Client will be responsible for making some table changes to the system using Tyler-developed tools through the DHD system. The Client will also be responsible for using Issue Tracker to request changes to the system that are not available to them

Role	Responsibilities
	through the system. Tyler is responsible for fully supporting the application.
Communication	The Client is responsible for appointing a System Administrator who can verify and enter Issue Tracker items, set up users, etc. This position requires no special software or hardware knowledge and does not require a major time investment. Tyler is responsible for notifying the client of scheduled outings, updates on system changes, etc. Both the Client and Tyler are responsible for communication about the DHD system.
Connection	The Client is responsible for monitoring and ensuring that the internet connection is working properly.
Hardware Maintenance	The Client is responsible for all hardware purchased, installed, and used by the Client. Tyler is responsible for application and server hardware and peripheral equipment pertaining to those servers.
Information Services Technical	The Client is responsible for maintaining Client's own technical staff as it relates to the Client's existing infrastructure. Tyler will be responsible for everything that applies to the production system, data storage, and application and server hardware.
Network Support	The Client is responsible for maintaining their own network system so that users are able to access the Internet and a web browser. Tyler is responsible for all network support to application and data servers.
Security Monitoring	The Client is responsible for monitoring Internet security and any other security measures already in place. Additionally, the Client will be responsible for maintaining the integrity of the internal user security (permissions, passwords, etc.). Tyler is responsible for monitoring security at the data and application server level.
Software Updates	Tyler is responsible for all software updates on the application. The Client is responsible for other applicable software updates on the Client's hardware (operating systems, Internet browser, etc.).

[The remainder of this page is left blank intentionally.]



(11)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: DECEMBER 23, 2019

RE: AGREEMENT BETWEEN RICHLAND COUNTY HEALTH
DEPARTMENT AND FARGO CASS PUBLIC HEALTH FOR NURSE
PRACTITIONER SERVICES FOR \$64.00 PER HOUR

The attached agreement is for a nurse practitioner from Fargo Cass Public Health to provide Family Planning services for the Richland County Health Department in Wahpeton, North Dakota.

If you have any questions please contact me at 241-1380.

Suggested Motion:

Move to approve the agreement with Richland County Health Department to provide nurse practitioner services.

DF/lls
Enclosure



Richland County Health Department

413 3rd Avenue North

Wahpeton, ND 58075

Telephone (701) 642-7735 Fax (701) 642-7746

www.richlandcountyhealth.org

AGREEMENT BETWEEN
RICHLAND COUNTY HEALTH DEPARTMENT
AND
FARGO CASS PUBLIC HEALTH

An agreement to provide nurse practitioner for family planning services is hereby made between Richland County Health Department and Fargo Cass Public Health.

The parties agree as follows:

SERVICES PROVIDED:

Fargo Cass Public Health agrees to provide nurse practitioner services for providing family planning client services on site a minimum of two times a month and telemedicine encounters as scheduling allows for Richland County Health Department. All services will be provided based on Richland County Family Planning policies, procedures and protocols.

COMPENSATION:

Compensation will be at a rate of \$64.00 per hour for client services and travel time. Mileage will be compensated at the current IRS rate per mile.

PAYMENT:

Payment shall be made to Fargo Cass Public Health upon receipt of monthly billing statement.

TERMS OF AGREEMENT:

This agreement shall take effect January 1, 2020 and shall terminate December 31, 2020. Continued services will be considered and subsequent agreement will be written if needed.

**Public Health**

Prevent. Promote. Protect.

Richland County Health Department

Richland County Health Department413 3rd Avenue North

Wahpeton, ND 58075

Telephone (701) 642-7735 Fax (701) 642-7746

www.richlandcountyhealth.org

Termination of the Agreement of a date earlier than that stated may occur after given thirty (30) day notice by either Richland County Health Department of Fargo Cass Public Health.

INDEMNIFICATION:

The Richland County Health Department agrees to indemnify, hold harmless and defend Fargo Cass Public Health, its agents, servants and employees from and against all claims, actions, losses, costs and expense (including attorney's fees and litigation costs), judgments, settlement payments, and, whether or not reduced to final judgment, all liabilities, damages or fines paid, incurred or suffered by any third parties in connection with loss of life, personal injury and/or damage to property arising from, directly or indirectly, wholly or in part, (i) the actions of any nurse practitioner in the course of providing services outlined in this agreement or (ii) any violation of any law, ordinance, order, rule or regulation of governmental authorities having jurisdiction over Fargo Cass Public Health.

IN WITNESS THEREOF, the parties have executed this Agreement of the dates set out below:

12/20/2019
Date

Michelle Eberhardt
Michelle Eberhardt, Administrator
Richland County Health Dept
Wahpeton, ND

12/23/2019
Date

Desi Flemming
Desi Flemming, Director
Fargo Cass Public Health
Fargo, ND

Date

Timothy J. Mahoney
Mayor, City of Fargo

12

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: DECEMBER 23, 2019

RE: AGREEMENT FOR SERVICES WITH FARGO MOORHEAD
METROPOLITAN COUNCIL OF GOVERNMENTS FOR
\$6000

The attached Agreement for Services with Fargo Moorhead Metropolitan Council of Governments for a maximum of \$6000 for assistance in providing guidance and administrative support for the Commission and oversee the Metropolitan Food Systems Plan updates and network with local jurisdictions.

No budget adjustment is required for this contract.

Suggested Motion: Move to approve the Agreement for Services with Fargo Moorhead Metropolitan Council of Governments.

DF/lls
Enclosure

AGREEMENT FOR SERVICES



Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

THIS AGREEMENT, effective the 1st day of November 2019, by and between Fargo Cass Public Health ("FCPH"); and Fargo-Moorhead Metropolitan Council of Governments (Independent Contracting Consultant).

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

- A. Term of Agreement:** The parties entered into a written agreement for the period of November 1, 2019 through September 30, 2020.
- B. Services to be provided by independent contractor:** Independent contractor will work closely with the Cass Clay Food Partners Steering Committee to implement and conduct the Cass Clay Food Commission meetings according to the Joint Powers Agreement guidelines; continue to provide guidance and administrative support for the Commission (keep minutes, compile and send out agenda packets, arrange room and technology for meetings, etc.). Oversee the Metropolitan Food Systems Plan updates and network with local jurisdictions to incorporate food systems in city/county comprehensive and land development plans.
- C. Reimbursement:** The independent contracting consultant shall be reimbursed \$6000 for services and will submit an invoice quarterly.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed to be an employee of Fargo Cass Public Health for any other purpose.
- B.** This service agreement shall be governed by the laws of the State of North Dakota. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.
- D.** Services including printing and other miscellaneous costs may be discussed and agreed to by the parties as needed.

In Witness thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH

By Desi Fleming
Desi Fleming, Director of Public Health

Date 12/23/2019

By _____
Timothy, J. Mahoney
Mayor, City of Fargo

Date _____

FM Metropolitan Council of Governments

By Cynthia Gray
Cindy Gray, Executive Director

Date 12/19/2019

Contract Originator: Kim Lipetzky



(13)

Inspections Division

225 Fourth Street North
Fargo ND, 58102
phone 701-241-1561
fax 701-476-6779

Memorandum

DATE: December 26, 2019

TO: Mayor Mahoney and Board of City Commissioners

FROM: Bruce Taralson, Inspections Director

SUBJECT: Vendor for junk vehicle removal contract

Attached are bids received for the provision of junked vehicle removal services for the coming calendar year. The bids received were from the present provider, Ed's Towing Service, Inc., Moorhead, MN, and Brennan's Garage LLC dba Fargo Moorhead Towing.

This process is routine and annual. I would respectfully request that you approve ***a motion to accept this proposal and award the contract for 2020 to Ed's Towing Service, Inc. in Moorhead, MN. The cost for a vehicle owner to retrieve their impounded vehicle is significantly lower than the rate through Brennan's Garage LLC dba Fargo Moorhead Towing.***

ED'S TOWING SERVICE, INC. PROPOSAL FOR SERVICES

For City of Fargo

To Whom it may concern,

Please accept our proposal for junk vehicle removal services for the calendar year 2020.

We provide service for all light, medium and heavy-duty vehicles and equipment. Our fleet consists of 12 flatbeds and tow trucks with a secured impound lot with security cameras. We currently have 16 full and part-time employees. We also background check and pre-employment drug test all employees.

Rates:

Impound tow fee: \$95 Light Duty/\$125 Medium Duty/\$150 Heavy Duty

Dollies/Skates/Go Jacks: \$35 (when needed)

Mileage: 15 miles free

then \$3/loaded mile Light Duty/\$4/loaded mile Medium Duty/\$5/loaded mile Heavy Duty

Admin fee: \$20

Daily Storage: \$35 Light Duty/\$70 Medium Duty/\$105 Heavy Duty

Snowbird: \$15 per 15 minutes shoveling (when applicable)

All fees are at owner's expense. Owners may reclaim their vehicles at Ed's Towing, 2848 22nd Ave S, Moorhead, MN from 8am-5pm Mondays thru Fridays and on Saturdays and Sundays 9am-5pm. Owners will need to provide proof of ownership, proof of insurance and a photo ID to reclaim their vehicles. We accept Visa, Mastercard, Discover, American Express, debit and cash.

Please feel free to contact Nick or Dawn if you have any questions or concerns. Nick's cell is 701-219-5885 and Dawn's is 701-238-7191.

Thank you for your proposal invitation, we look forward to hearing from you! ☺

Best regards,



Nick and Dawn Grossman

Owners

Ed's Towing Service, Inc.

2848 22nd Ave S

Moorhead MN 56560

P.218-233-7740

F.218-291-3340

Email: edstowing@hotmail.com

www.edstowing.com



4021 Main Avenue Unit C
Fargo, ND 58103
701-277-1263

Date: 11/21/2019
Attention: Bruce Taralson, Director
City of Fargo-Inspections Department
From: Fargo Moorhead Towing
RE: Proposal for junked vehicle removal services 2020

We would like to submit that the average size junked vehicles be treated like private impounds at a rate of \$150.00 impound fee with \$30.00 per day storage and \$25.00 admin fee for research of registered vehicle information and certified letter required by North Dakota Century Code Chapter 39-26 Abandon Motor Vehicles.

Oversized vehicles requiring medium duty wrecker \$200.00; oversized vehicles requiring heavy duty wrecker (semi's or large motor homes) \$250.00. Storage at \$50.00 per day and \$25.00 admin fee. Any extra labor or winching at a rate of \$100.00 per hour.

All fees charged to the vehicle owner, not the city of Fargo. Any impounds left beyond the required 30 days of certified letter will be disposed of at our discretion according to North Dakota Century Code Chapter 39-26 Abandon Motor Vehicles.

We appreciate your consideration for our proposal and would like to be able to serve your needs.

Any questions please contact our office (701) 850-7347

Respectfully,


Brennan R. Borg

AGREEMENT

This agreement, made and entered into this 30th day of December 2019, by and between the City of Fargo, a municipal corporation ("City"); and Ed's Towing Service Inc. of Moorhead, Minnesota ("Contractor").

PREMISES:

- A. City has solicited proposals for the removal, impound and disposition of junk cars.
- B. Contractor has submitted a proposal for such removal, impound and disposition.
- C. City has determined that the proposal submitted by contractor is the most advantageous to the City.
- D. The parties entered into a contract on December 30, 2019.
- E. The parties mutually agree that certain amendments to that contract are necessary.
- F. The parties wish to reduce their supplemental agreement to writing.

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

- 1. Contractor agrees to provide prompt wrecker services to the City of Fargo for the removal of junk cars, as may be designated by the City; in the event the contractor is unable, for any reason, to furnish prompt wrecker services, they will be required to hire another firm to remove junk cars, at its expense.
- 2. Contractor will provide a suitably fenced storage area and will retain all vehicles picked up for a minimum period of ninety days.
- 3. During the ninety-day holding period, the owner of such vehicle may take possession thereof by paying to the Contractor an impound fee of \$95 Light Duty/\$125 Medium Duty/\$150 Heavy Duty and a per day storage charge of \$35 Light Duty/\$70 Medium Duty/\$105 Heavy Duty. An administrative fee of \$20 may apply, and, if needed, dollies/skates/go jacks may be used, in which, a \$35 fee will apply. If snow removal is necessary, a \$15 fee per 15 minutes of shoveling shall apply. No vehicle may be removed by the owner which does not have a current automobile registration tag.
- 4. Any vehicles which are not claimed by the owner within the ninety-day period shall be retained by Contractor for salvage purposes.

5. Contractor shall, on the first day of each month, furnish the City with an accounting which shall consist of a list of all vehicles which are picked up and impounded and all vehicles which are claimed by the owner

6. Contractor agrees to dismantle for parts or crush all motor vehicles which are not claimed by the owner and retained by contractor all possible polluting chemicals and other hazards will be removed and disposed of properly. No motor vehicle shall be sold to the public at large.

7. The term of this agreement shall be from January 1, 2020 through December 31, 2020. This agreement may be terminated at any time by either party upon giving thirty days written notice of such termination.

Dated this 30th day of December 2019.

CITY OF FARGO

BY _____
Its Mayor


ED'S TOWING SERVICE, INC.

BY _____
Its President

(14)

M E M O R A N D U M

TO: BOARD OF CITY COMMISSIONERS

FROM: TIA BRASETH, COMMUNITY DEVELOPMENT PLANNING COORDINATOR 
NICOLE CRUTCHFIELD, PLANNING DIRECTOR

DATE: DECEMBER 24, 2019

RE: APPROVE AGREEMENT BETWEEN THE CITY OF FARGO AND HOMEFIELD 3, LLLP FOR PROPERTY ACQUISITION AT 4225 28 AVE S (CDBG GRANT FUNDS)

On August 26, 2019, the City Commission approved a \$526,000 land acquisition project with Beyond Shelter, Inc. & HomeField 3, LLLP under the 2019 HUD Community Development Block Grant (CDBG) & HOME Action Plan. The activity was described to the public and City Commission as:

Activities include acquisition and future construction of a multi-family rental housing complex in partnership with HomeField, LLLP & Beyond Shelter, Inc. CDBG funds will only be used to fund acquisition, construction of housing will be funded with non-CDBG funds (i.e., HOME funds, other federal and local sources).

As part of the federal program, there are incremental steps throughout the process in order to comply with federal regulations. At this time, staff is seeking authorization for the Mayor to execute the agreement, which the City Attorney has thoroughly reviewed and is currently in the process of completing final minor edits. Upon its execution, the City will release CDBG funds in order for HomeField 3, LLLP to acquire land at 4225 28 Ave S. and begin construction of the 39-unit, affordable senior housing complex at 4225 28 Ave S.

Recommended Motion: Authorize the Mayor to execute a contractual agreement with HomeField, LLLP to acquire land from Beyond Shelter, Inc. at 4225 28 Ave S using CDBG funds.

**Subrecipient Agreement
Between the City of Fargo & HomeField 3, LLLP
Community Development Block Grant (CDBG)
Property Acquisition – 4225 28 Ave S**

THIS AGREEMENT is entered into this ____ day of _____, 2019, by and between the City of Fargo (the "City"), a North Dakota municipal corporation, and HomeField 3, LLLP, a North Dakota limited liability limited partnership (the "Subrecipient").

WHEREAS, Subrecipient wishes to acquire property for the purpose of developing affordable senior housing for predominately low to moderate income residents through use of Community Development Block Grant ("CDBG") funds, provided by the City; and,

WHEREAS, the City wishes to provide Subrecipient with a grant of CDBG funds for said purpose, which grant will be in the form of an interest-free loan with a declining principal balance, conditioned upon the Subrecipient complying with certain obligations and restrictions as set forth herein, provided; however, that the City and another entity affiliated with Subrecipient intend to enter into a separate agreement by which the City will advance certain funds under a separate affordable-housing program known as the City's HOME loan program;

NOW THEREFORE, in consideration of the parties' mutual covenants contained in this Agreement, and other good and valuable consideration, the parties agree as follows:

Section 1 The Project—Development, Design, Construction, Finance and Operate.

- A) Subrecipient shall acquire a Ninety-nine-year (99-year) leasehold interest (the "**Required Interest**") in that certain real property situate in the County of Cass and State of North Dakota, described as:

Lot Three(3), in Block One(1), Autumn Fields Second Addition to the City of Fargo;

(the "**Property**") the street address for which is **4225 28 Ave S, Fargo, North Dakota** (Parcel #01-8595-00300-000).

- B) Said acquisition shall occur within six (6) months of the Effective Date.
- C) The Subrecipient will construct upon the Property a residential housing development consisting of at least 39 senior housing units. For purposes of this Agreement, Senior Housing Units shall mean _____ [INSERT DEFINITION OF SENIOR HOUSING UNITS] _____ (the "**Homefield 3 Project**")
- D) All activities funded with CDBG funds must meet one of the following CDBG program's National Objectives:

- i) benefit low-to-moderate income persons;
- ii) aid in the prevention or elimination of slum or blight; or,
- iii) meet community development needs having a particular urgency, as defined in 24 CFR §570.208.

E) The Subrecipient certifies that the activity carried out under this Agreement will meet the Low-to-Moderate Income Housing National Objective under 24 CFR §570.208(a)(3) including the following requirements:

- i) at least 51% of the residents must have income at or below 80% of the area median income at the time of occupancy;
- ii) Rents must be set at levels which are affordable to low-to-moderate income persons; and,
- iii) No more than 30% of a household's income can be spent on rent and utilities

[Referred to herein as the "Low-to-Moderate Income Housing National Objective"]. The HUD Income Limits [[DRAFTING COMMENT: need to identify defn]] change annually and are available at the HUD User website (www.huduser.gov) under "Data Sets". The most up to date Income Limits [[DRAFTING COMMENT: need to identify defn]] must be used to calculate income of residents. Income, race, and ethnicity data for each resident will be provided to the City upon occupancy of at least 51% of units by low and moderate income households (e.g., at least 20 units in a 39 unit complex are occupied by LMI households [[DRAFTING COMMENT: need to identify defn]]— report on these 20 units). Subrecipient shall periodically complete the form at Exhibit B and remit the same in a timely manner to City.

F) Residential occupancy of the Property must be occupied and rented to residents meeting the Low-to-Moderate Income Housing National Objective of seniors {{{need to define "seniors"}}} within five (5) years of the Effective Date of this Agreement,

G) General Compliance. The Subrecipient shall comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 [the U.S. Housing and Urban Development regulations concerning CDBG including Subpart K of these regulations], except that (1) the Subrecipient does not assume the City's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the City's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient shall also materially comply with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this Agreement. The Subrecipient shall utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

H) Assurances The Subrecipient agrees to use CDBG resources for the purposes authorized by the City pursuant to this Agreement. The Subrecipient further agrees to comply with the certifications, attached as Exhibit A, and made a part of this Agreement, which are required by the Department of Housing and Urban Development for all CDBG projects.

- l) Conflict of Interest. The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the award and administration of agreements supported by Federal funds.

- i) No employee, officer, or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, an agreement supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- ii) No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any agreement, or have a financial interest in any agreement, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, the Subrecipient, or any designated public agency.

K) Administrative Requirements

i) Financial Management/OMB

- (a) *Accounting Standards* – The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
- (b) *Cost Principles* – The Subrecipient shall administer its program in conformance with OMB (U.S. Office of Management & Budget) Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

i) Documentation & Recordkeeping

- (a) *Records to be Maintained* – The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR §570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
 - (i) Records providing a full description of each activity undertaken.
 - (ii) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program.

- (iii) Records required to determine the eligibility of activities.
- (iv) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance.
- (v) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program.
- (vi) Financial records as required by 24 CFR 570.502, and 24 CFR 84.21 through 84.28.
- (vii) Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

(b) Records of reimbursable expenses pertaining to the acquisition of the Property and records of accounts between the City and the Subrecipient shall be kept in a manner consistent with generally recognized accounting standards. The City, the U.S. Department of Housing and Development, the Comptroller General of the U.S. or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Subrecipient, including receipts, invoices, and other financial records, employment records, and client demographic and income data which are directly pertinent to the agreement for the purpose making an audit, examination, excerpts and transcriptions.

- (i) *Records Retention* – The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years after the date of the HUD’s approval of the City’s Consolidated Annual Performance and Evaluation Report (CAPER – due annually in late July), in which the activities assisted under this Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later. The Subrecipient shall retain information in its files which shall clearly document all activities performed in conjunction with this Agreement including, but not limited to, financial transactions, conformance with assurances, and Subrecipient activity reports.
- ii) *Client Data* – The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be secured under lock and key and made available to City monitors or their designees for review upon reasonable advanced request. See Exhibit B for a participant data collection form sample. Subrecipient may use their own format and method to collect the same data.

L) Title and Survey

- i) Title. Subrecipient's acquisition of the Required Interest in the Property shall only be subject to those easements, restrictions, and other matters of record, approved by the City and the Mortgage (the "Pre-Approved Title Matters"). Subrecipient shall furnish to the City at the City's request an updated abstract of title covering the Property (the "Abstract") for review by the City's attorney and issuance of a title opinion. The Subrecipient shall be responsible for the cost of updating the Abstract and the City will be responsible for the cost of such title opinion.
- ii) Survey. The City shall have the right to obtain an ALTA as-built survey of the Property in form reasonably acceptable to the City (the "Survey") at City's expense. Subrecipient shall promptly deliver to the City all documents in its possession which will assist the City in having the Survey created (including constructions documents, plans, etc.).
- iii) Corrections to Title. If any objections to title or to the Survey are made (other than to the Pre-Approved Title Matters), Subrecipient will correct such objections prior to the Grant Funds Closing.

Section 2 City to Advance Grant Funds—CDGB.

The City will advance and remit to Subrecipient the sum of FIVE HUNDRED TWENTY SIX and no/100 DOLLARS (\$526,000.00), said funds having been made available under the City's CDBG program [hereinafter, the "Grant Funds"], said funds to be delivered in the form of a loan in said amount, evidenced by a promissory note and secured by a mortgage and with conditions to be imposed upon the Property in the form of one or more Land Use Restrictive Covenants declared by the Subrecipient and recorded against the Property, which loan will be issued interest-free and with a principal balance of said amount that will remain due and fully payable throughout the term thereof, said term to be a period of Five (5) years from the Commencement Date, defined herein, but which loan shall be deemed by the City to have been satisfied as if it were paid in full upon the City recognizing that said Property has been maintained and managed in compliance with Subrecipient's obligations under this Agreement during said term. The City will recognize such compliance by issuance of a Certificate of Compliance and by cancellation of the promissory note as having been "paid in full", at which time the City shall issue a release and satisfaction of the said mortgage in a form suitable for recording as well as a release of the City's interest in the said Land Use Restrictive Covenants. The Grant Funds shall be paid to the Subrecipient at the Grant Funds Closing. The City shall designate representatives of the City who will be authorized to make all necessary decisions required of the City on behalf of the City in connection with the execution of this Agreement, including monitoring the use of the Property in connection with the activity.

Section 3 Grant Funds Closing

- A) The closing of the loan and grant transaction, including the advance to Subrecipient by the City of the Grant Funds, [the "**Grant Funds Closing**"] will occur as soon as reasonably possible after the Contingencies have been waived or satisfied by the City and Subrecipient, as applicable, but not later than six (6) months from the Effective Date hereof.
- B)

- i) Title and Survey. The City shall be responsible for performing any and all title and survey examination or due diligence that the City deems prudent, at the City's sole cost and expense. As mentioned, If any objections to title or to the Survey are made (other than to the Pre-Approved Title Matters), Subrecipient will correct such objections prior to the Grant Funds Closing. Notwithstanding the foregoing, the City will reasonably cooperate with Subrecipient to address and/or remove any title defects.

C) Grant Funds Closing Documents.

- i) City Closing Documents. The City will deliver to Subrecipient at the Grant Funds Closing:
 - (a) the Grant Funds specified in Section 2, above; and
 - (b) any other items required by this Agreement or reasonably requested by Subrecipient to the Closing Agent for the Grant Funds Closing.
- ii) Subrecipient Closing Documents. Subrecipient will deliver to the City at the Grant Funds Closing:
 - (a) The Promissory Note, the form of which shall be substantially in conformance with Exhibit "C",
 - (b) The Mortgage, the form of which shall be substantially in conformance with Exhibit "D"
 - (a) a resolution of the manager of Subrecipient authorizing and approving the transaction contemplated by this Agreement, certified as true and correct by an officer of Subrecipient;
 - (b) ; and
 - (c) any other items required by this Agreement or reasonably requested by the Closing Agent or the City for the Grant Funds Closing.

F) Grant Funds Closing Costs and Prorations.

- i) Costs of Grant Funds Closing. Subrecipient will be responsible for any document recording fees required for correction of title. Subrecipient will be responsible for all document recording fees (including the Mortgage and Land Use Restrictive Covenant(s) or Agreement(s)), title examination costs and title insurance premiums. Subrecipient will pay the closing fee and escrow fees, if any, imposed by the Closing Agent in connection with this transaction.

Section 4 Contingencies

- A) Subrecipient Contingencies. Subrecipient's obligations under this Agreement are subject to satisfaction or waiver by Subrecipient of the following contingencies on or before the "Contingencies Deadline", with the Contingencies Deadline being the date that is two weeks prior to the date that is six months from the Effective Date hereof ():
 - i) The City and Subrecipient's agreement (respectively, in their sole discretion) to the final form of the following Project Agreements (collectively, the "Contingent Agreements"):
 - (a) The Promissory Note, the form of which shall be substantially in conformance with Exhibit "C",
 - (b) The Mortgage, the form of which shall be substantially in conformance with Exhibit "D"

- (c) The Land Use Restrictive Agreement ("LURA") for CDBG funds, the form of which shall be substantially in conformance with Exhibit "E".
 - B) City Contingencies. The City's obligations under this Agreement are subject to satisfaction or waiver by the City of the following contingencies on or before the Contingencies Deadline:
 - i) The Subrecipient having entered into a valid and binding agreement for the acquisition of the Required Interest in the Property that provides for delivery to Subrecipient of said Required Interest within six (6) months of the Effective Date of this Agreement; and,
 - ii) the City and Subrecipient's agreement (respectively, in their sole discretion) to the final form of the Contingent Agreements;
 - iii) the City's continued authorization by the Federal Government (i.e. Housing and Urban Development (HUD)) to award the CDBG Grant Funds as described herein, and,
 - (a) the City's receipt of any other security documents and instruments reasonably required by the City;
 - C) Unsatisfied Contingencies. If any contingency set out in this Section is unsatisfied as of the Contingencies Deadline, the Party for whose benefit the contingency is may at its option:
 - iv) waive the contingency and proceed to perform under this Agreement; or
 - v) by written notice to the other Party within two (2) Business Days after the Contingencies Deadline, terminate this Agreement.
- If this Agreement is so terminated, no Party shall have the right to specific performance or damages for default of this Agreement (except in connection with Section 2K)(C), below, which subsection shall survive any termination of this Agreement). The termination rights set forth in this Section are the sole termination rights of Subrecipient set forth in this Agreement and Subrecipient agrees that it has no further or additional rights to terminate in this Agreement.
- D) Authority of Community Development Planning Director. The Community Development Planning Director shall have the authority to approve the final forms of the Contingent Agreements and determine whether the Contingencies of the City are fully satisfied.

Section 5 ~~Suspension or Termination of the Agreement~~ Events of Default.

~~The City may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to)~~ Each of the following shall constitute a default by the Subrecipient under this Agreement ("Event of Default") as the same are set forth in 24 CFR §85.43, but further subject to the Risk of Certain Losses/Force Majeure provision (Subsection 6 (C)) below:

- A) Failure to materially comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time.
- B) Failure, for any reason, of the Subrecipient to materially fulfill its obligations under this Agreement, in a timely and reasonably proper manner.
- C) Ineffective or improper use of the funds provided under this Agreement.

- D) Submission of incorrect or incomplete reports that are not subsequently corrected within thirty (30) days following notice from the City.

and, of the following (in addition to those set forth above from 24 CFR §85.43):

- E) the failure to make any payment of any sums payable under this Agreement, which failure shall continue for ten (10) days after receipt of written notice to the Subrecipient by the City (a "Monetary Payment Default");
- F) the Subrecipient's material violation or material failure to perform or observe any covenant or condition of this Agreement, other than a "Monetary Payment Default";
- G) the Subrecipient has instituted voluntary proceedings in bankruptcy;
- H) involuntary proceedings in bankruptcy have been instituted against the Subrecipient that are not discharged within sixty (60) days thereafter;
- I) any proceedings has been instituted by or against the Subrecipient under any Law relating to insolvency or bankruptcy reorganization, and in the case of an involuntary proceeding, that is not discharged within sixty (60) days after filing;
- J) a trustee or receiver shall be appointed for the Subrecipient by any court of competent jurisdiction, or (v) the Subrecipient shall make a general assignment for the benefit of its creditors; or
- K) any representation or warranty made by the Subrecipient herein shall prove to have been incorrect when made, in any material respect.
- L) Failure of the Subrecipient to have materially failed to comply, perform, fulfill or observe an obligation under this Agreement shall be deemed to have occurred when which failure or violation has continued for thirty (30) days after receipt of written notice to the Subrecipient by the City identifying with particularity the failure or violation; provided, however, that so long as such failure or violation (said failure or violation being a non-Monetary Payment Default) is not reasonably capable of being cured within such thirty (30) day period, there shall exist no Event of Default if the Subrecipient promptly advises the City of the Subrecipient's intention to duly institute all steps necessary to cure such default and the Subrecipient promptly commences cure of such failure or violation within such thirty (30) day period and diligently pursues such cure to completion, but such additional time for cure shall not exceed one-hundred eighty (180) days after receipt of the initial written notice to the Subrecipient by the City.

Section 6 Remedies Upon Event of Default.

- A) Upon the occurrence of an Event of Default, each City will have the right to exercise any of the following remedies:
 - i) deem said event to be a default of the mortgage granted to the City and to foreclosure upon the mortgage.

- ii) exercise any remedy afforded hereunder.
- iii) seek specific performance or other equitable relief.
- iv) sue for money damages.

Except as set forth in Section 4 (Contingencies), no Party shall be entitled to terminate this Agreement.

B) Remedies Cumulative; Limitation on Remedies; Waiver.

All rights and remedies set forth in this Agreement are cumulative and in addition to the Parties' rights and remedies at law or in equity, subject, however, to any limitation on damages, fees and costs as provided for in this Agreement. A Party's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies, or obligations. No Party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such Party. If a Party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement, except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder, nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other Party or Parties may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy.

C) Use & Reversion of Assets. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

- i) The Subrecipient shall transfer to the City any CDBG funds on hand, if any, at the time of expiration, cancellation, or termination.
- ii) Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 for a minimum of five (5) years after the expiration of this Agreement. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the City. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period.
- iii) In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment.) Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred

to the City for the CDBG program or (b) retained after compensating the City (an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the

D) Risk of Certain Losses; Force Majeure.

- i) The non-occurrence of any condition under this Agreement shall not give rise to any right otherwise provided in this Agreement when such failure or non-occurrence is due to the occurrence of a Force Majeure event and without the fault of the Party claiming an extension of time to perform or excuse from performance. Without limitation of and in addition to the foregoing, if a Party hereto shall be delayed or hindered or prevented from the performance of any obligation required under this Agreement by reason of a Force Majeure event, then the performance of such obligation shall be excused for the period of delay and the period for performance of any such act shall be extended for a period equivalent to the period of such delay. An extension of time for any such cause, if any, shall be limited to the period of delay due to such cause, which period shall be deemed to commence from the time of the commencement of the cause; provided, however, that if notice by the Party claiming such extension is sent to the other Parties more than thirty (30) days after the commencement of the cause, the period shall be deemed to commence thirty (30) days prior to the giving of such notice. The Party claiming a Force Majeure event shall remedy the Force Majeure event with all reasonable dispatch, and shall make commercially reasonable efforts to avoid the adverse impacts thereof and to resolve the event or occurrence once it has occurred in order to resume performance. As soon as the Party claiming a Force Majeure event is able to resume performance of all or a portion of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties. Times of performance under this Agreement also may be extended as mutually agreed upon in writing by the Parties. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default under this Agreement.
- ii) Force Majeure. A Force Majeure event shall be defined as an event that causes delay by a party or failure by a party 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.

E) Limited Recourse Obligations; Members and Officers Not Liable.

All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the City and not of any member, director, officer, employee, or agent of the City in his or her individual capacity, and no recourse shall be had for any Claim hereunder against any member, director, officer, employee, or agent of the City in such capacity. All covenants, stipulations, promises, agreements, and obligations of Subrecipient contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of Subrecipient and not of any shareholder, member, partner, owner, manager, officer, employee, or agent of Subrecipient in his or her individual capacity, and no recourse shall be had for any Claim hereunder against any

shareholder, member, partner, owner, manager, officer, employee, or agent of Subrecipient in such capacity.

Section 7 Amendments

Except as otherwise provided in this Section, this Agreement may not be amended except by written instrument approved by both parties and executed by a duly authorized representative of each party. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Subrecipient from its obligations under this Agreement.

To the extent this Agreement obligates the Subrecipient to conform with Federal or state statutes, regulations, or other formal guidance and such statutes, regulations or other formal guidance are amended, modified or otherwise formally issued or enacted, this Agreement shall be deemed to be amended to include such obligation; provided, however, that to the extent the City is so authorized to allow, failure by the Subrecipient to comply, perform, fulfill or observe such obligation may not be deemed to be an event of default unless the City have given the Subrecipient notice of the said amendment and provided Subrecipient a reasonable period of time in which to so comply, perform, fulfill or observe such amendment or obligation, in the same manner as is set forth for material failures as described in Section 5 (L), above.. Further, if such amendments result in a change of funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both parties.

Section 8 Assignability & Subcontractors

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Subrecipient from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval, notice of which assignment shall be promptly given to the City.

Section 9 Notices

All notices, requests, consents, or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail or overnight delivery service to the parties as follows (or at such other address as a party may from time to time designate by notice given pursuant to this section):

To Subrecipient:

Homefield 3, LLLP
ATTN: Daniel P. Madler
3320 Westrac Dr. S., Ste G
PO Box 310
Fargo, ND 58107
701.551.0488
dmadler@beyondshelterinc.com

or to:

The Registered Agent for service of process for
Subrecipient

To the City:

City Auditor
Fargo City Hall
225 N. Fourth Street
Fargo, ND 58102

and to:

Community Development Planning Director
ATTN: Tia Braseth
Fargo City Hall
225 N. Fourth Street
Fargo, ND 58102
701.476.4144
tbraseth@fargond.gov

Each notice shall be deemed given and received on the date delivered if served personally or, if sent by United States registered or certified mail or by overnight delivery service, then the day so sent to the address of the respective party, as provided herein, postage pre-paid. Notices sent by a party's counsel shall be deemed notices sent by such Party.

Section 10 General Conditions

A) Independent Contractor

Nothing contained in this Agreement nor the relationship of the Subrecipient or any of the Subrecipient's contractors to other parties shall make or be construed to make the Subrecipient or contractor, or any of the Subrecipient's or contractor's agents or employees, the agents or employees of the City. The Subrecipient or contractor shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

B) Indemnification & Hold Harmless

The Subrecipient agrees to indemnify and hold harmless the City and any of its officers, employees, contractors, consultants, representatives, agents, and assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property resulting from the acts or omissions of the Subrecipient, or the Subrecipient's contractors, successors, or assigns in connection with the work on the Property, and the Subrecipient will, at the Subrecipient's own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against the City or in which the City may be joined with other parties upon any such matter or claim(s). This agreement to indemnify and hold harmless will include indemnity against all costs, expenses, and liabilities, including any reasonable attorney fees, reasonably incurred in or in connection

with any such claims or proceedings brought thereof. This indemnification provision will survive the termination of this Agreement and any subsequent agreements of the parties contemplated herein. Notwithstanding anything to the contrary contained herein, the Subrecipient's obligation hereunder shall not apply to the extent such liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property, are a result of the acts or omissions of the City.

C) Worker's Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

D) Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City. The Subrecipient shall include the City as an additional insured on any insurance policy issued to comply with the requirements of this provision. The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

E) City Recognition

The Subrecipient shall ensure recognition of the role of the City in providing funding through this Agreement. The Subrecipient shall use best efforts to provide: (1) oral recognition of the City's role and of the federal program as a source of funds during major oral presentations related to the Property; and (2) recognition by logo (provided by the City) of the City's role and of the federal program as a source of funds in any publicity materials of the Property.

F) *Disclosure* – The Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

G) *Close-outs* – The Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds.

i) *Audits & Inspections/Monitoring & Evaluation* – The City reserves the right to monitor and evaluate the progress and performance of the Subrecipient to assure that the terms of this agreement are being satisfactorily met in accordance with City and other applicable monitoring and evaluating criteria and standards. The

Subrecipient shall reasonably cooperate with the City relating to such monitoring and evaluation.

H) Reporting & Payment

- i) *Program Income and Security Requirements* – For the purpose of this Agreement, program income includes funds from future sale of any property acquired with CDBG funds. The Subrecipient agrees to return all income generated from CDBG funds to the City if the Property is sold or transferred during the five (5) year period outlined in the Use & Reversion of Assets section [11(e)]. Program income does not include proceeds from the disposition of real property by Subrecipient that was acquired or improved with CDBG funds five years after the close out or termination of this Agreement.
- ii) *Indirect Costs* – Any indirect costs charged must be consistent with the conditions of this Agreement. In addition, the City may require a more detailed budget breakdown than the one contained herein if reasonably requested, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content reasonably prescribed by the City. Any amendments to the budget must be approved in writing by both the City and the Subrecipient, and such approval shall not be unreasonably withheld or delayed.
- iii) *Payment Procedures* – Provided that the activities authorized under the statement of work and Agreements signed by the Subrecipient are eligible expenditures of CDBG funds, the City agrees to provide the Grant Funds, as provided herein, to the Subrecipient to acquire a 99-year leasehold interest in the property to be used for affordable senior housing. The funds will be wired transferred to the Subrecipient.
- iv) *Progress Reports & Data Collection* – The Subrecipient shall submit regular progress reports to the City upon request of the City in the form, content, and frequency as required by the City. The Subrecipient shall submit to the City data collection on race and ethnicity of clients upon occupancy of the Property. See and complete form at Exhibit B and return to City.

I) *Reserved.*

Section 11 *Women & Minority Owned Businesses/Enterprises*

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

Section 12 Copyright

If this Agreement results in any copyrightable material or inventions, the City reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use the work or materials for governmental purposes.

Section 13 Entire Agreement

This Agreement, including attachments, constitutes the entire and complete agreement between the parties with respect to the subject premises. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants, and conditions set forth herein, and that no modification of this Agreement and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

Section 14 Counterparts

This Agreement may be executed in counterparts with both parties having a fully-executed counterpart.

Section 15 Agreement Binding on Successors

This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors, and assigns.

Section 16 North Dakota Law Applies.

Except with respect to any applicable federal statute, regulation or other federal law, this Agreement shall be controlled by and construed in accordance with the laws of the State of North Dakota, and any action brought as a result of any claim, demand or cause of action arising under the terms of this Agreement must be brought in state or federal district court in North Dakota venued in in the County of Cass and State of North Dakota.

Section 17 Effective Date. This Agreement shall be deemed to be effective as of the date and year first above-written or, if the date and year is not completed above, then this Agreement shall be deemed effective on the date last signed below (the "Effective Date").

[Signature Page(s) to Follow]

SIGNED THE ____ DAY OF _____, 20____.

HOMEFIELD 3, LLLP, a North Dakota
Limited liability limited partnership

By: HomeField 3, LLC,
A North Dakota Limited Liability Company
The General Partner of Homefield 3, LLLP

By: Beyond Shelter, Inc.
The General Manager of Homefield 3, LLC

Daniel P. Madler
Its: President

SIGNED THE ____ DAY OF _____, 20____.

Title (Chief Elected Official/Official with
Authority to Sign)

Federal ID # _____

DUNS # _____

SIGNED THE ____ DAY OF _____, 20____.

CITY OF FARGO, a North Dakota municipal
corporation

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

ATTEST:

Steven Sprague, City Auditor

EXHIBIT A

Certifications

This Agreement will be conducted and administered in compliance with:

1. Title VI of the Civil Rights Acts of 1964 (Pub. L. 88-352) and implementing regulations issued at 24 CFR Part 1.
2. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended; and the City will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing.
3. Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations issued pursuant thereto.
4. Section 3 of the Housing and Urban Development Act of 1968, as amended; the Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontractors executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very low income residents of the project area, and that Agreements for work in connection with the project be awarded to business concerns that provide economic opportunities for low and very low income persons residing in the metropolitan area in which the project is located."

The Subrecipient certifies and agrees that no Contractual or other legal incapacity exists that would prevent compliance with these requirements.

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

5. Equal Employment Opportunity, Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, 13279, 13665, 13672 and including E.O. 12107, and implementing regulations issued at 41 CFR Chapter 60; and Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement, the Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
6. Nondiscrimination and Equal Opportunity in Housing, Executive Order 11063, as amended by Executive Order 12259, and implementing regulations at 24 CFR Part 107.
7. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect.

8. The American with Disabilities Act of 1990.
9. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect.
10. Lobbying

The Subrecipient hereby certifies that:

- A) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Agreement, 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 Agreement, 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 Agreement, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions; and
 - i) It will require that the language of paragraph (d) of this certification be included in the award documents for all sub-awards at all tiers (including subcontractors, sub-grants, and Agreements under grants, loans, and cooperative agreements) and that all Subrecipient shall certify and disclose accordingly.
 - ii) Lobbying Certification: 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.C. 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.
11. Hatch Act, the Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
 12. Religious & Political Activities, the Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization or any political activities.
 13. The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part 42.
 14. Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution.
 15. The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub.L. 93-234).

16. The Uniform Administrative requirements, set forth in 24 CFR Part 570.502, and 24 CFR 85, and the requirements of OMB Circular Nos. A-87, A-128, A-122, A-21 and A-110 implemented at 24 CFR Part 84 as they relate to the acceptance and use of Federal funds under this federally assisted program, including but not limited to the regulations pertaining to inventions, reporting and patent rights, and copyrights.
17. The Clean Air Act (42 U.S.C. 7401 et. seq.).
18. HUD environmental standards (24 C.F.R Part 51, Environmental Criteria and Standards (44FR 40860-40866, July 12, 1979).
19. The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et. seq., and 21 U.S.C. 349), as amended.
20. The Endangered Species Act of 1973 (16 U.S.C. 1531 et. seq.) as amended.
21. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et. seq.), as amended.
22. The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et. seq.), as amended by the Archeological and Historical Preservation Action of 1974.
23. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), as amended.
24. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. seq.).
25. The lead based paint requirements of 24 C.F.R. Part 35 issued pursuant to the Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et. seq.).
26. The National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.) as amended;
27. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 C.F.R. 8921 et. seq.).
28. The Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in the Department of Labor regulations (29 C.F.R., Part 3).
29. The Davis Bacon Act (40 U.S.C. 276a-276a-5; 40 USC 327 and 40 USC 276c) as supplemented by the Department of Labor regulations (29 C.F.R., Part 5); Sections 103 and 107 of the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327-330), as supplemented by the Department of Labor regulations (29 CFR, Part 5), and the attached Federal Labor Standards Provisions.

EXHIBIT B

RACE & ETHNICITY DATA REPORT
Homefield 3 Acquisition

The following information must be collected by participants of any CDBG-funded project. Please collect the data and submit to the City upon occupancy. All information is strictly confidential (will be reported in aggregated form on a quarterly and an annual basis).

Income

Extremely Low (Less than 30% AMI) _____

Low (30% - 80% AMI) _____

Moderate (80% AMI or less) _____

Non-Low/Moderate (Over 80% AMI) _____

Race/Ethnicity

**Total
Number**

**Total
Hispanic**

White	_____	_____
Black/African American	_____	_____
Asian	_____	_____
American Indian/Alaskan Native	_____	_____
Native Hawaiian/Other Pacific Islander	_____	_____
American Indian/Alaskan Native & White	_____	_____
Asian & White	_____	_____
Black/African American & White	_____	_____
American Indian/Alaskan Native & Black	_____	_____
Other Multi-Racial	_____	_____
Total (needs to match number assisted)	_____	

The Number Assisted and the Race all need to total the same number.

EXHIBIT C
PROMISSORY NOTE
[attached]

FIXED PROMISSORY NOTE
DEFERRED PAYMENT HOME/CDBG LOAN PROGRAM
CITY OF FARGO
FARGO, NORTH DAKOTA

AMOUNT: Five Hundred Twenty Six Thousand and no/100 Dollars (\$526, 000.00)

DATE: _____, 20____

For the value received the undersigned promises to pay to the order of the CITY OF FARGO, a North Dakota municipal corporation, the principal sum of _____ and no/100 Dollars (\$____,____.00) to accrue without interest, said principal sum to become due and fully payable upon the following date or event:

A) _____; or,

B) _____.

This note is secured by mortgage of even date herewith on property located in Cass County, North Dakota, and this Note is to be construed according to the laws of North Dakota.

If the undersigned conveys or discontinues occupancy of the property secured by the mortgage of even date hereof within five (5) years from occupancy of at least 51% of the units by low to moderate income households (80% of the area median income as set forth by HUD's annual income limits, the principal sum, or balance thereof as reduced hereinabove, as the case may be, shall become due and payable in full, subject to any reduction in the initial principal sum have occurred prior thereto, or as may be reduced or otherwise determined in accordance with that certain Subrecipient Agreement with an Effective Date of the ____ day of _____, 20____, between the undersigned and the City of Fargo, a North Dakota municipal corporation, including, Section 6 ("Remedies Upon Event of Default") thereof, to said conveyance of the mortgaged property or discontinuance of occupancy thereof.

The makers and endorsers severally waive presentment, protest and demand, notice of protest, demand and of dishonor and non-payment and expressly agree that any extension of the time for any payment required by this Note or by the mortgage securing the same may be made from time to time without in any way affecting the liability of the makers and endorsers hereof and that they shall be severally as well as jointly liable for all payments required hereby.

[Execution Page to Follow]

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as of the date set forth above.

HOMEFIELD 3, LLLP, a North Dakota
Limited liability limited partnership

By: **HomeField 3, LLC**
A North Dakota Limited Liability Company
The General Partner of Homefield 3, LLLP

By: **Beyond Shelter, Inc.**
The General Manager of Homefield 3, LLC

By: _____
Daniel P. Madler
Its: President

[Execution Page—Promissory Note to City of Fargo]

EXHIBIT D

Mortgage

[attached]

MORTGAGE
Deferred Payment HOME/CDBG Loan
Short-Term Mortgage Redemption

THIS INDENTURE, Made this ____ day of _____, 20____, between **HomeField 3, LLLP, a North Dakota limited liability limited partnership**, whose post office address is 3320 Westrac Drive, South, Suite G, P.O. Box 310, Fargo, North Dakota 58107, "Grantor" or "Mortgagor" and party of the first part, and the **CITY OF FARGO**, a North Dakota Municipal Corporation, Grantee, whose post office address is 225 4th Street North, Fargo, North Dakota, Grantee and party of the second part.

WITNESSETH, that Mortgagor, in accordance with the terms of a Subrecipient Agreement effective the ____ day of _____, 20____ between Mortgagor and Grantee [hereinafter referred to as the "Loan Agreement"] and that Mortgagor has executed a Promissory Note [hereinafter referred to as the "Note"] of even date hereof, and due the ____ day of _____, 20____, of a principal indebtedness of Five Hundred Twenty Six Thousand and no/100 Dollars (\$526, 000.00), does hereby mortgage, grant, bargain, sell, and convey unto Mortgagee, its successors and assigns, forever, that certain real property situate in the County of Cass and State of North Dakota, described as follows, to-wit:

Lot Three(3), in Block One(1), Autumn Fields Second Addition to the City of Fargo;

(the "**Property**") according to the certified plat thereof on file and of record in the office of the County Recorder in and for said county and state, the street address for which is **4225 28 Ave S, Fargo, North Dakota.**

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, unto the said party of the second part, its successors and assigns, FOREVER.

As authorized by and in conformity with North Dakota state law, the mortgagee, or his or its heirs, administrators, executors, successors or assigns, reserve the optional right to advance funds or make additional loans to the mortgagors, or their respective heirs, executors,

successors or assigns, reserve the optional right to advance funds or make additional loans to the mortgagors, or their respective heirs, executors, administrators, successors or assigns, from time to time, for the purpose of maintenance, repairs, modernization or improvement of said real estate, without changing the terms of this mortgage, which advances or loans shall be deemed to be merged, incorporated in, and become a part of and secured by this mortgage, and this mortgage, including said advances or loans, shall be a good and valid first lien against said real estate to secure the payment of the funds so advanced or loaned.

PROVIDED, NEVERTHELESS, That if the said party of the first part, their heirs, executors, administrators, successors or assigns, shall well and truly pay, or cause to be paid, the said party of the second part, its successors or assigned, the sum of **Five Hundred Twenty Six Thousand and no/100 Dollars (\$526, 000.00)**, according to the conditions of that certain note of even date herewith payable at the address set forth above; and shall also keep and perform all and singular the covenants and agreements herein contained, then this deed to be null and void, and the premises hereby conveyed to be released at the cost of the said party of the first part; otherwise to remain in full force and effect (hereinafter the "Note"). ***This mortgage shall be payable when due in accordance with the Note, and there shall be no interest on this mortgage.***

And the said party of the first part does covenant and agree with the said party of the second part, its successors and assigns to pay the said sum of money as above specified; to pay as a part of the debt hereby secured, in case of each or any foreclosure or commencement of foreclosure of this mortgage all costs and expenses and statutory attorney's fees in addition to all costs and sums allowed in that behalf by law; to permit no waste, and to do or permit to be done, to said premises, nothing that may in any manner impair or weaken the security under this mortgage; on said premises, or any part thereof, or upon this mortgage or note of legal holder thereof, before the same shall become delinquent; to keep the buildings on said premises insured against loss by flood, fire and windstorm and other casualty for at least the amount of the Note, in companies acceptable to and with loss payable to, the mortgagee or its assigns.

But, if default shall be made in the payment of said sum of money, or any part thereof, at the time and in the manner hereinbefore or hereinafter specified for the payment thereof, the said party of the first part, in such cases does hereby authorize and fully empower the said party of the second part, its successors or assigns, to sell the said hereby granted premises and convey the same to the purchaser, in fee simple, agreeable to the statute in such case made and provided, and out of the moneys arising from such sale to retain the principal which shall then be due on said note, and all taxes upon said lands, together with all costs and charges and statutory attorney's fees, and pay the overplus if any to the said party of the first part, their heirs, executors, administrators or assigns. And if default be made by the party of the first part in any of the foregoing provisions it shall be lawful for the party of the second part, its successors or assigns, or its duly appointed attorney to declare the whole sum above specified to be due.

IN TESTIMONY WHEREOF, the said party of the first part have hereunto set its hand the day and year first above written.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first written above.

MORTGAGOR:

HOMEFIELD 3, LLLP, a North Dakota
Limited liability limited partnership

By: HomeField 3, LLC
A North Dakota Limited Liability Company
The General Partner of Homefield 3, LLLP

By: Beyond Shelter, Inc.
The General Manager of Homefield 3, LLC

By: _____
Daniel P. Madler
Its: President

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

On this ____ day of _____, 20__, before me, personally appeared, **DANIEL P. MADLER** known to me to be the **PRESIDENT** of **BEYOND SHELTER, INC.**, the company that is described in and that executed the foregoing instrument, and acknowledged that said company executed the same.

(Seal)

Notary Public

The legal description was obtained
from a previously recorded instrument.

EXHIBIT E

Land Use Restrictive Agreement ("LURA")

[attached]

**Please return
record-stamped instrument to:**
City of Fargo
Attn: Comm. Dev. Director, Dept. of Planning & Dev
225 4th Street N
Fargo, ND 58102

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS
(MULTIPLE FAMILY)
FARGO CDBG PROGRAM**

THIS "Declaration of Land Use Restrictive Covenants" (herein Declaration) is declared and established as of the ____ day of _____, 20__ by HomeField 3, LLLP a North Dakota Limited Liability Limited Partnership ("Subrecipient" or "Declarant"), whose address is PO Box 310, Fargo, ND 58107.

WITNESSETH:

WHEREAS; Subrecipient holds a long-term leasehold interest of Ninety-nine years' duration of land and improvements used as a low income rental housing located in Cass County, North Dakota, , Subject Property described as follows:

***Lot Three, in Block One, of Autumn Fields Second Addition to the City of Fargo,
situate in the County of Cass and the State of North Dakota,***

(hereinafter "Subject Property") the street address for which is 4225 28th Avenue South, Fargo, ND 58104.

WHEREAS; HomeField 3, LLLP, has applied to City for a grant of funds (CDBG Grant), made available by funds received from the US Department of Housing and Urban Development (HUD), (said Funds hereinafter collectively referred to as the "CDBG Funds"), provided through the provisions of Title I of the Housing and Community Development Act of 1974, and pursuant to all federal rules, regulations and policies promulgated thereunder (herein said act, program, rules, regulations and policies collectively referred to as the "CDBG Program"), which CDBG Program is being administered by the Department of Planning and Development of the City; and

WHEREAS; the CDBG Program, as adopted by City, requires that as a condition precedent to the making of the City grant requested by the Subrecipient, that this Declaration be executed, delivered, and recorded with the County Recorder for the county at which said Project is located in order to create certain covenants running with the land for the purpose of enforcing certain requirements which regulate and restrict the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS; the City and Subrecipient have entered into a Subrecipient Agreement effective the ____ day of _____, 20__, setting forth terms by which the Subrecipient will receive certain grant funds and conditions and obligations of the Subrecipient for receiving such grant funds;

NOW, THEREFORE, in consideration of the above recitals and the following mutual covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby declared:

SECTION 1 - RECORDING AND FILING

Upon execution and delivery of this Declaration by the Subrecipient, the City may cause this Declaration and all amendments hereto to be recorded at the Office of the County Recorder in Cass County, North Dakota, and shall pay all fees and charges incurred in connection therewith. Upon recording, the City shall immediately transmit to Subrecipient an executed and certified copy of the original of the recorded Declaration, showing the date, book and page of recordation.

SECTION 2 - DEFINITIONS

A. The Subrecipient, at this place, confirms that the real property at this Subject Property acquired in whole or in part with CDBG funds is required to meet the Low-to-Moderate Housing CDBG National Objective for five (5) years, and will commence on _____, and terminate on _____.

SECTION 3 - COVENANTS TO RUN WITH THE LAND

Subrecipient intends, declares and covenants, on behalf of Subrecipient and all future owners and operators of the Project during the Term of this Declaration, that this Declaration and the covenants and restrictions set forth herein which regulate and restrict the use, occupancy and transfer of the Project and the Land and the Project shall be and are covenants running with the Project and Land, encumbering the Project Land for the Term hereof, binding upon the Subrecipient's successors in title and all subsequent owners and operators of the Project and the Land, and are not merely personal covenants of the Subrecipient, and shall bind the Subrecipient, and the benefit shall inure to the City and any past, present or prospective tenants of the Project, and the City's respective successors and assigns during the Term hereof. The Subrecipient agrees that any and all requirements of the laws of the State of North Dakota to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to have been satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that these restrictions run with the land. For the Term hereof, every contract, deed or other instrument hereinafter executed, encumbering or conveying the Project or any portion thereof shall expressly provide that such Agreement is subject to this Declaration, provided however, that covenants contained herein shall survive and be effective regardless of whether such document provides that such instrument is subject to this Declaration.

SECTION 4 - REPRESENTATIONS, FURTHER COVENANTS AND WARRANTIES OF THE SUBRECIPIENT

(A) Subrecipient is a Limited Liability Limited Partnership (HomeField 3, LLLP), duly organized under the laws of the State of North Dakota, and is qualified to transact business under the laws of this State. Subrecipient has the power and authority to own its properties and assets and to carry on its business as now being conducted, and has the full legal right, power and authority to execute and deliver this Declaration.

(B) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Subrecipient, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by the Declaration) or would materially adversely affect its financial condition.

(C) The Subrecipient agrees to comply fully with the requirements of the CDBG Program as it may from time to time be amended or modified; 42 U.S.C. § -530.1 et seq., 24 CFR Part 570, as amended.

SECTION 5 - RENTAL LIMITATIONS AND RESTRICTIONS.

CDBG Restrictions: The project is required to meet the Low-to-Moderate Housing CDBG National Objective for the term defined in Section 2. At least 51% of the residents in the project must have income at or below 80% of the area median income at the time of occupancy. Rents must be set at levels which are affordable to low-to-moderate income persons. No more than 30% of a household's income can be spent on rent and utilities. Rent and income levels for non-HOME units shall use the published limits for the Low Income Housing Tax Credit program.

SECTION 6 - TERMINATION.

The Project will remain affordable as provided herein, and in the other Loan Documents, for not less than the minimum Period of Affordability above provided in Section 2, without regard to the term of the City mortgage, or to transfer of ownership, except that upon foreclosure by City, or another approved lender/mortgage, or transfer in lieu of foreclosure. In the event of such foreclosure the Period of Affordability for the Term hereof shall terminate. However, if at any time following the transfer by foreclosure or transfer in lieu of foreclosure, but still during the Period of Affordability the Subrecipient of record prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes the former Subrecipient, or those with whom the former Subrecipient has or had family or business ties, obtains an ownership interest in the Project, the Period of Affordability shall be revived according to its original Term.

SECTION 7 - DEFAULT.

(A) Enforcement and Remedies. If Subrecipient defaults in the performance of any of its obligations under this Declaration or breaches any covenant, Declaration or restriction set forth herein or in the City grant Declaration, and if such default remains uncured for a period of 60 days after notice thereof is given by City or any additional Lender (Lender), City shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of the Declaration, for an injunction against any violation of the Declaration, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Declaration, or for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Subrecipient's obligations hereunder cannot be adequately compensated by monetary damages in the event of Subrecipient default. City shall be entitled to all its reasonable costs in any such judicial action in which City shall prevail.

(B) Remedies Cumulative. Each right, power and remedy of City provided for in this Declaration, now or hereafter existing at law or in equity by statute, or in the City Mortgage or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Declaration, or hereafter existing at law or in equity or by statute, or in the City Mortgage or otherwise, and the exercise or beginning of the exercise by City of any one or more of the rights, powers or remedies provided for in this Declaration or

now or hereafter existing at law, in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by City of any or all such other rights, powers or remedies.

SECTION 8 - MISCELLANEOUS.

- (A) Successors Bound. This Declaration and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Subrecipient and City and their respective grantees, heirs, personal representatives, successors and assigns of all or any of them, or any interest(s) therein for the Term specified herein above in Section 2.
- (B) Additional Documents. The Subrecipient shall submit any other information, documents or certifications requested by the City which City deems reasonably necessary to substantiate the Subrecipient's continuing compliance with the CDBG program.
- (C) Severability. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
- (D) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses shown herein, or to such other place as a party may from time to time designate in writing to the other(s).
- (E) Applicable Laws. This Declaration is governed by the laws of the state of North Dakota.
- (F) Assignment or Transfer. Subrecipient may not assign or otherwise transfer or delegate any right or duty without the express written consent of City.
- (G) Waivers. This Declaration may not be waived, altered, modified, supplemented, or amended, in any manner, except by written agreement signed by both parties.
- (H) Compliance. Subrecipient agrees to comply with all applicable laws, rules, regulations, and policies, including but not limited to those relating to non-discrimination, accessibility and civil rights. Subrecipient agrees to timely file all recommended reports, make required payroll deductions, and timely pay all taxes and premium owed, including but not limited to sales and use taxes and unemployment compensation and workers compensation premiums. Subrecipient shall have and keep current at all times during the term of this Declaration all licenses and permits required by law. The duties imposed by this paragraph are in addition to, and do not supplant, the duties imposed by 24 CFR part 570.
- (I) Indemnity. Subrecipient shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this Declaration, and shall conduct its activities so as not to endanger any person or property. Subrecipient agrees to indemnify, save,

and hold harmless the City of Fargo, its agents, officers, and employees, from any and all claims of any nature, including costs, expenses, and attorneys' fees which may in any matter arise out of or result from this Declaration except claims resulting from or arising out of the City's acts or failure to act.

(J) Insurance. Subrecipient shall secure liability and property damage insurance and furnish a certificate of insurance or other satisfactory proof of such coverage. The policy may not be canceled without prior written notice to City. The insurance policy does not define or limit Subrecipient's duty to indemnify City under Section 8 (I).

(K) Subrecipient declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project and the Land as described herein, for the Term or Affordability Period stated herein and binding upon all subsequent owners of the Project and the Land for such Affordability Period, and are not merely personal covenants of the Subrecipient.

(L) No waiver, consent, modification, or change of any term of this Declaration is effective unless in writing and signed by both parties. There are no understandings, declarations or representations, oral or written, not specified within the Subrecipient Agreement and the accompanying documents—the Promissory Note and Mortgage. The provisions of the Subrecipient Agreement are hereby incorporated by reference into this Declaration, as fully as if set forth and in detail herein and shall be applicable to Owner on the same basis as to the Developer under such Declaration.

IN WITNESS WHEREOF, the Subrecipient has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first above written.

HOMEFIELD 3, LLLP

a North Dakota Limited Liability Limited

Partnership

By: HomeField 3, LLC

Its: General Partner

By: Beyond Shelter, Inc.

Its: Manager and Sole Member

Daniel P. Madler, Chief Executive Officer

STATE OF NORTH DAKOTA)

) SS

COUNTY OF CASS)

On this _____ day of _____, 2019, before me,
_____, the undersigned Notary Public, personally appeared
Daniel P. Madler, Chief Executive Officer of Beyond Shelter, Inc., on behalf of said company and
who acknowledged that he executed this Declaration.

Notary Public


(Seal)

Notary

Name: _____

(15)

MEMORANDUM

Date: December 24, 2019
To: City Commission
From: Nicole Crutchfield, Planning Director
Mark Williams, Assistant Planning Director 
RE: 2019 and 2020 Social Service Grant support for Valley Senior Services

The Planning Department seeks the City Commission's approval to support a \$28,000 grant allocation from the 2019 Mayor Social Service Funds to Valley Senior Services. Funds would assist senior transportation needs in Fargo. Based on their long-range needs, Valley Senior Services also seeks \$28,000 from the 2020 Mayor Social Service Funds. Given that the 2019 funds were not fully allocated this year and the 2020 funds have not been fully programmed yet, there are funds available. Supporting this work is vital to the community's senior services and the City of Fargo relies on Valley Senior Services to meet Fargo's community development needs.

Recommended Action: Approve allocation of the 2019 and 2020 Mayor Social Service Funds for a total of \$56,000 as a grant to the Valley Senior Services.



(16)

PUBLIC WORKS/OPERATIONS

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

December 26, 2019

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

RE: RFP for LP Sweeper / Scrubber (RFP20001)

Commissioners:

On December 26, 2019, request for proposals were received for one (1) one LP Sweeper / Scrubber. Three proposals were submitted by three (3) separate vendors. Two proposals met specification and are listed below.

The results are as follows:

<u>Firm</u>	<u>Total per unit</u>
Tennant Company	\$59,777.42
Brenco Corp	\$63,500.00

The review committee consisting of Ben Dow and Tanner Smedshammer determined that two vendors met the specifications required. Price was within the expected parameters. Our recommendation is to award the RFP to Tennant Company. Funding for this project is included in the 2020 Central Garage Capital Project Fund.

SUGGESTED MOTION:

Approve the recommendation to purchase one LP Sweeper / Scrubber from Tennant Company for the total amount of \$59,777.42.

Respectfully Submitted,

Tanner Smedshammer
Fleet Management Specialist

Fargo/Moorhead

Snow Removal
Street Maintenance
Right of Way Maintenance

Sanitary & Storm
Sewer Maintenance
Street Name Sign Maintenance

Fleet Management
Meters Readings,
Installations & Maintenance

Urban Forestry
Water Service/Hydrants
& Watermain Maintenance

Request for Proposals (RFP)
2020 LP Sweeper / Scrubber RFP20001
12/26/19

Proposal Evaluation Summary

	Nilfisk Inc	Tennant Company	Brenco Corp
MANUFACTURER Model	Nilfisk SC8000 LP	Tennant M20 LP	Karcher B300 LP
Sweeper / Scrubber Price:	\$49,398.69	\$59,777.42	\$63,500.00
Options: Squeegee Guard Kit	\$438.49	\$0.00	N/A
Meets Spec:	NO	YES	YES
Total	\$49,837.18	\$59,777.42	\$63,500.00

PUBLIC WORKS/OPERATIONS

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

December 26, 2019

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

RE: RFP for 60HP 4WD Front Loader Tractor (RFP20002)

Commissioners:

On December 26, 2019, request for proposals were received for one (1) one 60HP 4WD Front Loader Tractor. Two proposals were submitted by two (2) separate vendors. Both proposals met specification and are listed below.

The results are as follows:

<u>Firm</u>	<u>Total per unit</u>
Fargo Tractor	\$51,800.00
RDO Equipment	\$56,500.00

The review committee consisting of Rob Sobolik, Bernie Larson and Tanner Smedshammer determined that both vendors met the specifications required. Price was within the expected parameters. Our recommendation is to award the RFP to Fargo Tractor. Funding for this project is included in the 2020 Fargo Dome budget.

SUGGESTED MOTION:

Approve the recommendation to purchase one 60HP 4WD Front Loader Tractor from Fargo Tractor for the total amount of \$51,800.00.

Respectfully Submitted,



Tanner Smedshammer
 Fleet Management Specialist

Fargo/Moorhead

Snow Removal
 Street Maintenance
 Right of Way Maintenance

Sanitary & Storm
 Sewer Maintenance
 Street Name Sign Maintenance

Fleet Management
 Meters Readings,
 Installations & Maintenance

Urban Forestry
 Water Service/Hydrants
 & Watermain Maintenance

Request for Proposals (RFP)
60HP 4WD Front Loader Tractor RFP20002

12/26/19

Fargo Dome

Proposal Evaluation Summary

	Fargo Tractor	RDO Equipment
MANUFACTURER	Kubota	John Deere
Tractor Model	L6060HSTC	4066R w/440R Loader
SnowBlower	L4474	Pronovost P-720-4
Broom	L4556	M.B. SHL-CT
Tractor Price	\$49,500.00	\$54,150.00
SnowBlower Price	\$10,000.00	\$8,150.00
Broom Price	\$5,800.00	\$6,200.00
Trade	\$13,500.00	\$12,000.00
Total Price	\$51,800.00	\$56,500.00

(18)

December 18, 2019

City Commission
225 N 4th Street N
Fargo, ND 58102

Dear Commissioners:

On November 4, 2019, the City of Fargo Commission approved Transit to publish a Security Services RFP for the Ground Transportation Center (GTC) and Metro Transit Garage (MTG). Security services include both on site security officers at the GTC and money courier services from both the GTC and MTG.

Transit received one (1) proposal for the RFP. The proposal was submitted by our incumbent, Sentry Security, INC. After our evaluation team reviewed their proposal and compared with our Independent Cost Estimate (ICE). We feel Sentry's proposal is reasonable and would recommend moving forward with another contract.

Recommended motion is to approve Transit to begin contract negotiations with Sentry Security, INC and bring completed contract back for approval to Commission after review by Nancy Morris.

Sincerely,

Matthew Peterson

Matthew G. Peterson
Assistant Transit Director
City of Fargo

/enc



SENTRY SECURITY, INC

417 Main Ave. Suite 310, Fargo, ND 58103

LOSS PREVENTION PROFESSIONALS

PHONE: (701) 298-9051
FAX: (701) 566-7304

December 16, 2019

Matthew Peterson
Assistant Transit Director
City of Fargo
650 23rd Street North
Fargo, ND 58102

Dear Mr. Peterson:

Thank you for the opportunity for us to continue to provide security services to the city of Fargo.

As you will find on page three (3) under the heading Price, our proposed billing rate will be \$79,564.16.

As a locally owned and operated business, licensed in North Dakota and Minnesota, Sentry Security, Inc is ready to continue to provide the quality services that our clients have come to expect of us over the last 25 years.

We look forward to upcoming discussions regarding the details of the service to be provided. In the mean time, if you have any questions regarding our proposal please call me at 701-298-9051.

Sincerely,

Matthew Castle
Operations Manager

Request for Proposal
For
Security Services at the Ground Transportation Center
(GTC), and Courier Services for Paratransit & GTC
Money Deposits

Metro Transit Garage
650 23rd Street North
Fargo, ND 58102



Submitted by:
Matt Castle
Operations Manager

Sentry Security, Inc.
417 Main Ave, Suite 310
Fargo, ND 58103
701-298-9051

Request for Proposal for Security Services
at the Ground Transportation Center (GTC) and
Courier Services for Services for Paratransit & GTC Money Deposits



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Proposal Submittal Form	Page 7
License/Insurance on file with current services	

Request for Proposal for Security Services
at the Ground Transportation Center (GTC) and
Courier Services for Services for Paratransit & GTC Money Deposits



**Request for Proposal for Security Services
at the Ground Transportation Center (GTC) and
Courier Services for Services for Paratransit & GTC Money Deposits**

Sentry Security, Inc. proposes to enter into a 5-year agreement to provide Security Guard Services at the (1) Ground Transportation Center (GTC) and (2) Fargo Courier Services from the GTC and the Metro Transit Garage (MTG) to Wells Fargo Bank.

Security Guard Services at the GTC (502 NP Ave, Fargo ND) description:

- a. One shift of security services would be from 7:30 p.m. to 11:30 p.m. Monday through Saturday.
- b. In addition, security services for 4 hours per day at random, not to exceed 20 hours per week, for a total of 44 hours each week.
 - i. These random hour shifts will be no more than 4 hours at a time.

Courier Services from the GTC to Wells Fargo Bank (406 Main Avenue):

- a. Transport large denomination bills from the GTC to Wells Fargo Bank to exchange for smaller currency/coinage. The smaller currency/coinage will need to be brought back to the GTC dispatchers (Monday through Friday, at 1:00 PM each day).

Courier Service from the MTG at (650 23rd St N, Fargo ND), to Wells Fargo Bank description:

Transport several bags of farebox currency and coinage (valued at an average of \$5,500) from the money room at the MTG to Wells Fargo Bank in downtown Fargo (406 Main Ave). Pick-ups for the City of Fargo will be on Tuesday of each week, no later than 12:00 p.m.

Courier Service for Paratransit & GTC Deposits:

The quote denotes the per trip charge for the following:

The quote includes the utilization of a security guard to transport money bags. If armed, the security guard will be covered under a compliant drug & alcohol program per 49 CFR Parts 40 and 655 – documentation will be provided for verification of coverage.

Request for Proposal for Security Services
at the Ground Transportation Center (GTC) and
Courier Services for Services for Paratransit & GTC Money Deposits



PRICE:

See attached Proposal Submittal Form for estimated hours of service and annual estimated cost for the five-year period of the contract from February 1, 2020 to January 31, 2024.

Sentry Security, Inc. intends to provide Apprentice and Security Officer level personnel, and has set the price to allow for this level of qualified Officers. Pages 4-5 of this proposal have additional information regarding the different levels of security personnel and training.

Sentry Security, Inc. proposes base rate of **\$79,564.16 annual** for services herein indicated. After one (1) year, rates will automatically be increased by five (5) percent, and an additional five (5) percent each additional year.

- a. Time spent conducting any additional duties on behalf of the client, to include but not limited to: incidents, incident reports, court duties, travel, direct administrative time, dispatch time, or any unforeseen circumstances will be subtracted from the 20 hours of random security services. For example, a one (1) hour service call will reduce the random hours to 19 hours that week. (One (1) hour service call plus nineteen (19) random security services = twenty (20) total hours)
- b. Services will be invoiced bi-weekly as listed below:
One invoice to the City of Fargo Transit will include the following:
Security Guard Services at the GTC
Courier Services from the GTC to Wells Fargo Bank
Courier Services for Fargo Transit from MTG to Wells Fargo Bank
- c. Invoices will be delivered/mailed on a bi-weekly basis with terms of Net 30 days. Finance charges of 1.5% per month, minimum \$5.00 will be assessed for late payments.



CONTRACTOR RESPONSIBILITIES – OPERATING REQUIREMENTS:

Company Qualifications and Specifications

- Locally owned and operated Small Business in Fargo, ND since 1995.
- Licensed with the North Dakota Private Investigation and Security Board.
- Bonded, insured and covered by Worker's Compensation Insurance in North Dakota.
- 24-hour mobile patrol and guard services.
- Marked and highly visible patrol vehicles for deterrence and safe transport of valuables.
- Supervision and mobile backup officer(s) available for onsite posted officers.
- Incident Reports submitted to client(s) usually within 24 to 48 hours after the incident.
- Direct field experience, awareness, and proven ability to handle situations common to the downtown Fargo area.
- Currently providing patrol services to the GTC & Island Park Ramp since 2006.

Experience: Sentry Security, Inc. is a locally owned and operated small business providing private security services since 1995. It was incorporated in the State of North Dakota in 1996.

The corporate/business office is located at 417 Main Avenue, Suite 310 Fargo, ND 58103; the phone number is (701) 298-9051 and the email address is mcastle@sentrysecurity.biz.

The authorized negotiator for this proposal is Operations Manager, Matthew Castle. He can be reached at the corporate office at (701) 298-9051, Cell (701) 715-5075 or email at mcastle@sentrysecurity.biz.

Sentry Security, Inc. is familiar with the Fargo-Moorhead area, specifically the downtown Fargo area as the corporate offices are located at the Regional Small Business Center located at 417 Main Avenue since 1995 and has serviced several clients in that area. Sentry Security, Inc has been providing patrol services at the GTC and Island Park Ramp since 2006.

Sentry Security, Inc. has multiple marked security vehicles which allows for greater flexibility and coverage. Sentry provides professional quality incident reports usually within 24 to 48 hours of any particular incident. These reports are emailed directly to your authorized representative(s).

Personnel selection and Requirements

Our personnel selection and requirements criteria are thorough and extensive. Each applicant is required to pass numerous background checks and be approved by the ND Private Investigation and Security Board and the MN Board of Private Detective and Protective Agent Services.

Most of the Officers that currently work for Sentry Security, Inc have various backgrounds to include but not limited to prior Law Enforcement, Military Police, Military Security, or Armed Forces. Many Officers have or are attaining degrees in Criminal Justice or other related educational programs.

Each Officer attends 12 hours of initial Pre-Assignment classroom training and must maintain minimum annual training requirements. Officers with no security or equivalent experience can begin employment as an Apprentice Security Officer.

Request for Proposal for Security Services
at the Ground Transportation Center (GTC) and
Courier Services for Services for Paratransit & GTC Money Deposits



Officers obtaining or that have equivalent experience of 1000 hours of experience and 32 hours of classroom training can be hired/promoted to Security Officer. All armed Officers must meet the requirements of Security Officer Status, annual Use of Force classroom training as well as weapons range qualifications in order to carry a firearm.

Armed Officers Drug and Alcohol policy: Armed security officers providing service as outlined in this proposal will be subject to the Drug and Alcohol policy of the City of Fargo. Sentry Security, Inc. has adopted the drug and alcohol policy of the City of Fargo.



As a locally owned and operated business, licensed in North Dakota and Minnesota, Sentry Security, Inc. is ready to meet the needs of Fargo and fulfill the requirements for this contract.

Request for Proposal for Security Services
at the Ground Transportation Center (GTC) and
Courier Services for Services for Paratransit & GTC Money Deposits



REFERENCES:

Angela A. Jordahl
Krantz Family Trust
Jordahl & Associates
Moorhead Holiday Associates
South Moorhead Associates
800 Holiday Drive Suite 250
Moorhead, MN. 56560
218.287.4730 office
218.287.4731 fax
Email: Angela@krantzfamilytrust.com

M. Blake Strehlow
Public Housing Manager
Housing Authority of Cass County, North Dakota
230 8th Ave. W.
West Fargo, ND 58078
701-282-3443
Email: Blake@casscountyhousing.org

Dave Petranek
Construction Manager
Food Tech Inc.
200 Ledgewood Place, Suite 200
Rockland, MA 02370
Ph: 781-261-9700 ext. 216
Fax: 781-261-9701
Cell: 210-241-9655
Email: dpetranek@foodtech.com

Request for Proposal for Security Services
at the Ground Transportation Center (GTC) and
Courier Services for Services for Paratransit & GTC Money Deposits



ATTACHMENTS:

PROPOSAL SUBMITTAL FORM

Description	Frequency	# of Hours/Trips per Week	# of Weeks Annually	Total Annual Hours/Trips	Cost Per Hour/Trip	Annual Cost
FARGO TRANSIT:						
Security Guard Services at GTC	44 total hours per week	44	52	2288	\$ 29.80	\$ 68,182.40
Courier - GTC Large Denomination Exchange	Once Daily Monday - Friday	5	52	260	\$ 24.32	\$ 6,323.20
Courier - Farebox Deposits	Once per week	1	52	52	\$ 24.32	\$ 1,264.64
Courier - Paratransit Deposits	Once per week	1	52	52	\$ 24.32	\$ 1,264.64
Courier - GTC Deposits	Twice per week	2	52	104	\$ 24.32	\$ 2,529.28
SUBTOTAL FARGO TRANSIT						\$ 79,564.16
				Grand Total First Year Cost		\$ 79,564.16

19

December 18, 2019

City Commission
225 N 4th Street N
Fargo, ND 58102

Dear Commissioners:

On January 14, 2019, Commission approved a lease agreement with Jefferson Lines at the Ground Transportation Center (GTC). With the difficult weather in early 2019, Jefferson has asked that they use the GTC as a "Safe Haven" for when the weather makes travel difficult.

Staff worked with Nancy Morris, Assistant City Attorney, to develop the attached addendum to Jefferson Line's Lease Agreement. This agreement would allow Jefferson Line's to use GTC as a Safe Haven during dangerous weather conditions. Jefferson has agreed to pay for additional security services during these events at a \$30.00 per hour charge beginning after 11pm and prior to 5am (when GTC is normally not in use).

Recommended motion is to approve the attached Lease Agreement Addendum.

Sincerely,

Matthew Peterson

Matthew G. Peterson
Assistant Transit Director
City of Fargo

/enc

LEASE AGREEMENT (ADDENDUM for INCLEMENT WEATHER)

City of Fargo/Jefferson Lines

THIS ADDENDUM is an addendum to that Lease Agreement made and entered into by and between the city of Fargo, a North Dakota municipal Corporation (hereinafter "Fargo" or "Lessor") and Jefferson Partners, L.P., a Delaware Limited Partnership with its principal offices at 2100 E. 26th Street, Minneapolis, MN 55404 (hereinafter "Jefferson Lines" or "Lessee") dated January 14, 2019.

A. Fargo is the owner of real property and a building located at 520 NP Avenue, Fargo, ND 58102 (the "facility"). Fargo leases approximately 800 square feet on the ground floor of the building to Lessee for Lessee's exclusive use, as well as shared use of a Driver's Room, a designated bus space and employee parking (2 spaces).

B. Lessee's long haul bus service is subject to interruption due to inclement weather, including but not limited to road closures which significantly impact Lessee's operations.

C. Lessee wishes to enter into this Addendum for the extended use of the Premises, under limited circumstances, in order to best serve its patrons and protect the traveling public.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the parties agree as follows:

1. In exchange for the incidental, overnight use of the Premises, Lessee understands and agrees that it shall compensate Lessor for the additional necessary security services, as well as increased cost associated with the use of the facility, including electricity, water, heat and other CAM costs and expenses.

2. Lessee understands and agrees that more than one personnel, which shall include the added security detail provided for herein, shall be present in the Premises at all times that the Premises are occupied by Lessee patrons, including the overnight hours from 11:00 p.m. to 4:00 a.m.

3. In exchange for the extended use of the Premises, and in addition to the terms stated herein, Lessee agrees to compensate Lessor \$30.00 per hour for each hour the Premises remain in use outside of normal and approved hours of operation.

(Remainder of Page Intentionally Left Blank)

Dated this ____ day of _____, 2019.

LESSOR: City of Fargo, a North Dakota municipal corporation

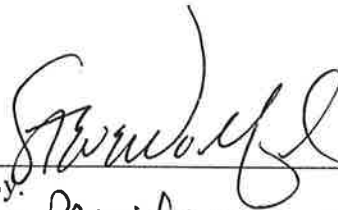
By: Timothy J. Mahoney, M.D., Mayor

Attest:

Steve Sprague, City Auditor

Dated this 11th day of December 2019.

LESSEE: Jefferson Partners, L.P., a Delaware Limited Partnership



By:
Its: PRESIDENT + CEO

(21)

December 23, 2019

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

Re: BN-19-B1 Negative Final Balancing Change Order #3

Dear Commissioners:

Negative Final Balancing Change Order #3 in the amount of \$-3,759.05 reconciles the measured quantities used in the field with those estimated for the contract.

RECOMMENDED MOTION

To approve Negative Final Balancing Change Order #3 in the amount of \$-3,759.05, bringing the total contract amount to \$854,957.60, to Dakota Underground Co., Inc.

Respectfully,



Brenda E. Derrig, P.E.
City Engineer

Attachments

Improvement District No	BN-19-B1	Change Order No	3
Project Name	Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights & Incidentals		
Date Entered	11/22/2019	For	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: Final Balancing

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Miscellaneous	2	Mulching Type 2 - Straw	SY	20,500.00	0.00	20,500.00	-3,890.00	16,610.00	0.11	-427.90
	3	Seeding Type C	SY	20,500.00	0.00	20,500.00	-3,890.00	16,610.00	0.26	-1,011.40
	4	Inlet Protection - Existing Inlet	EA	5.00	0.00	5.00	-1.00	4.00	153.00	-153.00
Miscellaneous Sub Total (\$)										-1,592.30
Sanitary Sewer	7	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	1,000.00	0.00	1,000.00	-1,000.00	0.00	0.01	-10.00
	8	F&I Pipe SDR 26 - 6" Dia PVC	LF	1,500.00	0.00	1,500.00	39.00	1,539.00	25.00	975.00
Sanitary Sewer Sub Total (\$)										965.00
Cass Rural Water	12	F&I Pipe C900 DR 18 - 6" Dia PVC	LF	25.00	0.00	25.00	3.00	28.00	22.00	66.00
	13	F&I Pipe C900 DR 18 - 8" Dia PVC	LF	1,475.00	0.00	1,475.00	-4.00	1,471.00	28.00	-112.00
Cass Rural Water Sub Total (\$)										-46.00
Storm Sewer	26	F&I Pipe 12" Dia	LF	490.00	0.00	490.00	-8.00	482.00	22.00	-176.00
	27	F&I Pipe 15" Dia	LF	1,140.00	0.00	1,140.00	-12.75	1,127.25	27.50	-350.63
	28	F&I Pipe 15" Dia Reinf Conc	LF	460.00	0.00	460.00	-66.30	393.70	34.25	-2,270.78
	29	F&I Pipe 24" Dia Reinf Conc	LF	250.00	0.00	250.00	-2.50	247.50	51.00	-127.50
	30	F&I Pipe 27" Dia Reinf Conc	LF	210.00	0.00	210.00	-5.00	205.00	67.25	-336.25
	31	F&I Pipe 30" Dia Reinf Conc	LF	210.00	0.00	210.00	-4.50	205.50	76.50	-344.25
	32	F&I Pipe 36" Dia Reinf Conc	LF	233.00	0.00	233.00	-1.00	232.00	97.50	-97.50

Summary	
Source Of Funding	
Net Amount Change Order # 3 (\$)	-3,759.05
Previous Change Orders (\$)	67,926.27
Original Contract Amount (\$)	790,790.38
Total Contract Amount (\$)	854,957.60

CONTRACT TIME

APPROVED



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

For Contractor



Title

Project Manager

11/23/19

Department Head



Mayor

12/23/19

Attest



**ENGINEERING DEPARTMENT
PAY ESTIMATE SHEET**

Improvement District No.		BN-19-B1							
Project Name		Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights & Incidentals							
Type		Utilities and Paving New							
Description		Grayland 1st Addition, Phase II							
Pay Estimate Number		6 - FINAL							
From Date		09/17/2019		To Date		11/21/2019			
The Honorable Board of City Commissioners									
Dear Commissioners,									
Be advised that Dakota Underground Co Inc has performed the work to date shown on this statement									
Contract		Previous		Current		To Date		Percentage	
		Unit	Quantity	Unit Price (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	Complete(%)
Miscellaneous									
1	Clear & Grub	LS	1.00	3,500.00	1.00	3,500.00	0.00	0.00	100.00
2	Mulching Type 2 - Straw	SY	20,500.00	0.11	16,610.00	1,827.10	0.00	0.00	81.02
3	Seeding Type C	SY	20,500.00	0.26	16,610.00	4,318.60	0.00	0.00	81.02
4	Inlet Protection - Existing Inlet	EA	5.00	153.00	0.00	0.00	4.00	612.00	80.00
5	Inlet Protection - New Inlet	EA	16.00	195.00	16.00	3,120.00	0.00	0.00	100.00
6	Stormwater Management	LS	1.00	2,530.00	0.80	2,024.00	0.20	506.00	100.00
					Miscellaneous Sub Total		14,789.70		
Sanitary Sewer									
7	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	1,000.00	0.01	0.00	0.00	0.00	0.00	0.00
8	F&I Pipe SDR 26 - 6" Dia PVC	LF	1,500.00	25.00	1,539.00	38,475.00	0.00	0.00	102.60



**ENGINEERING DEPARTMENT
PAY ESTIMATE SHEET**

Contract	Unit	Quantity	Unit Price (\$)	Previous		Current		To Date		Percentage Complete(%)
				Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	
9 F&I Pipe SDR 26 - 8" Dia PVC	LF	1,485.00	35.00	1,483.50	51,922.50	1.50	52.50	1,485.00	51,975.00	100.00
10 F&I Manhole 4' Dia Reinf Conc	EA	7.00	4,100.00	7.00	28,700.00	0.00	0.00	7.00	28,700.00	100.00
Sanitary Sewer Sub Total					119,097.50		52.50		119,150.00	
Cass Rural Water										
11 F&I Fittings C153 Ductile Iron	LB	660.00	7.00	660.00	4,620.00	0.00	0.00	660.00	4,620.00	100.00
12 F&I Pipe C900 DR 18 - 6" Dia PVC	LF	25.00	22.00	28.00	616.00	0.00	0.00	28.00	616.00	112.00*
13 F&I Pipe C900 DR 18 - 8" Dia PVC	LF	1,475.00	28.00	1,472.00	41,216.00	-1.00	-28.00	1,471.00	41,188.00	99.73
14 F&I Hydrant	EA	3.00	4,075.00	3.00	12,225.00	0.00	0.00	3.00	12,225.00	100.00
15 Relocate Hydrant	EA	1.00	1,475.00	1.00	1,475.00	0.00	0.00	1.00	1,475.00	100.00
16 F&I Gate Valve 6" Dia	EA	4.00	1,275.00	4.00	5,100.00	0.00	0.00	4.00	5,100.00	100.00
17 F&I Gate Valve 8" Dia	EA	3.00	1,900.00	3.00	5,700.00	0.00	0.00	3.00	5,700.00	100.00
18 F&I Pipe 1" Dia Water Service	LF	1,621.00	14.00	1,621.00	22,694.00	0.00	0.00	1,621.00	22,694.00	100.00
19 Connect Water Service	EA	30.00	525.00	30.00	15,750.00	0.00	0.00	30.00	15,750.00	100.00
66 Extra - WaterMains	LS	1.00	2,200.00	1.00	2,200.00	0.00	0.00	1.00	2,200.00	100.00
Cass Rural Water Sub Total					111,596.00		-28.00		111,568.00	
Storm Sewer										
20 F&I Manhole 4' Dia Reinf Conc	EA	6.00	2,775.00	6.00	16,650.00	0.00	0.00	6.00	16,650.00	100.00
21 F&I Manhole 5' Dia Reinf Conc	EA	4.00	3,550.00	4.00	14,200.00	0.00	0.00	4.00	14,200.00	100.00
22 F&I Manhole 6' Dia Reinf Conc	EA	1.00	5,475.00	1.00	5,475.00	0.00	0.00	1.00	5,475.00	100.00
23 F&I Inlet - Single Box (SBI) Reinf Conc	EA	7.00	2,075.00	7.00	14,525.00	0.00	0.00	7.00	14,525.00	100.00



**ENGINEERING DEPARTMENT
PAY ESTIMATE SHEET**

Contract	Unit	Quantity	Unit Price (\$)	Previous		Current		To Date		Percentage Complete(%)
				Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	
24 F&I Inlet - Round (RDI) Reinf Conc	EA	9.00	1,325.00	9.00	11,925.00	0.00	0.00	9.00	11,925.00	100.00
25 Connect Pipe to Exist Structure	EA	1.00	1,200.00	1.00	1,200.00	0.00	0.00	1.00	1,200.00	100.00
26 F&I Pipe 12" Dia	LF	490.00	22.00	482.00	10,604.00	0.00	0.00	482.00	10,604.00	98.37
27 F&I Pipe 15" Dia	LF	1,140.00	27.50	1,126.00	30,965.00	1.25	34.38	1,127.25	30,999.38	98.88
28 F&I Pipe 15" Dia Reinf Conc	LF	460.00	34.25	393.70	13,484.23	0.00	0.00	393.70	13,484.23	85.59
29 F&I Pipe 24" Dia Reinf Conc	LF	250.00	51.00	247.50	12,622.50	0.00	0.00	247.50	12,622.50	99.00
30 F&I Pipe 27" Dia Reinf Conc	LF	210.00	67.25	205.00	13,786.25	0.00	0.00	205.00	13,786.25	97.62
31 F&I Pipe 30" Dia Reinf Conc	LF	210.00	76.50	205.50	15,720.75	0.00	0.00	205.50	15,720.75	97.86
32 F&I Pipe 36" Dia Reinf Conc	LF	233.00	97.50	232.00	22,620.00	0.00	0.00	232.00	22,620.00	99.57
33 F&I Pipe w/GB 12" Dia Reinf Conc	LF	125.00	39.50	120.50	4,759.75	0.00	0.00	120.50	4,759.75	96.40
34 F&I Pipe w/GB 15" Dia Reinf Conc	LF	101.00	49.50	101.00	4,999.50	0.00	0.00	101.00	4,999.50	100.00
Paving				Storm Sewer Sub Total						
				193,536.98				34.38		193,571.35
35 Topsoil - Strip & Spread	LS	1.00	30,000.00	1.00	30,000.00	0.00	0.00	1.00	30,000.00	100.00
36 Fill - Haul	CY	3,724.00	5.75	3,724.00	21,413.00	0.00	0.00	3,724.00	21,413.00	100.00
37 Site Grading	LS	1.00	6,100.00	1.00	6,100.00	0.00	0.00	1.00	6,100.00	100.00
38 Excavation	CY	1,000.00	4.25	1,000.00	4,250.00	0.00	0.00	1,000.00	4,250.00	100.00
39 Subcut	CY	2,000.00	1.00	2,000.00	2,000.00	0.00	0.00	2,000.00	2,000.00	100.00
40 Subgrade Preparation	SY	5,980.00	3.00	5,980.00	17,940.00	0.00	0.00	5,980.00	17,940.00	100.00
41 F&I Woven Geotextile	SY	5,980.00	1.41	5,980.00	8,431.80	0.00	0.00	5,980.00	8,431.80	100.00
42 F&I Class 5 Agg - 7" Thick	SY	5,980.00	6.86	5,980.00	41,022.80	0.00	0.00	5,980.00	41,022.80	100.00



**ENGINEERING DEPARTMENT
PAY ESTIMATE SHEET**

Contract	Unit	Previous		Current		To Date		Percentage Complete(%)
		Quantity	Amount (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	
43 F&I Edge Drain 4" Dia PVC	LF	3,085.00	18,510.00	17.35	104.10	3,102.35	18,614.10	100.56
44 F&I Curb & Gutter Mountable (Type I)	LF	3,085.00	43,763.30	0.00	0.00	3,125.95	43,763.30	101.33
45 F&I Sidewalk 4" Thick Reinf Conc	SY	230.25	9,670.50	2.50	105.00	232.75	9,775.50	101.09
46 F&I Sidewalk 6" Thick Reinf Conc	SY	20.00	1,010.00	0.30	15.15	20.30	1,025.15	101.50
47 F&I Driveway 6" Thick Reinf Conc	SY	235.70	11,902.85	0.00	0.00	235.70	11,902.85	100.30
48 F&I Det Wam Panels Cast Iron	SF	32.00	1,344.00	0.00	0.00	32.00	1,344.00	100.00
49 F&I Aggregate for Asph Pavement FAA 43	TON	1,707.80	75,945.87	0.00	0.00	1,707.80	75,945.87	100.00
50 F&I Asphalt Cement PG 58-34	GAL	21,581.60	56,759.61	0.00	0.00	21,581.60	56,759.61	100.00
51 Casting to Grade - Blvd	EA	13.00	3,250.00	-3.00	-750.00	10.00	2,500.00	76.92
52 Casting to Grade - no Conc	EA	15.00	9,000.00	0.00	0.00	15.00	9,000.00	100.00
53 GV Box to Grade - Blvd	EA	4.00	600.00	0.00	0.00	4.00	600.00	100.00
54 GV Box to Grade - no Conc	EA	3.00	1,500.00	0.00	0.00	3.00	1,500.00	100.00
55 Mulching Type 1 - Hydro	SY	5,089.00	2,137.38	1,250.00	525.00	6,339.00	2,662.38	107.44
56 Seeding Type C	SY	5,089.00	1,323.14	1,250.00	325.00	6,339.00	1,648.14	107.44
67 Remove 27 LF Curb & Gutter	LS	1.00	413.48	0.00	0.00	1.00	413.48	100.00
Paving Sub Total			368,287.72		324.25		368,611.97	
Street Lighting								
57 F&I Base 5' Deep Reinf Conc	EA	10.00	4,410.00	0.00	0.00	10.00	4,410.00	100.00
58 F&I Conductor #6 USE Cu	LF	4,446.00	9,247.68	0.00	0.00	4,446.00	9,247.68	100.00
59 F&I Innerduct 1.5" Dia	LF	1,441.00	5,980.15	0.00	0.00	1,441.00	5,980.15	100.00



**ENGINEERING DEPARTMENT
PAY ESTIMATE SHEET**

Contract	Unit	Previous		Current		To Date		Percentage Complete(%)
		Quantity	Unit Price (\$)	Quantity	Amount (\$)	Quantity	Amount (\$)	
60 F&I Luminaire Type A	EA	10.00	1,217.00	0.00	0.00	10.00	12,170.00	100.00
61 F&I Light Standard Type A	EA	10.00	1,300.00	0.00	0.00	10.00	13,000.00	100.00
Street Lighting Sub Total					44,807.83		44,807.83	
Signing								
62 F&I Sign Assembly & Anchor	EA	7.00	94.50	0.00	0.00	7.00	661.50	100.00
63 F&I Sign Assembly	EA	2.00	94.50	0.00	0.00	2.00	189.00	100.00
64 F&I Diamond Grade Cubed	SF	13.60	18.90	0.00	0.00	13.60	257.04	100.00
65 F&I Engineering Grade	SF	15.80	14.76	0.00	0.00	15.80	233.21	100.00
Signing Sub Total					1,340.75		1,340.75	
Summary								
1. Original Contract Amount							\$ 790,790.38	
2. Net Change by Change Order							\$ 67,926.27	
3. Contract Amount To Date							\$ 858,716.65	
4. Total Work Completed to Date							\$ 854,957.60	
5. Retainage @ 0.00 % to Date							\$ 42,672.82	
6. Previous Retainage							\$ 42,672.82	
7. Retainage This Period							\$ 0.00	
8. Liquidated Damages								
0.00 Days to Date							\$ 0.00	
0.00 Days to Previous							\$ 0.00	



ENGINEERING DEPARTMENT

PAY ESTIMATE SHEET

0.00 Days This Period		\$ 0.00
9. Material on Hand (Payment)		\$ 0.00
10. Material on Hand (Recovery)		\$ 0.00
11. Adjustments		\$ 0.00
12. Total Due to Date		\$ 854,957.60
13. Previous Payments		\$ 810,783.66
14. Payment Due This Estimate		\$ 44,173.95
15. Amount allowed Pay Estimate # 6 - FINAL		\$ 44,173.95

Workflow History						
Status	Pending On	Date	User	Action	Action User	Action Date
Draft	Administrator, Division Head, Project Manager	11/21/2019	jsatterlund	StageInitialized		
Draft	Administrator, Division Head, Project Manager	11/22/2019	jsatterlund	Complete		
Completed	Administrator, Department Head, Division Head	11/22/2019	jsatterlund	StageInitialized		

REPORT OF ACTION
FINANCE COMMITTEE

(22)

Project: Improvement District BR-17-F1

Type: Settlement Agreement and Release

Location: 315 5th Street North

Date of Hearing: December 23, 2019

<u>Routing</u>	<u>Date</u>
City Commission	<u>12/30/19</u>
Project File	<u> </u>

The Committee received communication from City Engineer, Brenda Derrig, regarding alleged damages to the above property resulting from construction activity of the removal and replacement of the sidewalk adjacent to the building. Over the last year staff, administration, and the contractor have been communicating with the property owner. The adjacent work was part of a water main replacement and street reconstruction project on 4th Avenue North.

MOTION:

On a motion by Dave Piepkorn, seconded by Steve Sprague, the Finance Committee voted to approve the Settlement Agreement and Release to be forwarded on to the City Commission with a recommendation for approval.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Tim Mahoney, Mayor	<u>X</u>	<u>X</u>		
Dave Piepkorn, City Commissioner	<u>X</u>	<u>X</u>		
Bruce Grubb, City Administrator	<u>X</u>	<u>X</u>		
Mike Redlinger, Assistant City Administrator	<u>X</u>	<u>X</u>		
Kent Costin, Director of Finance	<u>X</u>	<u>X</u>		
Steve Sprague, City Auditor	<u>X</u>	<u>X</u>		



Kent Costin, Finance Director

Memorandum

To: Members of Finance
From: Brenda Derrig, City Engineer
Cc: Bruce Grubb, City Administrator
Date: December 18, 2019
Re: Shark Properties 315 5th Street North

Background:

During the last year, I have been working with the above property owner, administration, contractor, and our City Attorney's office regarding alleged damages to the above property resulting from construction activity of removal and replacement of the sidewalk immediately contiguous to the building. The adjacent work was part of the water main replacement and street reconstruction project, BN-17-F1.

Attached you will find a settlement agreement and release of a three-way split of the costs associated with the alleged damage.

Recommended Motion:

Approve the Agreement and compensate Shark Properties, LLC \$25,667.

BED/jmg
Attachment

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made and entered into, by and between:

City of Fargo	The City of Fargo (City), and its past, present and future elected officials, attorneys, officers, agents, employees, servants, subsidiaries, affiliates, representatives, insurers, predecessors, assigns and successors in interest
Property Owner	Shark Properties, LLC, (Shark) and its owners, attorneys, officers, agents, employees, servants, subsidiaries, affiliates, representatives, insurers, predecessors, assigns and successors in interest
Contractor	Master Construction Co., Inc. (Master) and its owners, attorneys, officers, agents, employees, servants, subsidiaries, affiliates, representatives, insurers, predecessors, assigns and successors in interest

RECITALS

- A.** Shark Properties, LLC ("Shark") owns property located at 315 5th Street North, Fargo, ND 58102. Shark alleges damages to the property as a result of construction activity on the City of Fargo ("City") Right of Way adjacent to the property, including removal and replacement of the sidewalk immediately contiguous to the building.
- B.** Shark alleges that Master Construction Company, Inc. ("Master") engaged in improper means and methods in order to complete the work contracted for on behalf of the City. In particular, Shark asserts that Master's use of a large implement to break the sidewalk caused vibration to its property, resulting in extensive damage, including damage to the chimney and other structural and aesthetic impacts.
- C.** Master was acting under contract with the City pursuant to Project BR-17-F1, and was obligated to perform the work in a workmanlike and appropriate manner.
- D.** City and Master deny any liability for the alleged damages asserted by Shark. Regardless, the parties desire to enter into this Settlement Agreement and Release in order to provide for the resolution of disputed claims.
- E.** It is the intent of this Settlement Agreement and Release to resolve any and all damage claims asserted or alleged by Shark to have been caused as a result of Project BR-17-F1.

AGREEMENT

The parties agree as follows:

- 1.0 Release and Discharge.** In exchange for the payments described in Section 2 herein, Shark agrees as follows:
- 1.1** In consideration of the payments set forth herein, Shark hereby releases and forever discharges the City and Master from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation of any nature whatsoever, based on any theory of recovery related to the Subject Property, including all claims which Shark could have brought, now has, or which otherwise relate to the Subject Property, including without limitation any and all known and unknown claims which resulted or may result from the alleged acts or omissions of the City and Master, well as any and all future claims which may be alleged to arise from the construction pursuant to Project BR-17-F1 as it relates to the Subject Property. Shark and its owners further agree to waive any and all such future claims and release and discharge the Released Parties regarding the same.
- 1.2** This release and discharge shall also apply to the City of Fargo Releasees' insurers, past, present and future officers, elected officials, directors, attorneys, agents, servants, representatives, employees, administrators and other fiduciaries, subsidiaries, predecessors and successors, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.
- 1.3** This release shall be a fully binding and complete settlement between and among Shark, the City of Fargo Releasees, and their insurers, heirs, assigns and successors and Master and its insurers, heirs, assigns and successors.
- 1.4** This is a general release. Shark expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which they do not know or suspect exist regarding the claims and real property described in the above listed recitals, including any obligation for further damages, attorneys' fees and costs. Shark further agrees that it has accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. It is understood and agreed by the parties that this settlement is a compromise of disputed claims and the payments and agreements herein are not to be construed as an admission of liability on the part of either party, by whom liability is expressly denied.
- 1.5** Shark waives the provisions of N.D.C.C. § 9-13-02, or any similar or other applicable state or federal statute or regulation, which provides that a general release does not extend to claims a creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected the settlement with the debtor.

2.0 Payment of Alleged Damages. The parties agree as follows:

2.1 Each party shall be responsible for 1/3 of the alleged damages in the amount of \$77,000, as identified in Exhibit A attached hereto. City and Master agree to each pay Shark, by Certified Check, the amount of \$25,667.00. Payment by one party shall relieve that party of any further obligation with respect to the alleged damage claim.

3.0 Attorneys' Fees

The parties shall be responsible for their own attorney fees and expenses.

4.0 Representation of Comprehension of Document

By entering into this Settlement Agreement and Release, Shark represents that they have relied upon the advice of their attorneys, who are attorneys of their own choice, concerning the legal and income tax consequences of this Settlement Agreement and Release; that the terms of this Settlement Agreement and Release have been completely read and explained to Shark by their attorneys; and that the terms of this Settlement Agreement and Release are fully understood and voluntarily accepted by its owners.

5.0 Warranty of Capacity to Execute Agreement

Shark represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement and Release, except as otherwise set forth herein; that Shark and its representatives have the sole right and exclusive authority to execute this Settlement Agreement and Release and receive the sums specified in it.

6.0 Governing Law

This Settlement Agreement and Release shall be construed and interpreted in accordance with the laws of the State of North Dakota.

7.0 Additional Documents and Information

All parties agree to cooperate fully and to provide any information and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement and Release.

8.0 Entire Agreement and Successors in Interest

This Settlement Agreement and Release contains the entire agreement between Shark, City of Fargo, and Master.

9.0 Effectiveness

This Settlement Agreement and Release shall become effective upon execution of this document. Each party shall execute this Settlement Agreement and Release. One original document must be signed by all parties and notarized accordingly. Digital and photocopied reproductions of a party's dated signature on the line below shall be ineffective.

THIS IS A RELEASE. READ BEFORE SIGNING

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

CITY OF FARGO,
A North Dakota municipal corporation

Date: _____

Dr. Timothy Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

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

On this ____ day of _____, 2019, before me, a notary public in and for said county and state, personally appeared **TIMOTHY 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 who executed the within and foregoing instrument, and who acknowledged to me that said municipal corporation executed the same.

[SEAL]

Notary Public

Shark Properties, LLC, a North Dakota Limited
Liability Company

Date: 12-17-19



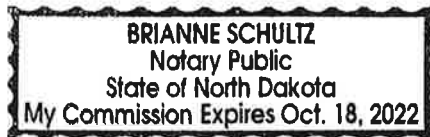
By: Raymond Kotchian

It's President 12-17-19

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

On this 17 day of December, 2019, before me, a notary public in and for said county and state, personally appeared Ray Kotchian, of Shark Properties, LLC, a North Dakota limited liability company, known to me to be the person described herein and who executed the within and foregoing instrument and who acknowledged to me that said company executed the same.

[SEAL]




Notary Public

Master Construction Co., Inc., a North Dakota corporation

Date: 12/26/19

[Signature]
By: Fred J. Schlanser, Jr.
It's 12/26

STATE OF NORTH DAKOTA)
COUNTY OF CASS) ss.

On this 26TH day of DECEMBER, 2019, before me, a notary public in and for said county and state, personally appeared Fred J. Schlanser, Jr., of Master Construction Co., Inc., a North Dakota Corporation, known to me to be the person described herein and who executed the within and foregoing instrument and who acknowledged to me that said company executed the same.

[SEAL]

RENAE HEGER
Notary Public
State of North Dakota
My Commission Expires May 17, 2022

[Signature]
Notary Public



PO Box 801
Fergus Falls, MN 56538

brad.bradcorestoration@gmail.com
(218) 739-3988

PROPOSAL

TO: Ray Kotchian
the "Shark bldg"
email:

August 7, 2019

Review and Scope of Work: For the masonry repairs, tuckpointing, brick replacement and masonry rebuilding of dislodged bricks due to vibration damage. (NOTE: I have worked on this building previously so I am aware of its condition prior to the sidewalk demolition.) Other masonry is quoted separately that appears to be age affected masonry and also the removal chimney stacks.

TUCKPOINTING BASE BID: Vibration Dislodging: **\$ 55,000.00**

For all labor, equipment and material to complete the tuckpointing and brick replacement of the exposed masonry surfaces that are cracked, or dislodged due to vibration on the west, north and east elevations. This work would not be considered a full and complete restoration as it will NOT include repainting, but it will include a rebuilding of the masonry and tuckpointing of cracked masonry to be a sound masonry structure with brick that match the wiretex finish of the existing.

TUCKPOINTING REPAIRS: Age related Masonry: **\$ 15,000.00**

For all labor, equipment and material to complete the tuckpointing of up to 20% of the east wall and areas above the 2nd floor windows that were not caused by vibration.

CHIMNEY REMOVAL: **\$ 22,000.00**

For all labor, equipment to removed the (2) large chimneys from the alley side.

PAYMENT TERMS: Contract will be accepted and scheduled All billings will be made on the end of the month with payments to be made within (15) days of billing. No exceptions to payment without prior consent in writing. Unpaid balances are subject to interest charges of 1 1/2% monthly; 18% annually.

Bradley J. Sunde, President

Ray Kotchian

Date

1989 CRAFTSMAN OF THE YEAR
1991 CRAFTSMANSHIP AWARD
2011 ARTISAN AWARD

North Dakota American Institute of Architects
Fargo Heritage Society
Preservation North Dakota