

FARGO CITY COMMISSION AGENDA
Tuesday, February 20, 2024 - 5:00 p.m.

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

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

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Application for Abatement or Refund of Taxes #4558 for property located at 113 Woodland Drive North requesting a reduction in value from \$397,200.00 to \$361,200.00; staff is recommending a reduction in value to \$361,200.00 for 2023.
- 2. 1st reading of an Ordinance Amending Section 31-0102 of Article 31-01 of Chapter 31 of the Fargo Municipal Code Relating to the International Property Maintenance Code.
- 3. 2nd reading and final adoption of an Ordinance Annexing a Certain Parcel of Land Lying in the Northwest Quarter of Section 14, Township 140 North, Range 49 West, in Cass County, North Dakota; 1st reading, 2/5/24.
- 4. 2nd reading and final adoption of an Ordinance Rezoning a Certain Parcel of Land Lying in 46th Avenue Industrial Park Addition to the City of Fargo, Cass County, North Dakota; 1st reading, 2/5/24
- 5. Findings, Conclusions and Order of the Board of City Commissioners of the City of Fargo regarding the License Violation of Windbreak Saloon.
- 6. Applications for Games of Chance:
 - a. Safari Club International North Dakota Chapter for a calendar raffle from 3/8/24-3/9/24.
 - b. GiGi's Playhouse for a raffle on 3/22/24.
 - c. North Central Turfgrass Association for a raffle on 2/28/24.
 - d. Oak Grove Post Prom Committee for a raffle on 2/29/24.
 - e. Fargo Elks #260 for a calendar raffle 5/1/24-5/31/24.
 - f. Soaring Eagle Parent Theatre Council for a calendar raffle from 4/11/24-4/14/24.
 - g. Red River Valley Figure Skating Club for a raffle on 3/10/24.
- 7. Negative Final Balancing Change Order No. 7 in the amount of -\$90,562.95 for Project No. FM-19-C1.
- 8. Modifications to On Street Parking on the 3200 Block of North 10th Street.
- 9. Agreement for Consulting Engineering Services with Houston Engineering for Project No. MS-24-A0.

10. Agreement for Consulting Engineering Services with Houston Engineering for Project No. SN-25-B0.
11. Agreement for Consulting Engineering Services with HDR Engineering for Project No. TR-26-A0.
12. Pond Access and Maintenance Easement and Storm Sewer Line Crossing Agreement with Gitty-Up, LLC.
13. Bid advertisement for Project No. TM-24-A (Pavement Markings).
14. Cost Participation, Construction and Maintenance Agreement – LPA Federal Aid Project with the NDDOT for the 32nd Avenue Reconstruction project (Improvement District No. BR-23-G1).
15. Memorandum of Understanding for Easements and Removal of Fixtures with YWCA Cass Clay and Lantern Light, LLC and Permanent Easement (Storm Sewer and Levee), Permanent Easement (Storm Sewer and Utility) and Easement (Temporary Construction Easement) with Lantern Light, LLC (Project No. NR-24-A1).
16. Create Improvement District No. BN-23-E (New Paving and Utility Construction).
17. Create Improvement District No. BN-23-J (New Paving and Utility Construction).
18. Create Improvement District No. PR-24-F (Asphalt Mill and Overlay).
19. Contract and bond for Improvement District No. TN-23-A2.
20. Piggyback purchase through Sourcewell Cooperative Purchasing Agreement with Great Plains Fire Equipment in the amount of \$151,960.00 for forty sets of structural firefighting turnout gear (PBC24123).
21. Authorization of the Fire Department to apply for the Assistance to Firefighters Grant in the amount of \$578,448.00 for updated vehicle exhaust systems, gear washers and station alerting system.
22. Authorization of the Fire Department to apply for the FY2024/2025 Hazardous Materials Emergency Preparedness grant to allow four team members to attend the 2025 International Hazardous Materials Response Teams Conference.
23. Authorization to apply for the FY2021 State Homeland Security Grant Program (SHSP) Round 2 to fund a RRVUASU flight operations vehicle with associated equipment.
24. Authorization to apply for the FY2021 State Homeland Security Grant Program (SHSP) Round 2 to purchase TVs.
25. Benefit Plan Agreement and Group Insurance Policy for Dental Benefits with BCBSND for health and dental insurance coverage for 2024.
26. Cass Clay Threat Assessment Threat Management Team Memorandum of Understanding – Participating Agencies.
27. Agreement for Construction Contract with Gast Construction Company Inc. for the Public Works South Side Fuel Station (ITB24028).

28. Task Order No. 24-1 with Stantec in an amount not to exceed \$212,900.00 for 2024 General Engineering Services at the landfill.
29. Task Order No. 5 with AE2S in an amount not to exceed \$15,000.00 for professional engineering services related to updates to the existing Solid Waste Revenue Adequacy Model.
30. Change Order No. 1 in the amount of \$569,910.72 for Project No. SW 23-04.
31. Public Transportation Agency Safety Plan.
32. Resolution Authorizing Filing of Applications with the Federal Transit Administration.
33. Increase to the Transit Connect Smartcard replacement fee from \$5.00 to \$10.00, effective 4/1/24.
34. Amendment No. 2 to the Contract with Transdev to extend through 12/31/24.
35. Task Order No. 10 with AE2S in the amount of \$121,700.00 for Project No. BN-23-F0.
36. Bills.

REGULAR AGENDA:

37. **RESIDENT COMMENTS** (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at FargoND.gov/VirtualCommission).

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

38. **PUBLIC HEARING** – Application filed by Packet Digital, LLC for a property tax exemption for a project to be located at 1300 and 1358 39th Street North, which the applicant will use primarily to design, develop and manufacture battery cells.
39. **PUBLIC HEARING** - Application filed by Wepay Inc, d/b/a Anvil Design and MFG for a property tax exemption for a project to be located at 2222 7th Avenue North, which the application will use for a variety of mechanical engineering services.
40. **PUBLIC HEARING** – Rheault Second Addition (2318, 2322, 2408 and 2420 30th Avenue South); approval recommended by the Planning Commission on 1/2/24:
 - a. Zoning Change from GO, General Office to LC, Limited Commercial and MR-3, Multi-Dwelling Residential.
 - b. 1st reading of rezoning Ordinance.
 - c. Plat of Rheault Second Addition.
41. Presentation of the 25th Street Corridor Study.
42. Presentation of the 2023 Fire Department Annual Report.
43. Recommendation to Adopt the Resolution Approving Airport Facilities Revenue Bond and Pledging Deficiency Tax Levy (Airport Facilities Revenue Bond, Series 2023).

44. Application for Abatement or Refund of Taxes #4555 for property located at 1710 1st Avenue South requesting a reduction in value for 2023 from \$193,500.00 to \$96,600.00.
45. Application for Abatement or Refund of Taxes #4556 for property located at 3723 21st Street South requesting a reduction in value for 2023 from \$371,400.00 to \$331,400.00.
46. Applications for Property Tax Exemptions for Improvements Made to Buildings:
 - a. Justin and Jacqueline Grams, 66 Prairiewood Drive South (5 years).
 - b. Brandon Smith, 218 27th Avenue North (5 years).
 - c. George Sinner and Margaret Sinner, 1806 Rose Creek Drive South (5 years).
 - d. Young Club, LLC, 203 8th Street South (5 years).
 - e. Mark and Susan Sorby, 1442 19th Street South (5 years).
 - f. Nancy Schafer, 4426 Carrie Rose Lane South (5 years).
47. Liaison Commissioner Assignment Updates.

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

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

①

February 14, 2024

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Attached is the Application for Abatement or Refund of Taxes #4558. The application is for a residence located at 113 Woodland Dr N. The application requests the following:

#4558 – for 2023, a reduction from \$397,200 to \$361,200

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

The applicant has waived, in writing, the city hearing on this abatement.

SUGGESTED MOTION:

**Approve a reduction of the property value at 113 Woodland Dr N in the following manner:
#4558 – reduce the 2023 certified value to \$361,200**

Sincerely,



Michael Splonskowski
Fargo City Assessor

Parcel Number: 01-2360-00630-000

Appeal of Assessment for Year: 2023

Name of Applicant: John Shipley

Assessed Value(s) 2023 397,200

Applicants Requested Value(s) 2023 361,200 -9.1%

General Property Information

Property Type		Residential
Year Built		1957
Building Area (Total Above Grade)	1,708 sf	181.38 / sf
Land Area	18,000 sf	4.86 / sf

Last Sale: 06/23/2010 178,200



Summary

The owner appealed the value on December 11, 2023, citing structural issues with the house. Upon review of the property, the appraiser found cracking on drywall and uneven foundations in both the addition and attached garage. Two bids were provided by owner. Bid stated that damage was due to the lack of depth of the foundation walls, and helical piers would need to be installed.

The cost approach was used to revalue this house and adjustments were made, accounting for all the changes in the property's characteristics, and the deferred maintenance and repairs that would be necessary. The owner is seeking a reduction in value for the 2023 certified value.

Based on the information presented by the owner and the information of our onsite review of the property, we agree that the condition of the house was likely present in 2023 and has a negative effect on the value, and that a reduction is warranted.

Recommended Action(s):

Reduce the value to \$361,200 for the 2023 tax year

Application For Abatement Or Refund Of Taxes

North Dakota Century Code § 57-23-04

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

State of North Dakota Assessment District Fargo
 County of Cass Property I.D. No. 01-2360-00630-000
 Name John Shipley Telephone No. (701) 866-9284
 Address 113 Woodland Dr N

Legal description of the property involved in this application:

Lot 2 Block 4 Ridgewood

Total true and full value of the property described above for the year 2023 is:

Land \$ 87,400
 Improvements \$ 309,800
 Total \$ 397,200
 (1)

Total true and full value of the property described above for the year 2023 should be:

Land \$ 87,400
 Improvements \$ 273,800
 Total \$ 361,200
 (2)

The difference of \$ 36,000 true and full value between (1) and (2) above is due to the following reason(s):

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

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

1. Purchase price of property: \$ 170,000 Date of purchase: June 2010
 Terms: Cash X Contract _____ Trade _____ Other (explain) _____
 Was there personal property involved in the purchase price? no Estimated value: \$ —
 yes/no

2. Has the property been offered for sale on the open market? no If yes, how long? _____
 yes/no

Asking price: \$ _____ Terms of sale: _____

3. The property was independently appraised: no Purpose of appraisal: _____
 yes/no Market value estimate: \$ _____

Appraisal was made by whom? _____

4. The applicant's estimate of market value of the property involved in this application is \$ 361,200

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

Applicant asks that Value gets reduced for 2023 year

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

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

Signature of Preparer (if other than applicant) _____ Date _____ Signature of Applicant [Signature] Date 1.24.24

Recommendation of the Governing Body of the City or Township

Recommendation of the governing board of _____

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

Dated this _____ day of _____, _____
City Auditor or Township Clerk

Action by the Board of County Commissioners

Application was _____ by action of _____ County Board of Commissioners.
Approved/Rejected

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

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

Dated _____

County Auditor Chairperson

Certification of County Auditor

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

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

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

Year	Reduction in Taxable Valuation	Reduction in Taxes

County Auditor Date

Application For Abatement Or Refund Of Taxes

Name of Applicant John Shipley

County Auditor's File No. 4558

Date Application Was Filed With The County Auditor 1/25/2024

Date County Auditor Mailed Application to Township Clerk or City Auditor 1/26/2024 (must be within five business days of filing date)

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

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AN ORDINANCE AMENDING SECTION 31-0102 OF ARTICLE 31-01
OF CHAPTER 31 OF THE FARGO MUNICIPAL CODE
RELATING TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 31-0102 of Article 31-01 of Chapter 31 of the Fargo Municipal Code is hereby amended as follows:

* * * *

303.2.1 Fence or Barrier height and clearances. Barrier heights and clearances shall be in accordance with all the following:

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1. The top of the barrier shall be not less than 48 inches above grade where measured on the side of the barrier that faces away from the pool or spa. Such height shall exist around the entire perimeter of the barrier and for a distance of 4 feet measured horizontally from the outside of the pool or spa to the inside of the required barrier.
2. The vertical clearance between grade and the bottom of the barrier shall not exceed 2 inches (51 mm) for grade surfaces that are not solid, such as grass or gravel, where measured on the side of the barrier that faces away from the pool or spa.
3. The vertical clearance between a surface below the barrier to a solid surface, such as concrete, and the bottom of the required barrier shall not exceed 4 inches (102 mm) where measured on the side of the required barrier that faces away from the pool or spa.
4. Where the top of the pool or spa structure is above grade, the barrier shall be installed on grade or shall be mounted on top of the pool or spa structure. Where the barrier is mounted on the top of the pool or spa, the vertical clearance between the top of the pool or spa and the bottom of the barrier shall not exceed 4 inches (102 mm).

303.2.2 Openings. Openings in the barrier shall not allow passage of a 4-inch-diameter (102 mm) sphere.

303.2.3 Solid barrier surfaces. Solid barriers that do not have openings shall not contain indentations or protrusions that form handholds and footholds, except for normal construction tolerances and tooled masonry joints.

303.2.4 Mesh fence as a barrier. Mesh fences, other than chain link fences in accordance with Section 303.2.7, shall be installed in accordance with the manufacturer's instructions and shall comply with the following:

1. The bottom of the mesh fence shall be not more than 1 inch (25 mm) above the deck or installed surface or grade.
2. The maximum vertical clearance from the bottom of the mesh fence and the solid surface shall not permit the fence to be lifted more than 4 inches (102 mm) from grade or decking.

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3. The fence shall be designed and constructed so that it does not allow passage of a 4-inch (102mm) sphere under any mesh panel. The maximum vertical clearance from the bottom of the mesh fence and the solid surface shall not be more than 4 inches (102 mm) from grade or decking.
 4. An attachment device shall attach each barrier section at a height not lower than 45 inches (1143 mm) above grade. Common attachment devices include, but are not limited to, devices that provide the security equal to or greater than that of a hook-and-eye-type latch incorporating a spring-actuated retaining lever such as a safety gate hook.
 5. Where a hinged gate is used with a mesh fence, the gate shall comply with Section 303.2.10.
 6. Patio deck sleeves such as vertical post receptacles that are placed inside the patio surface shall be of a nonconductive material.
 7. Mesh fences shall not be installed on top of on-ground residential pools.

303.2.4.1 Setback for mesh fences. The inside of a mesh fence shall be not closer than 48 inches (1219 mm) to the nearest edge of the water of a pool or spa.

303.2.5 Closely spaced horizontal members. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches (1143 mm), the horizontal members shall be located on the pool or spa side of the fence. Spacing between vertical members shall not exceed 1³/₄ inches (44 mm) in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1³/₄ inches (44 mm) in width.

303.2.6 Widely spaced horizontal members. Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 45 inches (1143 mm) or more, spacing between vertical members shall not exceed 4 inches (102 mm). Where there are decorative cutouts within vertical members, the interior width of the cutouts shall not exceed 1³/₄ inches (44 mm).

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303.2.7 Chain link dimensions. The maximum opening formed by a chain link fence shall be not more than 2 inches (50.8 mm). Where the fence is provided with slats fastened at the top and bottom which reduce the openings, such openings shall be not more than 2 inches (50.8 mm).

303.2.8 Diagonal members. Where the barrier is composed of diagonal members, the maximum opening formed by the diagonal members shall be not more than 1³/₄ inches (44 mm). The angle of diagonal members shall be not greater than 45 degrees (0.79 rad) from vertical.

303.2.9 Clear zone. Where equipment, including pool equipment such as pumps, filters and heaters, is on the same lot as a pool or spa and such equipment is located outside of the barrier protecting the pool or spa, such equipment shall be located not less than 36 inches (914mm) from the outside of the barrier.

303.2.10 Doors and gates. Doors and gates in barriers shall comply with the requirements of Sections 303.3.11 through 303.2.13 and shall be equipped to accommodate a locking device. Pedestrian access doors and gates shall open outward away from the pool or spa, shall be self-closing and shall have a self-latching device.

303.2.11 Utility or service doors and gates. Doors and gates not intended for pedestrian use, such as utility or service doors and gates, shall remain locked when not in use.

303.2.12 Double or multiple doors and gates. Double doors and gates or multiple doors and gates shall have not fewer than one leaf secured in place and the adjacent leaf shall be secured with a self-latching device.

303.2.13 Latch release. For doors and gates in barriers, the door and gate latch release mechanisms shall be in accordance with the following:

1. Where door and gate latch release mechanisms are accessed from the outside of the barrier and are not of the self-locking type, such mechanism shall be located above the finished floor or ground surface at residential pools and spas, not less 54 inches (1372 mm).
2. Where door and gate latch release mechanisms are of the self-locking type such as where the lock is operated by means of a key, an electronic opener or the entry of a combination into an integral combination lock, the lock operation control and the latch release

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1 mechanism shall be located above the finished floor or ground surface at residential pools
2 and spas, at not greater than 54 inches (1372 mm).

- 3 3. Where the only latch release mechanism of a self-latching device for a gate is located on
4 the pool and spa side of the barrier, the release mechanism shall be located at a point that
5 is at least 3 inches (76 mm) below the top of the gate.

6 **303.2.14 Barriers adjacent to latch release mechanisms.** Where a latch release mechanism is
7 located on the inside of a barrier, openings in the door, gate and barrier within 18 inches (457 mm)
8 of the latch shall not be greater than 1/2 inch (12.7 mm) in any dimension.

9 **303.2.15 Structure wall as a barrier.** Where a wall of a dwelling or structure serves as part of
10 the barrier and where windows having a sill height of less than 48 inches (1219 mm) above the
11 indoor finished floor, doors and gates shall have an alarm that produces an audible warning when
12 the window, door or their screens are opened. The alarm shall be listed and labeled as a water
13 hazard entrance alarm in accordance with UL 2017.

14 **Exception:** An approved means of protection, such as self-closing doors with self-latching
15 devices, is provided. Such means of protection shall provide a degree of protection that is
16 not less than the protection afforded by an alarm that produces an audible warning when
17 the window, door or their screens are opened.

18 **303.2.16 On-ground residential pool structure as a barrier.** An on-ground residential pool wall
19 structure or a barrier mounted on top of an on-ground residential pool wall structure shall serve as
20 a barrier where all the following conditions are present:

- 21 1. Where only the pool wall serves as the barrier, the bottom of the wall is on grade, the top
22 of the wall is not less than 48 inches (1219 mm) above grade for the entire perimeter of the
23 pool, the wall complies with the requirements of Section 303.2 and the pool manufacturer
allows the wall to serve as a barrier.
2. Where a barrier is mounted on top of the pool wall, the top of the barrier is not less than 48
inches (1219 mm) above grade for the entire perimeter of the pool, and the wall and the
barrier on top of the wall comply with the requirements of Section 303.2.

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- 3. Ladders or steps used as means of access to the pool are capable of being secured, locked or removed to prevent access except where the ladder or steps are surrounded by a barrier that meets the requirements of Section 303.
- 4. Openings created by the securing, locking or removal of ladders and steps do not allow the passage of a 4-inch (102 mm) diameter sphere.
- 5. Barriers that are mounted on top of on-ground residential pool walls are installed in accordance with the pool manufacturer's instructions.

303.2.17 Natural barriers. In the case where the pool or spa area abuts the edge of a lake or other natural body of water, public access is not permitted or allowed along the shoreline, and required barriers extend to and beyond the water's edge not less than 18 inches (457 mm), a barrier is not required between the natural body of water shoreline and the pool or spa.

303.2.18 Natural topography. Natural topography that prevents direct access to the pool or spa area shall include but not be limited to mountains and natural rock formations. A natural barrier approved by the governing body shall be acceptable provided that the degree of protection is not less than the protection afforded by the requirements of Sections 303.2 through 303.2.16.

* * * *

Section 2. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

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Section 3. Effective Date.

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

Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

3

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE ANNEXING A CERTAIN PARCEL OF LAND
LYING IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 140 NORTH,
RANGE 49 WEST, IN CASS COUNTY, NORTH DAKOTA

WHEREAS, A Petition for Annexation has been submitted by the owners of not less than three-fourths in assessed value of the property described in said Petition for Annexation to the City of Fargo, Cass County, North Dakota, in accordance with Section 40-51.2-03 N.D.C.C.; and,

WHEREAS, Public notice of the submission of such Petition has been given by publication in The Forum as required by Section 40-51.2-05 N.D.C.C.; and,

WHEREAS, Said Section 40-51.2-03 N.D.C.C. requires that such annexation be accomplished by ordinance,

NOW, THEREFORE,

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

Section 1. The following described property located in the Northwest Quarter of Section 14; Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County North Dakota, is hereby annexed to the City of Fargo, Cass County, North Dakota:

Beginning at the southwest corner of the Northwest Quarter of Section 14; thence N02°54'59"W along the west line of said Northwest Quarter, the existing city of Fargo annexation limits, a distance of 590.09 feet; thence N88°04'14"E parallel with the south line of said Northwest Quarter a distance of 1049.95 feet to the existing city of Fargo annexation limits; thence S02°37'21"E along said existing city of Fargo annexation limits a distance of 590.05 feet to the south line of said Northwest Quarter, the existing city of Fargo annexation limits; thence S88°04'14"W along said south line, and said existing city of Fargo annexation limits, a distance of 1046.92 feet to the point of beginning.

Said tract of land contains 14.20 acres, more, or less.

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ORDINANCE NO. _____

Section 2. Effective Date.

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

CITY OF FARGO

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 AN ORDINANCE REZONING A CERTAIN PARCEL
2 OF LAND LYING IN 46TH AVENUE INDUSTRIAL PARK ADDITION
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

4 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the
5 City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain
6 parcels of land lying in the proposed 46th Avenue Industrial Park Addition to the City of Fargo, Cass
7 County, North Dakota; and,

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
9 request on July 6, 2023; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on February 5,
11 2024,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 All of 46th Avenue Industrial Park Addition to the City of Fargo, Cass County, North
16 Dakota;

17 is hereby rezoned from "AG", Agricultural, District to "LI", Limited Industrial, District.

18 Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his
19 office so as to conform with and carry out the provisions of this ordinance.
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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

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

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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CITY ATTORNEY

Nancy J. Morris

ASSISTANT CITY ATTORNEYS

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

(5)

February 15, 2024

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

**RE: Findings, Conclusions and Order of the Board of City Commissioners of the city of
Fargo regarding the Windbreak**

Mayor and Commissioners,

Presented for your consideration and approval please find Findings, Conclusions and Order in accordance with Fargo Municipal Code § 25-1513 regarding your previous unanimous decision finding Windbreak in violation of Fargo Municipal Code § 25-1509.2.

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

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

Regards,



Nancy J. Morris

cc: Steve Sprague
Chief David Zibolski

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

The matter before the board of City Commissioners of the city of Fargo (City Commission) is whether or not there is a factual basis to find that it is more likely than not that Liquid Hospitality, LLC, d/b/a Windbreak Saloon (hereinafter Windbreak or Licensee) violated Fargo Municipal Code §25-1509.2 on August 18, 2023. If the City Commission finds a violation to have occurred, the administrative penalty(s) in accordance with Fargo Municipal Code §25-1512 shall be applied. The Licensee received notice of the asserted violation and was heard by the Liquor Control Board on October 24, 2023, and the City Commission at a Special Meeting on January 23, 2024.

Fargo Police Chief David Zibolski and Sgt. Aldin Golos presented the factual basis to the Liquor Control Board recommending a finding of a violation of Fargo Municipal Code §25-1509.2. This section states:

25-1509.2. - Restrictions on obviously intoxicated or impaired persons.

No licensee, partner, principal, agent, or employee of any licensee shall sell, serve, or furnish alcoholic beverages to, or allow possession or consumption of alcoholic beverages on the licensed premises, by any person who is or has become intoxicated or impaired by alcohol or drugs. A person may be considered to be obviously intoxicated or impaired when it can be determined by appearance, conduct, or demeanor. The term "obviously intoxicated or impaired" shall mean that the person's obvious intoxication or impairment be reasonably discernible or evident to a person of ordinary experience. Such indicators of intoxication or impairment may include, but are not limited to, a combination of any of the following types of conditions:

- A. Problems with, or inability to maintain, balance, i.e., stumbling, swaying, staggering gait, bumping into furniture while walking, falling against bar or off stool, resting head on bar;
- B. Ineffective muscular coordination, i.e., spilling and/or knocking over drinks, unable to pick up change;

- C. Delayed responses, rambling, disorientation, and mental confusion;
- D. Strong smell of alcohol;
- E. Unusual or distorted speech, i.e., slurred, thick tongue, uncontrollable voice pitch, muttering;
- F. Bloodshot, watery, or glassy eyes, flushed face;
- G. Condition of clothes and hair, i.e., soiled clothing, urinated upon clothing, disheveled;
- H. Unusual behavior, i.e., vomiting, profanity, crying, hiccups, fighting, loud, boisterous, obnoxious behavior, sleeping or unconscious;
- I. Anxious, scratching, paranoia, dry mouth, or dilated pupils.

Violation of this ordinance may result in sanctions as prescribed in Section 25-1512(F). Violations may be established with direct and indirect evidence.

Chief Zibolski presented the factual basis to the City Commission due to Sgt. Golos' inability to attend the January hearing.

The Licensee was represented by attorney Timothy O'Keeffe before both the Liquor Control Board and City Commission. The City Commission further considered the submitted documents, the recommendation of the Liquor Control Board, arguments of counsel and all documents presented.

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

FINDINGS OF FACT

1. By notice dated October 5, 2023, City Auditor Steven Sprague advised Licensee Windbreak Saloon he had determined that Windbreak Saloon "violated liquor license requirements as defined in section 25-1509.2 of the Fargo Municipal Code, including overserving an obviously intoxicated patron."

2. City Auditor Sprague had received information from the Fargo Police Department on which he based this determination, including Police Department Liquor Establishment Report Forms, a Memorandum regarding Windbreak liquor establishment form follow up from Sgt. Aldin Golos to Captain Helmick and Lt. Berner dated August 31, 2023, email correspondence from Sgt. Golos to Michael Hlebechuk dated September 1, 2023 containing a detailed timeline of events, and Michael Hlebechuk's email correspondence in response dated September 2, 2023. These documents were provided to the Liquor Control Board and Licensee.
3. The Liquor Control Board met and heard evidence of the liquor license violation on October 24, 2023.
4. Chief of Police David Zibolski and Sgt. Aldin Golos presented a detailed factual recitation of the events that occurred in the Windbreak on August 18, 2023. The facts are presented in the form of a timeline from Sgt. Golos's review of the video from the Windbreak, with a particular time designation. Sgt. Golos described in detail the behaviors exhibited by the patron alleged to have been over served which led him to conclude that a liquor violation had occurred:
 - 2247 hours: Female arrives alone to Windbreak (as she said). She enters, her ID is checked, she pays the cover charge, and is given a wristband (said she wasn't). The female was walking normally and doesn't appear impaired.
 - 2255 hours: Female orders a mixed drink which is poured into a small glass. Female said she drinks whisky waters. The female pays cash.
 - 2259 hours: Female takes her drink and goes to the dance floor. She is dancing and appears fine, not impaired.
 - 2301 hours: Female sets her drink on a table and continues to dance. Nobody tampers with the drink.
 - 2302 hours: Staff member takes the drink (presumably empty).

- 2308 hours: Female leaves the dance floor.
- 2310 hours: Female buys another drink. Small glass again.
- 2311 hours: Female goes to a random male's table and they talk.
- 2314 hours: They try each other's drinks. Nobody tampers with her drink.
- 2315 hours: Goes into smoking area.
- 2316 hours: Comes back into establishment from smoking area, no drink in hand (presumably left it in smoking area).
- 2317 hours: Leaves the business and goes to her vehicle (presumably, no video of where vehicle was parked). She walks to her vehicle without issues.
- 2318 hours: Back inside Windbreak.
- 2318 hours: Goes back to the smoking area.
- 2319 hours: Walks back inside, now with her drink in hand.
- 2321 hours: Goes to the dance floor with her drink.
- 2322 hours: Leaves her drink at the same table.
- 2323 hours: Sits at the table where she set her drink. There is a male at this table. He doesn't tamper with her drink.
- 2328 hours: Leaves table with drink in hand.
- 2331 hours: Walks to the bar, chats with an individual, and takes two big sips of his drink.
- 2331 hours: Goes to the smoking area with her drink in hand.
- 2337 hours: Comes back inside the establishment with Brian (manager). Brian walks her to the bar and makes her a drink free of charge. The drink is in a large glass, one they use to pour beer. Female claimed to me she took two sips of it, it was too strong, set it down by the dance floor, and didn't drink anymore of it. This is not true. She continued to drink it the rest of the night.
- 2338 hours: Goes to the dance floor with the drink.
- 2340 hours: Goes to the pool area with the drink.
- 2341 hours: Talks to another individual, takes a sip of his drink.
- 2341 hours: Goes to a different individual in the pool area and takes a sip of his drink.
- 2347 hours. Server brings her another drink (appears to be a tall drink). This drink was paid for by one of the males at the pool table. The female now has two drinks. The bartender should have seen this.

- 2354 hours: Takes both drinks with her and leaves the pool area.
- 2355 hours: Walks by the bar area and shows, shows both drinks to the bartender (I can't tell if it's Brian), and appears to say thank you (body language).
- 2355 hours: Female is on the dance floor and sets both drinks at the same table. She takes a drink from one and starts dancing. Her dancing is strange. Dancing by herself, lot of movement, movement becomes more exaggerated as the night goes on. The same male is sitting at the table. He has his hands in his lap and seems to be there for the band. Nobody tampers with her drinks.
- 0002 hours: Takes one of her drinks and sets it by the stage to dance.
- 0012 hours: Still dancing. At this point she looks intoxicated. Movements are exaggerated and slower. She sets her head on the stage in what appears to be a resting position.
- 0016 hours: Goes to the smoking area.
- 0036 hours: Comes back inside the establishment with a black male (the male who was in her vehicle at time of crash and just before arrest). She takes a hit from her vape pen.
- 0037 hours: The black male takes her to the bar and orders drinks for them. While the drinks are being made, the female is hugging the male from behind and thrusting his behind/back. Her actions indicate she is impaired. They are kissing and all over each other. The female is continuously adjusting her hair.
- The bartender gives them three drinks. A tall beer for the male. A shot (unknown if single or double) and a mixed drink in a small glass for the female. The female chugs the shot immediately. She sips the mixed drink (I think).
- 0054 hours: The black male is at the bathroom at this time. The female moves the beer closer to her but doesn't drink it. A security guard comes over and determines she's too intoxicated. He takes the beer away from her and they give her a water. The black male returns, has a short conversation with the security guard and walks away with the beer and mixed drink.
- 0058 hours: Two security guards walk the female outside. She can't walk on her own and they have to escort her.
- 0100 hours: Female is outside and walks towards her vehicle. She has poor balance and isn't walking straight. Security goes back inside the establishment.
- 0104 hours: Security comes outside and walks towards where female's vehicle is. Goes back inside the Windbreak shortly after.
- 0122 hours: Security comes outside and walks towards where female's vehicle is.
- 0126 hours: Security goes back inside.
- 0130 hours: Security comes outside and walks towards where female's vehicle is.

0134 hours: Security goes back inside

5. The Liquor Control Board considered all the evidence and recommended a finding of a violation of Fargo Municipal Code § 25-1509.2 against the Windbreak on August 18, 2023.
6. The Windbreak requested a hearing before the City Commission following the Liquor Control Board recommendation. A special City Commission hearing was held on January 23, 2024.
7. Chief Zibolski presented the factual basis in the form of a detailed summary of the timeline and description of the video review provided by Sgt. Golos for consideration by the City Commission to independently find a violation of Fargo Municipal Code § 25-1509.2.

CONCLUSIONS

The board of City Commissioners of the city of Fargo finds that Liquid Hospitality, LLC, d/b/a Windbreak Saloon provided alcohol to a person who had become overly intoxicated on August 18, 2023, in violation of FMC § 25-1509.2. The behaviors exhibited by the patron over the course of the evening, including but not limited to erratic and exaggerated dancing, laying her head on the stage, possession of multiple drinks at one time, Sgt. Golos's testimony and observation that the patron "looks intoxicated" at 0012 hours, and her behavior observed at 0037 hours, are consistent with the "indicators of intoxication or impairment" stated in the ordinance. Despite these indicators of intoxication, the Windbreak allowed the patron to continue to consume additional alcohol, as observed by Sgt. Golos at 0037 hours.

ORDER

After considerable discussion, questions and thorough review of all of the evidence, including arguments by counsel, Commissioner Preston moved to support the recommendation of the Liquor Control Board and further find that a violation of Fargo Municipal Code § 25-1509.2, is factually supported, and to impose a \$500 administrative penalty.

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

DATED this ____ day of February, 2024.

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

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

ATTEST:

Steven Sprague, City Auditor



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

Local

Applying for (check one)

Local Permit Restricted Event Permit*

Games to be conducted

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

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

ORGANIZATION INFO

Name of Organization or Group <i>Satan Club & Int'l SEE - NORTH DAKOTA CHAPTER</i>		Dates of Activity (Does not include dates for the sales of tickets) <i>MARCH 8 & 9, 2024</i>	
Organization or Group Contact Person <i>ROGER VAN RADEN</i>	E-mail <i>HONESTROGVR@gmail.com</i>	Telephone Number <i>(701) 361-8575</i>	
Business Address <i>72 35th AVE N</i>	City <i>FARGO</i>	State <i>ND</i>	ZIP Code <i>58102</i>
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name <i>HOLIDAY INN</i>	County <i>CASS</i>
Site Physical Address <i>3803 13th AVE S.</i>	City <i>FARGO</i>
	State <i>ND</i>
	ZIP Code <i>58103</i>

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

MARCH 8 & 9, 2024

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

Game Type	Description of Prize	Exact Retail Value of Prize
<i>SEE ATTACHED SHEETS</i>	<i>SEE ATTACHED SHEETS</i>	<i>SEE ATTACHED SHEETS</i>
Total (limit \$40,000 per year)		<i>\$ 27,550.00</i>

Intended Uses of Gaming Proceeds
YOUTH SPONSORSHIP FOR HUNTER SAFETY & EDUCATION / VETERANS' SPONSORSHIP - PHEASANT SHOOT

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

Yes No

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

Yes No

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

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

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

Yes No

Name <i>ROGER VAN RADEN</i>	Title <i>CHAPTER PRESIDENT</i>	Telephone Number <i>(701) 361-8575</i>	E-mail Address <i>HONESTROGVR@gmail.com</i>
Signature of Organization or Group's Top Official <i>Roger Van Raden</i>		Title <i>President</i>	Date <i>2-1-2024</i>



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

(Handwritten initials)

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

Games to be conducted Raffle by a Political or Legislative District Party

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

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

ORGANIZATION INFO

Name of Organization or Group Gigi's Playhouse		Dates of Activity (Does not include dates for the sales of tickets) 03-22-2024	
Organization or Group Contact Person Heather Lorenzen	E-mail hlorenzen@gigisplayhouse.org	Telephone Number 701-551-7529	
Business Address 324 20th St S	City Fargo	State ND	ZIP Code 58104
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Fargo Air Museum	County Cass
Site Physical Address 1609 10th Ave N	City Fargo
	State ND
	ZIP Code 58102

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)
Gigi's Derby for Down Syndrome Gala 03/22/2024

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

Game Type	Description of Prize	Exact Retail Value of Prize
Heads/Tails	\$250.00 West Acres Gift Card	\$250.00
50/50 Cash Raffle	50% of total dollars raised	\$4000 total cash prize \$2000
Total (limit \$40,000 per year)		\$ 2,250.00

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds
Operations and programming

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

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

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

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

Printed Name of Organization Group's Permit Organizer Heather Lorenzen	Telephone Number 701-551-7529	E-mail Address hlorenzen@gigisplayhouse.org
Signature of Organization Group's Permit Organizer <i>Heather Lorenzen</i>	Title Executive Director	Date 2/15/24



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

Applying for (check one)

Local Permit Restricted Event Permit*

Games to be conducted Raffle by a Political or Legislative District Party

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

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

ORGANIZATION INFO

Name of Organization or Group North Central Turfgrass Association		Dates of Activity (Does not include dates for the sales of tickets) 2/27/24-2/28/24 (drawing on 2/28)	
Organization or Group Contact Person Sam Bauer	E-mail info.nctga@gmail.com	Telephone Number 612-205-4428	
Business Address P.O. Box 10823	City Fargo	State MN	ZIP Code 58106
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Holiday Inn		County Cass	
Site Physical Address 3803 13th Avenue South	City Fargo	State ND	ZIP Code 58106
Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.) one time raffle. drawing to be conducted from 5-7pm on Wednesday, February 28th			

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	Cash	300.00
Raffle	Cash	100.00
Raffle	Cash	50.00
Total (limit \$40,000 per year)		\$ 450.00

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds
Charitable giving

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

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

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

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

Printed Name of Organization Group's Permit Organizer Sam Bauer	Telephone Number 612-205-4428	E-mail Address info.nctga@gmail.com
Signature of Organization Group's Permit Organizer 	Title Executive Director	Date Feb 12, 2024



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

lad

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

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

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

ORGANIZATION INFO

Name of Organization or Group Oak Grove Post Prom Committee 2024		Dates of Activity (Does not include dates for the sales of tickets) 2/29/24	
Organization or Group Contact Person Stephanie Deitz	E-mail steph.deitz@oakgrovelutheran.com	Telephone Number 701-730-7080	
Business Address 124 N Terrace N	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name El Zagal Shrine Fargo	County Cass
Site Physical Address 1429 3rd St N	City Fargo
	State ND
	ZIP Code 58102

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)
2/29/24 Meat and Designer Purse Raffle

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	4 meat bundles (\$75 each)	\$300
Raffle	2 meat bundles (\$100 each)	\$200
Raffle	3 designer purses (\$89, \$179, \$199)	\$467
Total (limit \$40,000 per year)		\$ 934.00

Intended Uses of Gaming Proceeds
The proceeds will be used to fund the Post Prom party so students have a safe, supervised environment on Prom night

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

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

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

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

Name Stephanie Deitz	Title Committee Chairperson	Telephone Number 701-730-7080	E-mail Address steph.deitz@oakgrovelutheran.com
Signature of Organization or Group's Top Official <i>Stephanie Deitz</i>		Title Committee Chairperson	Date 2/13/24



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

ad
cd
(Signature)

Applying for (check one)
 Local Permit Restricted Event Permit*
 Games to be conducted Raffle by a Political or Legislative District Party
 Bingo Raffle Raffle Board Calendar Raffle Sports Pool Poker* Twenty-One* Paddlewheels*

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

ORGANIZATION INFO

Name of Organization or Group Fargo Elks #260		Dates of Activity (Does not include dates for the sales of tickets) May 1, 2024 through May 31, 2024	
Organization or Group Contact Person Tom Thompson	E-mail rotarytt429@gmail.com	Telephone Number 701-793-4303	
Business Address 3435 Broadway N	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Fargo Elks #260	County Cass
Site Physical Address 3534 Broadway N	City Fargo
	State ND
	ZIP Code 58102

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

Drawings will be weekly. 5/1, 5/5, 5/12, 5/19, 5/26

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	Monday through Friday \$50/day Saturday \$100 Sunday \$100	\$1,950.00
	Total (limit \$40,000 per year)	\$ 1,950⁰⁰

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds
Scholarships for High School Students.

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

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

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

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

Printed Name of Organization Group's Permit Organizer Tom Thompson	Telephone Number 701-793-4303	E-mail Address rotarytt429@gmail.com
Signature of Organization Group's Permit Organizer <i>Tom Thompson</i>	Title Trustee	Date 2/14/2024



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 GAMING DIVISION
 SFN 9338 (9-2023)

lf

Applying for (check one)

Local Permit Restricted Event Permit*

Games to be conducted

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

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

ORGANIZATION INFO

Name of Organization or Group Soaring Eagle Parent Theatre Council		Dates of Activity (Does not include dates for the sales of tickets) 4/11/24; 4/12/24; 4/13/24; 4/14/24	
Organization or Group Contact Person Kelly Wanzek	E-mail kelly.wanzek@gmail.com	Telephone Number 701-793-328	
Business Address 7150 25th St S	City Fargo	State ND	ZIP Code 58104
Mailing Address (if different) 3319 62nd Ave South	City Fargo	State ND	ZIP Code 58104

SITE INFO

Site Name Davies High School Theatre	County Cass		
Site Physical Address 7150 25th Street South	City Fargo	State ND	ZIP Code 58104

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)
50/50 raffle to be held in conjunction with the annual musical and annual play.
Spring 2024 dates - 4/11/24; 4/12/24; 4/13/24; 4/14/24 Fall 2024 - TBA

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

Game Type	Description of Prize	Exact Retail Value of Prize
50/50 Raffle	Cash value for 1/2 of tickets sold. Tickets are \$20 each.	$(\times \\$20) \div 2$
Total (limit \$40,000 per year)		\$ 5000.00

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds
Proceeds used to support the needs of the Davies Theatre department (i.e. costumes, make up supplies, affordable participation fees)

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

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

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

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

Printed Name of Organization Group's Permit Organizer Kelly Wanzek	Telephone Number 701-793-0328	E-mail Address kelly.wanzek@gmail.com
Signature of Organization Group's Permit Organizer <i>Kelly Wanzek</i>	Title Lead Parent	Date Feb 8, 2024



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

(Handwritten signature/initials)

Applying for (check one)

Local Permit Restricted Event Permit*

Games to be conducted

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

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

ORGANIZATION INFO

Name of Organization or Group Red River Valley Figure Skating Club - Fargo ice Show		Dates of Activity (Does not include dates for the sales of tickets) March 10th	
Organization or Group Contact Person Laura Jacobson	E-mail lauracjacobson@yahoo.com	Telephone Number 7012616821	
Business Address 908 9th St. N.	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Cornerstone Arena	County Cass
Site Physical Address 4404 23rd Ave SW	City Fargo
	State ND
	ZIP Code 58103

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

Raffle drawing on Sunday March 10th

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	See Attachment	
		Total (limit \$40,000 per year) \$ 3571.25

Intended Uses of Gaming Proceeds

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

Yes No

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

Yes No

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

No Yes - Total Retail Value: **2,322.50** (This amount is part of the total prize limit for \$40,000 per fiscal year)

Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52800 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be for political purposes.)

Yes No

Name Jeremy M. Elbert	Title Raffle Chair	Telephone Number 7012614687	E-mail Address jeremy@oakvalley.farm
Signature of Organization or Group's Top Official <i>(Handwritten signature)</i>		Title Raffle Chair	Date 02.15.2023

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-19-C1 Type: Negative Final Balancing Change Order #7

Location: Woodcrest Neighborhood Date of Hearing: 2/12/2024

Routing	Date
City Commission	2/20/2024
PWPEC File	X
Project File	Rob Hasey

The Committee reviewed the accompanying correspondence from Project Manager, Rob Hasey, regarding Negative Final Balancing Change Order #7 in the amount of \$-90,562.95, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #7 in the amount of \$-90,562.95, bringing the total contract amount to \$4,224,002.56.

On a motion by Steve Sprague, seconded by Ben Dow, the Committee voted to recommend approval of Negative Final Balancing Change Order #7 to Industrial Builders.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #7 in the amount of \$-90,562.95, bringing the total contract amount to \$4,224,002.56 to Industrial Builders.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax


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

COMMITTEE

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

ATTEST:

C: Kristi Olson


Tom Knakmuhs, P.E.
City Engineer



CHANGE ORDER REPORT
WOODCREST FLOOD RISK MANAGEMENT PROJECT
PROJECT NO. FM-19-C1

Final Balancing
Change Order

STARTING AT 119 SOUTH WOODCREST DRIVE NORTH AND ENDING AT 150 NORTH WOODCREST DRIVE NORTH.

Change Order No 7 **Change Order Date** 2/1/2024
Contractor Industrial Builders Inc

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

EXPLANATION OF CHANGE Change Order # 7

Final Balancing Change Order.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)		
Phase 1 Sanitary Sewer	3	Remove Pipe All Sizes All Types	LF	202	0	212	-5	207	\$38.00	-\$190.00		
	4	F&I Pipe SDR 26 - 6" Dia PVC	LF	8	8	8	8	16	\$56.00	\$448.00		
	5	F&I Pipe w/GB SDR 26 - 6" Dia PVC	LF	53	53	53	-16	37	\$94.00	-\$1,504.00		
				Phase 1 Sanitary Sewer Sub Total							-\$1,246.00	
Phase 1 Water Main	20	F&I Fittings Ductile Iron	LB	196	0	132	32	164	\$14.00	\$448.00		
	25	F&I Pipe w/GB C900 DR 18 - 6" Dia PVC	LF	32	0	39	1	40	\$56.00	\$56.00		
	26	F&I Pipe w/GB C900 DR 18 - 8" Dia PVC	LF	82	0	66	-1	65	\$70.00	-\$70.00		
	29	F&I Pipe 1" Dia Water Service	LF	24	24	24	-8	16	\$35.00	-\$280.00		

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Phase 1 Miscellaneous	71	Temp Fence - Safety	LF	700		700	-487	213	\$24.00	-\$11,688.00
	75	Remove Tree	EA	61		61	8	69	\$520.00	\$4,160.00
Phase 1 Miscellaneous Sub Total - \$7,528.00										
Phase 1 Flood Mitigation	87	Topsoil - Strip	CY	13100		13100	-6815	6285	\$4.50	-\$30,667.50
	89	Fill - Import	CY	14762	0	13998	812	14810	\$15.50	\$12,586.00
	90	Fill - Haul	CY	6435		6435	-6435	0	\$10.00	-\$64,350.00
	91	Excavate & Haul - Excess Material	CY	600		600	2905	3505	\$7.00	\$20,335.00
	92	Embankment	CY	815		815	2295	3110	\$10.00	\$22,950.00
	93	Fill - Random	CY	4555		4555	-795	3760	\$7.50	-\$5,962.50
Phase 2 Paving	94	Excavation	CY	905		905	2550	3455	\$6.50	\$16,575.00
	96	Overseeding	SY	21815		21815	-21815	0	\$0.15	-\$3,272.25
	98	Inspection Trench	CY	915		915	-50	865	\$11.00	-\$550.00
Phase 1 Flood Mitigation Sub Total - \$32,356.25										
Phase 2 Paving	106	F&I Sidewalk 4" Thick Reinf Conc	SY	40		40	-40	0	\$124.00	-\$4,960.00
	108	F&I Asphalt Pavement FAA 43 w/ PG58H-34	Ton	129		129	-129	0	\$120.00	-\$15,480.00
Phase 2 Paving Sub Total - \$20,440.00										
Phase 2 Miscellaneous	112	Remove Fence	LF	523	0	587	13	600	\$6.00	\$78.00
	113	Temp Fence - Safety	LF	830		830	-67	763	\$9.00	-\$603.00
	116	Remove Tree	EA	37		37	6	43	\$450.00	\$2,700.00
	118	Temp Construction Entrance	EA	1		1	-1	0	\$4,000.00	-\$4,000.00
	119	Silt Fence - Standard	LF	577		577	-47	530	\$4.00	-\$188.00
Phase 2 Miscellaneous Sub Total - \$2,013.00										

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)	
Phase 2 Flood Control	125	Topsoil - Strip	CY	5565		5565	-3072	2493	\$4.10	-\$12,595.20	
	127	Fill - Import	CY	10352	0	10755	-355	10400	\$14.50	-\$5,147.50	
	128	Fill - Haul	CY	1120		1120	236	1356	\$9.60	\$2,265.60	
	129	Excavate & Haul - Excess Material	CY	400		400	-58	342	\$6.10	-\$353.80	
	130	Embankment	CY	1155		1155	-403	752	\$9.20	-\$3,707.60	
	131	Fill - Random	CY	3420		3420	-836	2584	\$5.90	-\$4,932.40	
	132	Excavation	CY	1285		1285	63	1348	\$7.70	\$485.10	
	134	Overseeding	SY	9905		9905	-9905	0	\$0.15	-\$1,485.75	
	135	Weed Control Type B	SY	9905		9905	-9905	0	\$0.07	-\$693.35	
	136	Inspection Trench	CY	575		575	894	1469	\$10.30	\$9,208.20	
	Phase 2 Flood Control Sub Total										-\$16,956.70

Summary.

Source Of Funding	Infrastructure Sales Tax Fund 460
Net Amount Change Order # 7 (\$)	-\$90,562.95
Previous Change Orders (\$)	\$177,626.81
Original Contract Amount (\$)	\$4,136,938.70
Total Contract Amount (\$)	\$4,224,002.56

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

APPROVED

For Contractor

Title


 Industrial Builders, Inc.
 Vice President Estimating

APPROVED DATE

Department Head

Mayor

Attest





Dean Hulse

5-4-23

JASON,

The seventeen signatures on this petition represent about 65% of the residents living in the Silver Pointe development.

If you have questions, feel free to call me at 701-639-7518 (a landline; no texts).

Dean Hulse

- both sides no days mentioned



Native American Rights Fund

J6556

Traffic Technical Advisory Committee
City of Fargo, North Dakota

We, the undersigned, do hereby certify that we reside, own property, or work at the address described below following each name subscribed hereto. This petition represents residents, property owners, or employees from both sides of the street(s) that will be affected by this request.

We respectfully petition the Traffic Technical Advisory Committee to take such action as may be required to implement the following parking or traffic operational improvement:

Install street signs featuring the no-parking symbol and stating "Nov 1 to Apr 15; 1 AM to 7 AM" to be positioned throughout the development based on discretion of City personnel.

Submitted by: Darrell Dean Hulse

Address: 3246 10th St. N.

Telephone No.: 701-639-7518 (landline; no texts)

Signature	Address	Resident/Owner/Work
<u>Darrell Dean Hulse</u>	<u>3246 10th St. N.</u>	<u>owner</u>
<u>Lisa Leabo</u>	<u>3247 10th St. N</u>	<u>owner</u>
<u>[Signature]</u>	<u>3270 10th St N</u>	<u>OWNER</u>
<u>Pat Jacobson</u>	<u>3210 10th St. N</u>	<u>owner</u>
<u>Daniel M. Probi</u>	<u>3241 10th St. N</u>	<u>Owner</u>
<u>[Signature]</u>	<u>3276 10th St. N</u>	<u>Owner</u>
<u>Michael O'Connell</u>	<u>3282 10th St. N</u>	<u>owner</u>
<u>Mary Anderson</u>	<u>3271 10th St. N</u>	<u>owner</u>
<u>[Signature]</u>	<u>3263 10th St. W.</u>	<u>owner</u>
<u>Dale Herman</u>	<u>3205 10th St. N.</u>	<u>owner</u>
<u>Jon Peterson</u>	<u>3204 10th St N</u>	<u>owner</u>
<u>Jane Weiss</u>	<u>3216 10th St N</u>	<u>owner</u>
<u>Thomas Beaker</u>	<u>3222 10th St N</u>	<u>owner</u>
<u>Nathaniel Nantz</u>	<u>3258 10th St N</u>	<u>owner</u>
<u>Mike Johnson</u>	<u>3279 10th St. N.</u>	<u>Owner</u>

January 29, 2024

To: Property owners of the 3200 Block of 10th Street N

From: Jeremy M. Gorden, PE, PTOE
Division Engineer - Transportation

Subject: Proposed On-Street Parking Modifications to 10th Street N

Upon request from a neighborhood representative showing support for parking modifications via a door to door petition, the City's Traffic Technical Advisory Committee has passed a motion to do two (2) modifications to the on-street parking on the 3200 block of 10th Street N.

The first modification will be to remove parking on the west side of the street completely, all hours of every day. This should have happened when the street was first built, as that was part of the Developer's Agreement. Please refer to Attachment A, and this change is highlighted in red on the map.

The second modification is to remove parking on the east side of the street every night from 1am - 7am in the winter months, November 1 to April 15. Please refer to Attachment A, and this change is highlighted in orange on the map.

I plan to bring this item to the City Commission meeting scheduled for Tuesday, February 20, for discussion and decision. I am requesting comments on the proposed plan. If you have comments on the proposed plan, please call me at 241-1545 or email me at jgorden@fargond.gov and I will make that part of my communication to the City Commission on February 20. The comment period will end on Tuesday, February 13, at 4:30pm.

Attachment

Attachment A



REPORT OF ACTION

110

CONSULTANT SELECTION COMMITTEE

Requesting: CONSULTING ENGINEERING SERVICES

Proposal Project No. SN-25-B0

Location: Red River from Park Lane to 15th Ave N.

Date of Hearing: 2/12/2024

Requested Services: Final Design Plans

<u>Routing</u>	<u>Date</u>
City Commission	<u>2/20/2024</u>
Consultant File	<u> </u>
Project File	<u> X </u>
Petitioners	<u> </u>
Selection Committee	<u> X </u>

Proposals were received from the following Consultants for this project:

- Houston Engineering
- WSB Engineering
- Lowry Engineering
- MBN Engineering
- Moore Engineering

The Selection Committee evaluated proposals based on the criteria outlined within the RFP:

<u>Selection Criteria</u>	<u>Points</u>
Understanding of Project Objectives	10
Project Team's Past Performance on Other Local Projects	25
Project Team's Experience with Similar Projects	25
Cost Proposal	10
Expertise of the Technical and Professional Staff assigned to Project	<u>30</u>
	100

This proposed project will evaluate and construct a new shared use path along the Red River from Park Lane to 15th Avenue North.

It is anticipated that this project will bid next spring, in hopes of constructing it in 2025.

Staff met on February 12, 2024, to review proposals submitted for the project and selected Houston Engineering Group as the preferred firm for the project. The total cost for this work is estimated to be \$140,065.

RECOMMENDED MOTION

Concur with the Consultant Selection Committee and recommend contract award for Consulting Services to Houston Engineering.

PROJECT FINANCING INFORMATION:

Following review of the proposals, the Selection Committee ranked the firms for selection of the preferred consultant. The Committee then tabulated Committee member proposal rankings. Based on the tabulated ranking, the Committee selected Houston Engineering as the preferred firm for the project, for a total of \$140,065.

COMMITTEE

- Tom Knakmuhs, City Engineer
- Nathan Boerboom, Assistant City Engineer
- Jeremy Gorden, Division Engineer - Transportation
- Jason Leonard, Division Engineer
- Eric Hodgson, Civil Engineer II

<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"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	



Tom Knakmuhs, P.E.
City Engineer



CONSULTANT SELECTION COMMITTEE

Requesting: CONSULTING ENGINEERING SERVICES

Proposal Project No. TR-26-A0

Location: 19th Ave N & University Drive; 45th Street & 23rd Ave S

Date of Hearing: 2/12/2024

Requested Services: Final Design Plans

<u>Routing</u>	<u>Date</u>	Proposals were received from the following Consultants for this project:
City Commission	<u>2/20/2024</u>	
Consultant File	<u> </u>	
Project File	<u> X </u>	Ackerman Engineering
Petitioners	<u> </u>	HDR Engineering
Selection Committee	<u> X </u>	KLJ Engineering
		SRF Engineering

The Selection Committee evaluated proposals based on the criteria outlined within the RFP:

<u>Selection Criteria</u>	<u>Points</u>
Understanding of Project Objectives	10
Project Team's Past Performance on Other Local Projects	25
Project Team's Experience with Similar Projects	25
Cost Proposal	10
Expertise of the Technical and Professional Staff assigned to Project	<u>30</u>
	100

This proposed project will evaluate and construct new offset left turn lanes, and fix deficient ADA ramps at 2 intersections.

It is anticipated that this project will bid in 2024 or 2025, in hopes of constructing it the following year.

Staff met on February 12, 2024, to review proposals submitted for the project and selected HDR Engineering Group as the preferred firm for the project. The total cost for this work is estimated to be \$86,831.20.

RECOMMENDED MOTION


Concur with the Consultant Selection Committee and recommend contract award for Consulting Services to HDR Engineering.

PROJECT FINANCING INFORMATION:

Following review of the proposals, the Selection Committee ranked the firms for selection of the preferred consultant. The Committee then tabulated Committee member proposal rankings. Based on the tabulated ranking, the Committee selected HDR Engineering as the preferred firm for the project, for a total of \$86,831.20.

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u> ✓ </u>
Tom Knakmuhs, City Engineer	<u> ✓ </u>	<u> ✓ </u>	<u> Γ </u>	
Nathan Boerboom, Assistant City Engineer	<u> ✓ </u>	<u> ✓ </u>	<u> Γ </u>	
Jeremy Gorden, Division Engineer - Transportation	<u> ✓ </u>	<u> ✓ </u>	<u> Γ </u>	
Jason Leonard, Division Engineer	<u> ✓ </u>	<u> ✓ </u>	<u> Γ </u>	
Eric Hodgson, Civil Engineer II	<u> ✓ </u>	<u> ✓ </u>	<u> Γ </u>	


 Tom Knakmuhs, P.E.
 City Engineer

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

12

Type: Pond Access & Maintenance Easements
And Sewer Line Crossing Agreement

Location: The Pines at The District Fourth Addn Date of Hearing: 2/12/2024

<u>Routing</u>	<u>Date</u>
City Commission	<u>2/20/2024</u>
PWPEC File	<u>X</u>
Project File	<u>Nathan Boerboom</u>

The Committee reviewed the accompanying correspondence from Assistant City Engineer, Nathan Boerboom, regarding a Pond Access and Maintenance Easement and Storm Sewer Line Crossing Agreement between the City and Gitty-Up, LLC.

The Pines at The District Fourth Addition includes an existing storm water pond located adjacent to 38th Street South and near 56th Avenue South. The storm water pond was constructed under the original District of Fargo Addition and is part of the City's storm water system. The pond is located within an existing easement dedicated to the City. However, the easement area is insufficient for providing access around the pond for maintenance activities. The Developer has agreed to grant a maintenance access easement for around the perimeter of the pond. The easement document covers the terms for the access, as well as, the long term pond maintenance responsibilities of Gitty-Up, LLC and the City. The document also includes an agreement to allow for a crossing of a private storm sewer line over an existing City owned line.

On a motion by Steve Sprague, seconded by Mike Redlinger, the Committee voted to recommend approval of the Pond Access and Maintenance Easement between the City and Gitty-Up, LLC.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Pond Access and Maintenance Easement between the City and Gitty-Up, LLC.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

COMMITTEE

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

ATTEST:



 Tom Knakmuhs, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Nathan Boerboom, Assistant City Engineer
Date: February 7, 2024
Re: Pond Access and Maintenance Easement and Storm Sewer Line Crossing Agreement
The Pines at The District Fourth Addition

The Pines at The District Fourth Addition includes an existing storm water pond located adjacent to 38th Street South and near 56th Avenue South. This storm water pond was constructed under the original District of Fargo Addition and is part of the City's storm water system. The pond is located within an existing easement dedicated to the City. However, the easement area is insufficient for providing access around the pond for maintenance activities. To address this issue, the Developer (Gitty-Up, LLC) has agreed to grant a maintenance access easement around the perimeter of the pond to the City. This easement document covers the terms for the access, as well as, the long term pond maintenance responsibilities of Gitty-Up, LLC and the City.

Highlights of the responsibilities for each party are:

- City of Fargo
 - Pond maintenance (sediment removal, bank sloughing repair, and erosion repair)
 - Maintenance of City owned storm sewer

- Gitty-Up, LLC
 - Grass mowing, weed control, and any tree trimming.
 - Maintenance of privately owned storm sewer outfalls to pond.
 - City has ability to assess property owners for costs of maintenance if they fail to properly maintain the privately owned storm sewer within the pond easement.
 - Maintenance and repair to any private amenities or improvements added to the pond or access easement areas.
 - Gitty-Up, LLC may not construct any amenities in these easement areas without agreement by the City.

In addition to the items previously mentioned, this document also includes an agreement to allow for a crossing of a private storm sewer line over an existing City owned storm sewer line (see attachment). This agreement states that the City will not be responsible for any costs incurred to this private storm sewer line as a result of any maintenance or replacement activities occurring to the City owned line.

The attached document provides a full description of all the easement and agreement terms.

Recommended Motion:

Approve the Pond Access and Maintenance Easement between the City and Gitty-Up, LLC.

**POND ACCESS AND MAINTENANCE EASEMENT
AND STORM SEWER LINE CROSSING AGREEMENT**

THIS POND ACCESS AND MAINTENANCE EASEMENT AND STORM SEWER LINE CROSSING AGREEMENT (the "Agreement") is made this 20th day of February, 2024, by and between Gitty-Up, LLC, a North Dakota limited liability company, 300 23rd Avenue East, Suite 300, West Fargo, ND 58078 ("Grantor" or "Gitty-Up") and the **City of Fargo**, a North Dakota municipal corporation, 225 4th Street North, Fargo, ND 58102 ("Grantee" or "City").

WHEREAS, Gitty-Up is the owner of certain real property legally described as Lot 1, Block 1, The Pines at The District Fourth Addition to the City of Fargo, Cass County, North Dakota (the "Burdened Property");

WHEREAS, Gitty-Up is also the owner of certain real property legally described as Lot 2, Block 1, The Pines at The District Fourth Addition to the City of Fargo, Cass County, North Dakota ("Lot 2");

WHEREAS, a stormwater retention pond presently exists on Southerly portion of the Burdened Property (the "Pond"), which is part of the City's overall storm sewer system; and

WHEREAS, Gitty-Up, as Grantor, agrees to re-create on the Burdened Property and grant to City an easement benefitting the City for the Pond that was originally dedicated pursuant to the plat of The District of Fargo Addition to the City of Fargo, Cass County, North Dakota, recorded in the office of the Cass County, North Dakota Recorder on October 1, 2007, as Doc. No. 1215551 (the "Pond Easement"); the Pond Easement is located in the Southeast corner of former Lot 1, Block 1 of The District of Fargo Addition to the City of Fargo, Cass County, North Dakota, in the area labeled "STORM SEWER EASEMENT" (the "Pond Easement Area") on such plat; the Pond Easement Area is also shown and labeled as "EXISTING STORM WATER DRAINAGE EASEMENT (DOC. NO. 1215551)" on the plat of The Pines at The District Fourth Addition to the City of Fargo, Cass County, North Dakota; and

WHEREAS, Gitty-Up, as Grantor, agrees to grant to the City, as Grantee, an additional permanent and perpetual access and maintenance easement on the Burdened Property around the portions of the Pond described and depicted in the attached **Exhibit A** (the "Access Easement Area"), allowing ingress and egress for the performance of maintenance, inspection, and repair of the Pond, as necessary.

WHEREAS, Gitty-Up or its successors of Lot 2 intend to run a storm sewer line under and across the Burdened Property (the "Lot 2 Line") and cross a portion of a storm sewer line operated by City and located within the Burdened Property (the "City Line"), such crossing in the general location shown on attached **Exhibit B** (the "Crossing Area"), and the parties wish to establish certain terms and conditions relating to such crossing.

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, the parties agree as follows:

1. **Pond Easement.** Grantor grants to Grantee a permanent non-exclusive easement over, under, upon and across the Pond Easement Area for the purposes of water retention and detention and for purposes of allowing City to perform all maintenance and repairs to the Pond permitted or required of it under this Agreement. The parties understand and agree that the primary use of the Pond is for storm water retention and detention, and such purpose shall not be impaired or impeded. Grantor agrees to ensure unimpeded access throughout the Pond Easement Area for whatever purpose deemed necessary by Grantee, including patrol, emergency access, and truck access, as necessary in the sole discretion of the City. Grantor shall not install any vehicle gates or other access controls throughout the Pond Easement Area without the prior and written consent of the Grantee.

2. **Access Easement.** Grantor grants to Grantee a permanent non-exclusive easement over, under, upon and across the Access Easement Area allowing access to the Pond for ingress and egress, and for purposes of maintenance, repairs, and construction, as necessary in the sole discretion of the Grantee. Grantor agrees to ensure unimpeded access through the Access Easement Area to the Pond for whatever purpose deemed necessary by Grantee, including patrol, emergency access, and truck access, as necessary in the sole discretion of the City. Grantor shall not install any vehicle gates or other access controls throughout the Access Easement Area without the prior and written consent of the Grantee.

3. **City Pond Maintenance.**

a. City shall be responsible only for major Pond maintenance, including but not limited to sediment removal, bank sloughing repair, erosion repair, and other maintenance deemed necessary by City for the continued functionality of the Pond as a regional retention/detention pond. The maintenance responsibilities of the City outlined herein are all at the sole discretion of the City.

b. City shall not be responsible for mowing or weed control. City shall not be responsible for erosion or bank sloughing it deems insignificant or unnecessary.

c. City shall promptly restore any areas affected by its maintenance to substantially the same condition as existed prior thereto.

4. **Grantor Maintenance.**

a. Grantor shall be responsible for the general, routine maintenance and upkeep of the Pond, Pond Easement Area and Access Easement Area, including but not limited to grass mowing, weed treatment, tree trimming, as well as maintenance and repair and snow and debris removal over any paved areas.

b. Grantor shall be solely responsible for the necessary repair and maintenance of any amenities and improvements added to the Pond, Pond Easement Area and Access Easement Area, if any. Grantor understands and agrees that it may not construct any amenities or permanent structures on the Pond Easement Area and Access Easement Area unless otherwise agreed to in writing signed by both Grantor and Grantee.

c. Grantor understands, warrants, and agrees that any work completed by it on the Pond Easement Area or the Access Easement Area shall not impact the City's storm sewer system or change the Pond's storm water retention capacity or level, without prior written consent of the City.

5. **Lot 2 Line Crossing.** Subject to the remainder of this Section, City hereby grants permission for the owner of Lot 2 to install the Lot 2 Line and cross the City Line in the Crossing Area. Prior to installing or at any time thereafter replacing the Lot 2 Line, the owner of Lot 2 shall: (a) provide City for its review detailed plans and specifications that demonstrate the Lot 2 Line will provide effective flow while not interfering with or compromising the City Line, which review shall not be unreasonably withheld or delayed; (b) obtain City's written authorization to install the Lot 2 Line in conformity with such plans and specifications. The owner of Lot 2 shall install, repair and maintain the Lot 2 Line, including the crossing, at its sole cost and expense, and shall do so in a manner that does not damage or alter the City Line. If City is required to maintain, repair or replace the City Line in the Crossing Area, and the cost of doing so is greater because of the presence of the Lot 2 Line, the owner of Lot 2 shall reimburse City for such increased costs within 30 days following written request for same.

6. **Easement Runs With the Property.** This Agreement, and all covenants, terms, conditions, provisions, and undertakings created hereunder, are perpetual and will run with the Burdened Property and Lot 2, and will be binding upon the heirs, transferees, successors, and assigns of Grantor.

7. **Grantor's Use of the Easement Property.** Grantor has the right and privilege to use the Pond Easement Area and the Access Easement Area at any time, in any manner, and for any purpose, subject to the terms and conditions contained herein. Grantor will not use, or permit use of, the Pond Easement Area or the Access Easement Area in any manner that disrupts or interferes with Grantee's rights and privileges arising hereunder. To the extent Grantor voluntarily improves or constructs (e.g., pavement, sidewalks, trails, parking lot) upon the Access Easement Area, Grantee shall not be responsible or liable for any damages to the improvement(s) while

Grantee is using the Access Easement Area or engaged in its maintenance obligations arising hereunder or by separate agreement; provided, however, Grantee shall restore improvements Grantee required Grantor to install in the Access Easement Area pursuant to an amenities plan. Grantee shall not be responsible or liable for restoring improvements Grantor is required to install in accordance with City ordinance, including but not limited to the Land Development Code (Chapter 20). Any improvements or construction within the Access Easement Area cannot obstruct the Grantee's ability to drive within the Access Easement Area or access the Pond.

8. **Private Connections to Pond.** Grantor and its successors shall be allowed to make a direct connection to the Pond for one or more storm sewer systems serving the Burdened Property and Lot 2. The owner of a parcel whose storm sewer system connects to the Pond shall be solely responsible for the maintenance, upkeep, and repair and all associated costs of the private storm sewer outfall and connection to the Pond associated with its parcel, which shall include but not be limited to pipe, related components, and rip-rap materials. Grantee shall use reasonable efforts to not cause damage to the direct connection(s) or outfall(s) while Grantee is using the Pond Easement Area or Access Easement Area or engaged in its maintenance obligations. In the event Grantee is required to remove or alter, or causes damage to, the connection(s) or outfall(s), Grantee shall not be responsible or liable for the costs to restore the connection(s) or the outfall(s) and shall have no obligation to restore the connection(s) or outfall(s). Except as provided in the foregoing sentence, Grantee shall have no obligation to perform any maintenance, upkeep or repair to private storm sewer systems, including their connections and outfalls to the Pond.

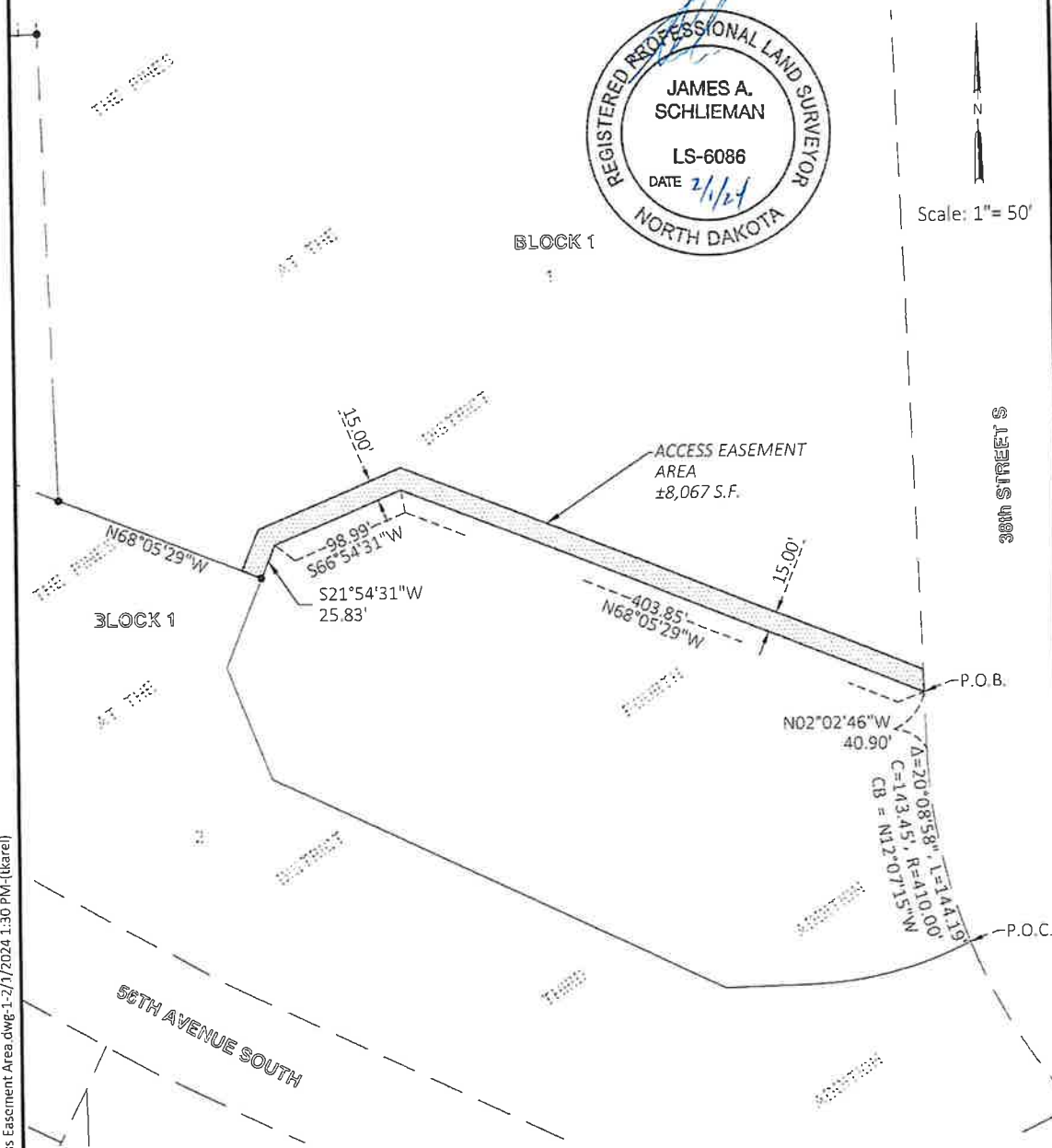
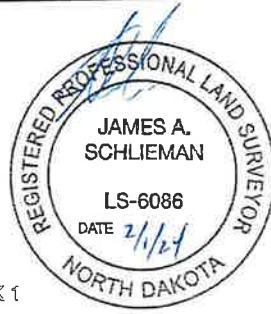
9. **Assessment.** Grantee shall have the right to direct a property owner whose private storm sewer system connects to the Pond to perform maintenance and repairs to such system if Grantee determines, in its reasonable discretion, that maintenance or repairs are necessary to prevent any impact to the City's storm sewer system or changes in the Pond's storm water retention capacity or level. If such owner fails to adequately perform the directed maintenance or repairs upon the private storm sewer system within a reasonable period of time as determined by the City, then the City shall have the right to complete the maintenance and repairs and all costs of the maintenance and repairs, including but not limited to construction costs, materials, and fees, shall be assessed to the owner for the entire amount. By expressly granting to the City the right to assess the costs directly to the Property for completion of the maintenance and repairs, the Grantor hereby waives its right to protest the assessment.

10. **Release.** Grantor will release, defend, indemnify, protect, and hold harmless Grantee and its agents, representatives, employees, consultants, and contractors from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, together with all other costs and expenses of any kind or nature suffered by or asserted against Grantee to the extent resulting from or arising out of Grantor's actions related to the Pond, Pond Easement Area, and Access Easement Area; and including any costs, expenses, and attorneys' fees incurred in establishing the indemnification provided herein; provided, however, the foregoing shall not apply or be operative to the extent resulting from or arising out of the negligence or willful misconduct of Grantee.

11. **Term.** This easement is permanent unless terminated by written agreement of the parties.
12. **Encumbrances.** Grantor will not encumber or incur any obligations that adversely affect the rights of City under this Agreement.
13. **Forbearance or Waiver.** The failure or delay of Grantee to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.
14. **Governing Law.** 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 North Dakota District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.
15. **Severability.** 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.
16. **Modifications.** Any modifications or amendments to this Agreement must be in writing and signed by Grantors and Grantee and must be recorded in the Cass County Recorder's Office.
17. **Representation.** The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this agreement, and agree they have not been influenced by any representations or statements made by any other parties. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this agreement.
18. **Headings.** Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.
19. **Time of the Essence.** Time is of the essence of each provision of this Agreement and of all the conditions thereof.
20. **Entire Agreement.** This Agreement constitutes the entire and complete agreement between the parties pertaining to the Pond, Pond Easement Area and Access Easement Area and supersedes any prior oral or written agreements between the parties. 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.

PART OF LOT 1, BLOCK 1
THE PINES AT THE DISTRICT FOURTH ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

OWNER: GITTY-UP, LLC



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IRON MONUMENT FOUND
MEASURED BEARING 559°27'46"E
MEASURED DISTANCE 105.00'
POND ACCESS & MAINTENANCE EASEMENT

NOTE: MEASURED BEARINGS SHOWN ARE BASED ON THE CITY OF FARGO GROUND COORDINATE SYSTEM, DECEMBER 1992.



EASEMENT EXHIBIT A

PROJECT NO. 7489-0117

PART OF LOT 1, BLOCK 1, THE PINES AT THE DISTRICT FOURTH ADDITION, CITY OF FARGO, CASS CO., ND

SHEET 1 OF 2

PART OF LOT 1, BLOCK 1
THE PINES AT THE DISTRICT FOURTH ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

OWNER: GITTY-UP, LLC

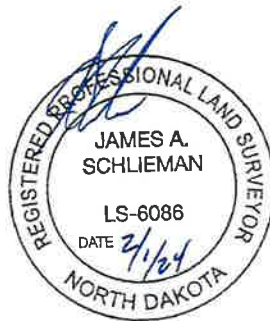
Description - Access Easement Area:

That part of Lot 1, Block 1, The Pines at the District Fourth Addition, to the City of Fargo, Cass County, North Dakota, described as follows:

A 15.00 foot wide strip, lying northerly and westerly of and being coincident with the following described line:

Commencing at the southeast corner of said Lot 1, said southeast corner being on a curve, concave to the northeast, having a radius of 410.00 feet; thence northerly, along the easterly line of said Lot 1 and along said curve, for a distance of 144.19 feet, through a central angle of 20°08'58", chord bearing of North 12°07'15" West; thence North 02°02'46" West, along the easterly line of said Lot 1, for a distance of 40.90 feet to the true point of beginning of the line to be described; thence North 68°05'29" West for a distance of 403.85 feet; thence South 66°54'31" West for a distance of 98.99 feet; thence South 21°54'31" West for a distance of 25.83 feet to the southwesterly line of said Lot 1, said line there terminating. Said strip shall be lengthened or shortened as necessary to intersect the easterly line of said Lot 1 on the east, and to intersect the southwesterly line of said Lot 1, which bears North 68°05'29" West from the point of termination, on the west.

Said tract contains 8,067 square feet, more or less.



EASEMENT EXHIBIT A

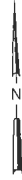
PROJECT NO. 7489-0117	PART OF LOT 1, BLOCK 1, THE PINES AT THE DISTRICT FOURTH ADDITION, CITY OF FARGO, CASS CO., ND	SHEET 2 OF 2
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PART OF LOT 1, BLOCK 1
THE PINES AT THE DISTRICT FOURTH ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

OWNER: GITTY-UP, LLC

53RD AVENUE SOUTH



Scale: 1" = 20'



S01°56'11"E
224.00'

EXISTING 20.00' STORM
SEWER EASEMENT
(DOC. NO. 1215551)

BLOCK 1

10.00'
CROSSING AREA
±200 S.F.
20.00'
N88°03'49"E
20.00'

H:\BNV\400\7489\7489_0117\CAD\Easement\7489-0117 Crossing Area.dwg-1-27-2024 1:34 PM-(tkarel)

IRON MONUMENT FOUND
MEASURED BEARING
MEASURED DISTANCE
STORM SEWER
EASEMENT

S59°27'46"E
105.00'

NOTE: MEASURED BEARINGS
SHOWN ARE BASED ON THE CITY
OF FARGO GROUND COORDINATE
SYSTEM, DECEMBER 1992.



EASEMENT EXHIBIT B

PROJECT NO.
7489-0117

PART OF LOT 1, BLOCK 1, THE PINES AT THE DISTRICT
FOURTH ADDITION, CITY OF FARGO, CASS CO., ND

SHEET
1 OF 2

PART OF LOT 1, BLOCK 1
THE PINES AT THE DISTRICT FOURTH ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

OWNER: GITTY-UP, LLC

Description - Crossing Area:

That part of Lot 1, Block 1, The Pines at the District Fourth Addition, to the City of Fargo, Cass County, North Dakota, described as follows:

A 10.00 foot wide strip, lying northerly of and being coincident with the following described line:

Commencing at the northwest corner of said Lot 1; thence South 01°56'11" East, along the westerly line of said Lot 1, for a distance of 224.00 feet to the true point of beginning of the line to be described; thence North 88°03'49" East for a distance of 20.00 feet to a point of intersection with the easterly line of the West 20.00 feet of said Lot 1, said line there terminating.

Said tract contains 200 square feet, more or less.



EASEMENT EXHIBIT B

PROJECT NO.
7489-0117

PART OF LOT 1, BLOCK 1, THE PINES AT THE DISTRICT
FOURTH ADDITION, CITY OF FARGO, CASS CO., ND

SHEET
2 OF 2

H:\JBN\7400\7489\7489_0117\CAD\Easement\7489-0117 Crossing Area.dwg-2-2-24 1:34 PM-(tkarel)



CLIENT:

ENCLAVE
Kyle McCamy, PE
300 23rd Ave E, Suite 300,
West Fargo, ND 58078
D 701.997.7550
O 701.478.8300
C 701.271.9214

PROJECT:

GITTY UP
DEVELOPMENT SKETCH

LOCATION:

PRELIMINARY
SKETCH

THIS SET OF DRAWINGS IS PRELIMINARY AND NOT TO BE CONSIDERED A CONTRACT DOCUMENT. IT IS SUBJECT TO CHANGE WITHOUT NOTICE AND WITHOUT LIABILITY TO THE ENGINEER. THE ENGINEER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED BY HIMSELF OR HIS FIRM.



OLDSTYLUS
Cocoa, FL 32926
(218) 234-9067

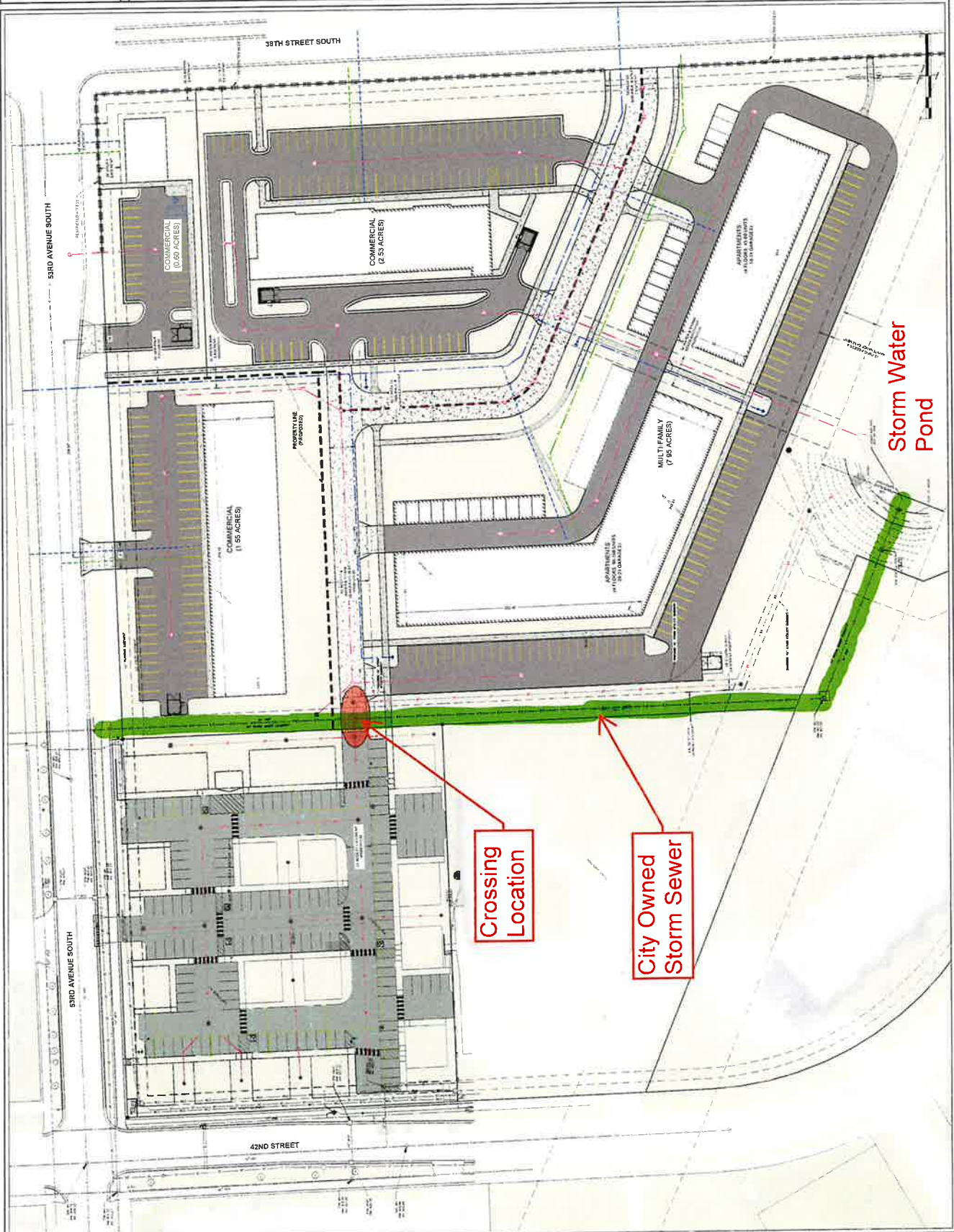
NO.	DESCRIPTION	DATE
1	OPTION F	01/11/2024

JOB NUMBER	DRAWING BY	DATE
	G. BOSS	2024.01.11

OPTION F

SHEET TITLE
C11U

SHEET NUMBER



Crossing Location

City Owned Storm Sewer

Storm Water Pond

COVER SHEET
CITY OF FARGO PROJECTS

13

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

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

Pavement Markings

Project No.	<u>TM-24-A</u>		
Call For Bids	<u>February 20</u>	<u>,</u>	<u>2024</u>
Advertise Dates	<u>February 28, March 6 & 13</u>	<u>,</u>	<u>2024</u>
Bid Opening Date	<u>March 27</u>	<u>,</u>	<u>2024</u>
Substantial Completion Date	<u>September 2</u>	<u>,</u>	<u>2024</u>
Final Completion Date	<u>October 2</u>	<u>,</u>	<u>2024</u>

- N/A PWPEC Report (Part of 2024 CIP)
- X Engineer's Report (Attach Copy)
- X Direct City Auditor to Advertise for Bids
- X Bid Quantities (Attach Copy for Auditor's Office Only)
- N/A Notice to Property Owners (Dan Eberhardt)
- N/A Supplemental Funding Language Included

Project Engineer Kevin Morlan
Phone No. (701) 241-1545

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

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



**ENGINEER'S REPORT
PAVEMENT MARKINGS
PROJECT NO. TM-24-A
VARIOUS LOCATIONS CITYWIDE**

Nature & Scope

This project calls for new pavement markings at various locations citywide where the existing pavement markings have faded or portions are missing.

Purpose

The purpose of the project is to install new pavement markings for safer road condition, for both motorists and pedestrians alike.

Feasibility

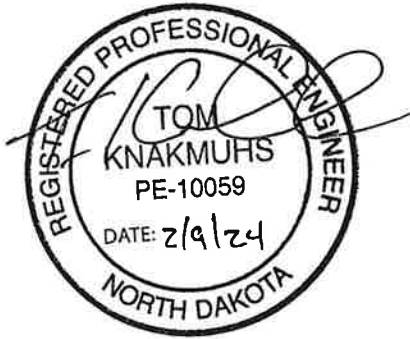
The estimated cost of construction is \$926,937.10. The cost breakdown is as follows:


Base Bid			
Construction Cost			\$926,937.10
Fees			
Admin	4%		\$37,077.48
Contingency	5%		\$46,346.86
Engineering	10%		\$92,693.71
Interest	4%		\$37,077.48
Legal	3%		\$27,808.11
Total Estimated Cost			\$1,167,940.74
Funding			
Utility Funds - Street Lights - 528	100.00%		\$1,167,940.74

Project Funding Summary			
Utility Funds - Street Lights - 528	100.00%		\$1,167,940.74
Total Estimated Project Cost			\$1,167,940.74

This project does not have any alternate or optional containers.

We believe this project to be cost effective.




Thomas Knakmuhs, PE
City Engineer

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

14

Improvement District No.: BR-23-G1
NDDOT Project No.: TMA-SU-8-984(169) PCN 22925

Type: Cost Participation and Maintenance Agreement

Location: 32nd Ave S (22nd St – 15 St)

Date of Hearing: 2/12/2024

<u>Routing</u>	<u>Date</u>
City Commission	<u>2/20/2024</u>
PWPEC File	<u>X</u>
Project File	<u>Eric Hodgson</u>

The Committee reviewed the accompanying correspondence from Civil Engineer, Eric Hodgson, regarding a Cost Participation and Maintenance Agreements (CPM) with NDDOT for 32nd Avenue South Reconstruction.

The estimated construction cost breakout is as follows:

Estimated Project Cost:	\$18,775,132.00
Federal Share:	\$ 9,747,756.00
City Share:	\$ 9,027,376.00

Staff is recommending approval of the CPM Agreement.

On a motion by Mike Redlinger, seconded by Ben Dow, the Committee voted to recommend approval of the CPM Agreement with the NDDOT.

RECOMMENDED MOTION

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

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Federal, Sales Tax, Utility Funds & Special Assessments


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

COMMITTEE

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

ATTEST:

C: Kristi Olson


 Tom Knakmuhs, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Eric Hodgson, Civil Engineer II
Date: February 12th, 2024
Re: Improvement District No. BR-23-G1 CPM Agreement with NDDOT
32nd Avenue South Reconstruction (22nd Street South to 15th Street South)

Background:

Attached is the CPM Agreement between the City of Fargo and NDDOT.

This project is currently scheduled for a bid opening of March 15, 2024 with a substantial completion date of October 14, 2024 and a final completion date of November 1, 2024. The project's estimated construction cost is nearly \$18,775,132, with \$9,747,756 in Federal funding, and the rest to be paid by the City.

Recommended Motion:

Approve the attached CPM Agreement with NDDOT for Improvement District BR-23-G1.

Attachments:
- CPM Agreement

MEMO TO: Chad Orn
Deputy Director for Planning

FROM: Marohl, Sengaroun H., 328-4449
Local Government Division

DATE: 01/11/2024

SUBJECT: Cost Participation, Construction and Maintenance Agreement for Project
TMA-SU-8-984(169) PCN 22925

This contract is a Cost Participation, Construction and Maintenance (CPM) agreement with City of Fargo on 32ND Ave S (22nd St S-15th St S) project.

Contract # 38240029

- The type of work is Grading, Salvaged Base, PCC Pavement, Storm Sewer, Watermain, Traffic Signal, Lighting, Shared Use Path
- The TMA Federal Funds for this project is limited to \$ 9,747,756.
- Any costs over the above limited amount will be City responsibility.

- No one time changes on the standard agreement template.

38/sm

Contract routing:
Seng Marohl - Contract Owner
Stacey Hanson
Paul Benning
Shannon Sauer
Jeremy Gorden - Transportation Division Engineer
City of Fargo Officials
Seng Marohl
Legal
Chad Orn
Stacey Hanson

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

Federal Award Information – to be provided by NDDOT

Assistance Listing No: 20.205

Assistance Listing Title: Highway Planning & Construction

Award Name: Federal Aid Highway Program

Awarding Fed. Agency: Federal Highway Admin

NDDOT Program Mgr: Marohl, Sengaroun

Telephone: 701-328-4449

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

For NDDOT use only.

FHWA Authorization date:

Project No. TMA-SU-8-984(169) PCN: 22925

LPA: CITY OF FARGO

Location: FARGO 32ND AVE FROM 22ND ST S TO 15TH ST S

**Type of Improvement: GRADING, SALVAGED BASE, PCC PAVEMENT, STORM SEWER,
WATERMAIN, TRAFFIC SIGNAL, LIGHTING, SHARED USE PATH**

Length: 0.66 MILE

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

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

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

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

Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project cost up to a maximum of \$9,747,756. The balance of the project is the obligation of the LPA.

Additional Funding Clause

None.

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



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

PART I

LPA Obligation:

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

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

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

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

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



PART II

Contracting and Construction:

1. On behalf of the LPA, NDDOT will:
 - a. Prepare the bid package, solicit proposals, and include the project in a scheduled bid opening as provided in the North Dakota Century Code, Chapter 24-02.
 - b. Evaluate the bids as to the sufficiency of Disadvantaged Business Enterprise (DBE) participation and the bidder's good faith efforts in satisfying the requirements of the current edition of the DBE special provision, and 49 CFR Part 26. NDDOT shall have exclusive authority in evaluating the adequacy of DBE participation.
 - c. Tabulate the bids and send to the LPA.
 - d. Concur in the award of the contract, after the LPA has executed the contract, for the sole purpose of enabling the LPA to procure federal aid for the construction of the project.

2. The LPA will:
 - a. Review bids to determine the lowest responsible bidder.
 - b. Execute the contract.
 - c. Distribute copies of the executed contract and contract bond to NDDOT.

3. During the construction of the project, the LPA will:
 - a. Provide engineering services, material testing, and inspection of the work as required by the contract documents and the current editions of NDDOT's *Sampling and Testing Manual* and the *Standard Specifications for Road and Bridge Construction*.
 - b. Keep all project records and documentation as required in NDDOT's current editions of the *Construction Records Manual* and the *Construction Automated Records System*.
 - c. Make all records available to NDDOT and FHWA for inspection upon request. The LPA will submit all documents and records to NDDOT for review before final payment is made. NDDOT will maintain the project records for three years from the final voucher date of FHWA and then return them to the LPA.
 - d. Be responsible for any changes in plan, character of work, quantities, site conditions, or any claim for extra compensation. NDDOT will review all contract adjustments to determine if the adjustments are eligible for federal aid. Federal aid shall be limited to the amount stated on page one of this agreement.

PART III

Post Construction:

After the project is completed the LPA agrees to:

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



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

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

PART IV

General:

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

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

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



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

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

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



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

APPROVED:

LPA/STATES ATTORNEY (TYPE OR PRINT)

SIGNATURE

DATE

LPA of City of Fargo

*

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

SIGNATURE

* Mayor

TITLE

DATE

ATTEST:

Steve Sprague
AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

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

APPROVED as to substance:

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

Paul Benning
SIGNATURE

01/11/24
DATE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE *SS*

DATE

*Mayor, President or Chairperson of Commission

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



CERTIFICATION OF LOCAL MATCH

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

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

Source:

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

ATTEST:

APPROVED:

Steve Sprague
AUDITOR (TYPE OR PRINT)

LPA of City of Fargo

SIGNATURE

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

DATE

SIGNATURE

* Mayor
TITLE

DATE

*Mayor, President or Chairperson of Commission

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



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

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

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



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

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

Pertinent Non-Discrimination Authorities:

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



Risk Management Appendix

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

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

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

Governments – State and Government Entity, as defined above

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

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

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$406,250 per person and \$1,625,000 per occurrence**. The minimum limits of liability required of the State are **\$406,250 per person and \$1,625,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

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

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

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

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

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

RM Consulted 2007
Revised 11-23

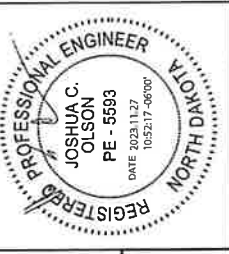
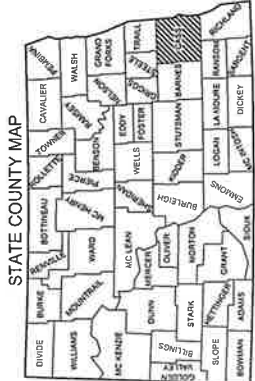
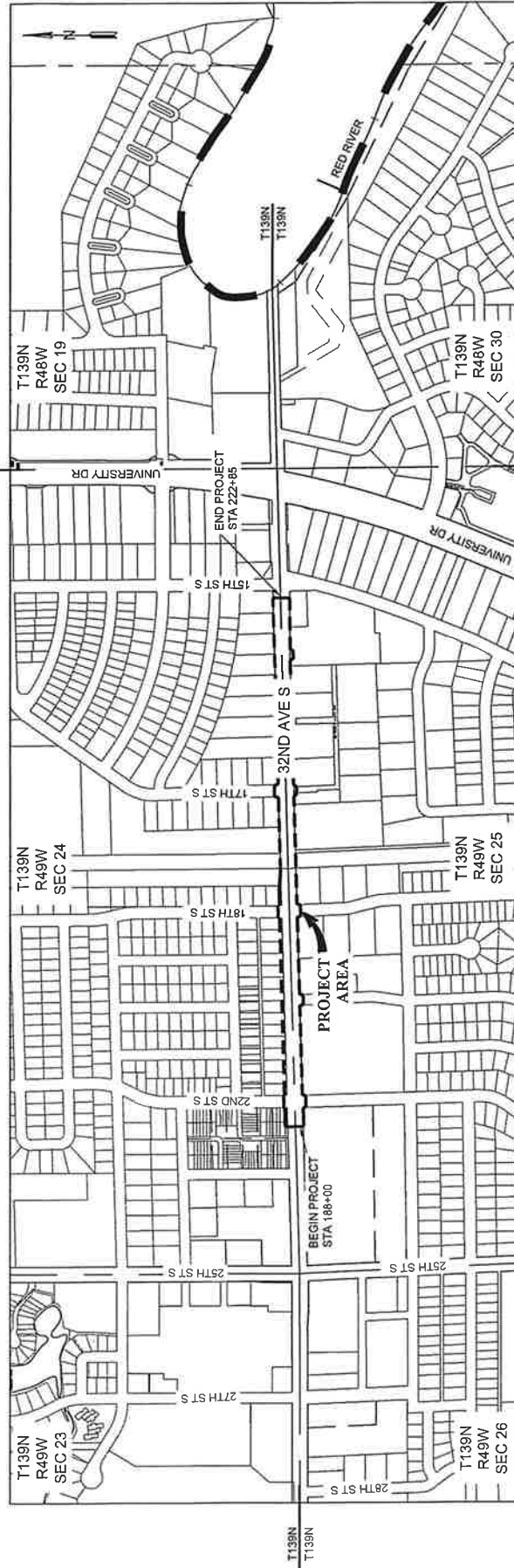


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DESIGN DATA		Apex Engineering Group		STATE	PROJECT NO.	PCN	SECTION NO.	SHEET NO.
TRAFFIC: 22ND ST S TO RED RIVER				ND	TMA-SU-8-984(169)	22925	1	81
CURRENT 2021	PASS: 11,685 TRUCKS: 220 TOTAL: 11,905							
FORECAST 2045	PASS: 14,080 TRUCKS: 265 TOTAL: 14,345							
CLEAR ZONE DISTANCE: 16'	DESIGN SPEED: 35 MPH							
MINIMUM SIGHT DIST. FOR STOPPING: 250'	BRIDGES: N/A							
SIGHT DIST. FOR NO PASSING ZONE: N/A	PAVEMENT DESIGN LIFE: 30 (YEARS)							
DESIGN ACCUMULATED ONE-WAY FLEXIBLE ESALS: N/A								

PCN #22925
CITY OF FARGO, NORTH DAKOTA
 ND PROJECT NO. TMA-SU-8-984(169)
 CITY OF FARGO IMPROVEMENT DISTRICT NO. BR-23-G1
 CASS COUNTY
 32ND AVENUE SOUTH
 22ND ST S TO 15TH ST S
 GRADING, SALVAGED BASE, PCC PAVEMENT, STORM SEWER, WATERMAIN, TRAFFIC SIGNAL, LIGHTING, SHARED USE PATH

GOVERNING SPECIFICATIONS	Date Published and Adopted Department of Transportation
Standard Specifications	04/01/2023
Supplemental Specifications	NONE
PROJECT NUMBER / DESCRIPTION	NET MILES GROSS MILES
TMA-SU-8-984(169) RECONSTRUCTION	0.660 0.660



CITY OF FARGO
 CITY ENGINEER
Flax
 Digitally signed by Tom
 Kneimuhs
 Date: 2023.11.21
 121345-0600

DESIGNER	Dallon Dryburgh
DESIGNER	Mike Johnson
DESIGNER	Chelsea Nible
DESIGNER	Travis Radtke
DESIGNER	Wes Gullicks
DESIGNER	Brent Muscha

Certificate Of Completion

Envelope Id: D17AAFF62FD64DFC833489E92CADCE88 Status: Sent
 Subject: Contract #38240029: Please DocuSign: CPM Agreement for Fargo 32nd Ave (22nd St-15th St)
 Contract Number: 38240029
 PCN: 22925
 Source Envelope:
 Document Pages: 12 Signatures: 2 Envelope Originator:
 Certificate Pages: 4 Initials: 4 Sengaroun Marohl
 AutoNav: Enabled 608 E Boulevard Ave
 EnvelopeId Stamping: Enabled Bismarck, ND 58505
 Time Zone: (UTC-06:00) Central Time (US & Canada) smarohl@nd.gov
IP Address: 165.234.92.5

Record Tracking

Status: Original Holder: Sengaroun Marohl Location: DocuSign
 1/11/2024 4:39:27 PM smarohl@nd.gov
 Security Appliance Status: Connected Pool: StateLocal
 Storage Appliance Status: Connected Pool: Carahsoft OBO North Dakota Department of Location: DocuSign
Transportation CLOUD

Signer Events

Stacey Hanson
 smhanson@nd.gov
 Assistant Local Government Engineer
 Carahsoft OBO North Dakota Department of
 Transportation CLOUD
 Security Level: Email, Account Authentication
 (None), Authentication

Signature

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

Timestamp

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 Viewed: 1/11/2024 4:50:16 PM
 Signed: 1/11/2024 4:51:20 PM

Authentication Details

SMS Auth:
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 Result: passed
 Vendor ID: TeleSign
 Type: SMSAuth
 Performed: 1/11/2024 4:50:10 PM
 Phone: +1 701-527-8879

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

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

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

Sent: 1/11/2024 4:51:25 PM
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 Signed: 1/11/2024 4:58:12 PM

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 Vendor ID: TeleSign
 Type: SMSAuth
 Performed: 1/11/2024 4:56:20 PM
 Phone: +1 701-214-2502

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Signer Events

Signature

Timestamp

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

SS

Sent: 1/11/2024 4:58:19 PM
Viewed: 1/16/2024 7:53:57 AM
Signed: 1/16/2024 7:54:10 AM

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

Authentication Details

SMS Auth:
Transaction: 5208d176-078a-4886-9861-52dfbbad1882
Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 1/16/2024 7:53:44 AM
Phone: +1 701-426-9825

SMS Auth:
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Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 1/17/2024 8:38:08 AM
Phone: +1 701-426-9825

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Tom Knakmuhs
tknakmuhs@fargond.gov
City Engineer
Security Level: Email, Account Authentication
(None)

Sent: 1/16/2024 8:56:28 AM
Viewed: 1/16/2024 2:12:27 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Nancy Morris
nmorris@serklandlaw.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Steve Sprague
ssprague@fargond.gov
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Timothy J. Mahoney
tmahoney@fargond.gov
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sengaroun Marohl
smarohl@nd.gov
Security Level: Email, Account Authentication
(None), Authentication

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Signer Events	Signature	Timestamp
Clint Morgenstern cdmorgenstern@nd.gov Security Level: Email, Account Authentication (None), Authentication Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Chad Orn corn@nd.gov Security Level: Email, Account Authentication (None), Authentication Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Stacey Hanson smhanson@nd.gov Security Level: Email, Account Authentication (None), Authentication Electronic Record and Signature Disclosure: Not Offered via DocuSign		

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
Sengaroun Marohl smarohl@nd.gov Carahsoft OBO North Dakota Department of Transportation CLOUD Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div style="border: 1px solid black; padding: 5px; text-align: center; font-weight: bold;">VIEWED</div> Using IP Address: 165.234.252.245	Sent: 1/11/2024 4:39:41 PM Viewed: 1/11/2024 4:42:43 PM Completed: 1/11/2024 4:49:27 PM

Agent Delivery Events	Status	Timestamp
Jeremy Gorden JGorden@FargoND.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div style="border: 1px solid black; padding: 5px; text-align: center; font-weight: bold;">VIEWED</div> Using IP Address: 165.234.250.1	Sent: 1/16/2024 7:54:16 AM Viewed: 1/16/2024 8:50:54 AM Completed: 1/16/2024 8:56:28 AM

Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Legal Admin dotlegaladmin@nd.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Legal Admin dotlegaladmin@nd.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure:		

Carbon Copy Events	Status	Timestamp
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Not Offered via DocuSign

A Murra
 amurra@nd.gov
 Security Level: Email, Account Authentication
 (None)
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Aaron Murra
 amurra@nd.gov
 Security Level: Email, Account Authentication
 (None)
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Updated	Security Checked	1/16/2024 8:56:28 AM
Envelope Updated	Security Checked	1/16/2024 8:56:28 AM

Payment Events	Status	Timestamps
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15

February 14, 2024

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

Re: Memorandum of Understanding & Easements
Improvement District #NR-24-A1

Dear Commissioners:

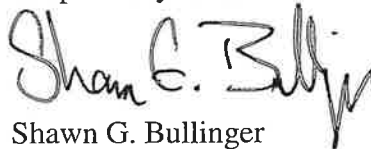
Accompanying for City Commission review and approval is a Memorandum of Understanding, (2) Permanent Easements & a Temporary Construction Easement with the **Lantern Light LLC** in association with Improvement District #NR-24-A1.

RECOMMENDED MOTION:

Approve Memorandum of Understanding, (2) Permanent Easements & a Temporary Construction Easement with the **Lantern Light LLC**.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Nathan Boerboom
Kasey McNary

PWPEC ROA
NR-24-A1 MOU – Lantern Light, LLC
01/29/2024 -- Page 2

ATTEST:

C: Kristi Olson

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

Nathan Boerboom, P.E.
Assistant City Engineer

Memorandum

To: Members of PWPEC
From: Nathan Boerboom, Assistant City Engineer
Date: January 26, 2024
Re: Memorandum of Understanding with Lantern Light, LLC
COF Project #NR-24-A1 – STS Lift Station #27 Reconstruction

Over the past year, staff has been developing a project for the reconstruction of storm sewer lift station #27, which is located at 32nd Avenue South and the Red River. In addition to the reconstruction of the lift station, this project includes the construction of a new storm sewer outfall to the river and a levee extension to the north of 32nd Avenue South. This outfall and levee extension is located on property owned by Lantern Light, LLC. Through discussions with Lantern Light, they are willing to grant the City the necessary permanent and temporary easements for the project at no cost to the City in return for the following considerations, which will be part of the overall construction project:

- Salvaging the Sisters of Presentation monument/sign and statue and deliver both to Shanley High School;
- Reconstruction of their south parking lot, which will be impacted by the lift station construction;
- Removal of an existing gazebo structure located within the footprint of the levee.

In addition to the previous mentioned items, the attached memorandum of understanding (MOU) includes a proposed land exchange with Lantern Light. This land exchange is located at 3000 11th Street South, which the City is in the process of purchasing for a future flood mitigation project. Along the western edge of this property is an existing row of parking that would not be impacted by the future flood mitigation project nor is necessary for the long term use of the City. The land exchange being proposed is to deed this parking area to Lantern Light since they are also in the process of purchasing the adjacent property to the west of this row of parking. This land exchange would only take place if both parties are successful in acquiring the two properties. Please note that the square footage of land that would be transferred is also less than the total easement area Lantern Light has agreed to grant to the City.

Recommended Motion:

Approve the attached Memorandum of Understanding and permanent and temporary easements with Lantern Light, LLC.

MEMORANDUM OF UNDERSTANDING
FOR EASEMENTS AND REMOVAL OF FIXTURES

This Memorandum of Understanding ("MOU" or "Agreement") is entered into between the City of Fargo, whose address is 225 4th Street North, Fargo, North Dakota 58102 ("Fargo"), YWCA Cass Clay ("YWCA"), a North Dakota nonprofit corporation, whose address is 4650 38th Avenue South, Suite 110, Fargo, North Dakota 58104, and the Lantern Light, LLC, a North Dakota limited liability company, whose address is 4650 38th Avenue South, Suite 110, Fargo, North Dakota 58104 (the "Lantern Light").

WHEREAS, North Dakota Century Code § 40-05.1-6 and Article 3 of Fargo's Home Rule Charter authorizes Fargo to enter into contracts; and

WHEREAS, YWCA and Lantern Light are affiliated entities; and

WHEREAS, Fargo is planning to construct a storm sewer lift station and related appurtenances near the area of 1001 and 1101 32nd Avenue South; and

WHEREAS, Lantern Light owns and operates a housing development located at 1001 and 1101 32nd Avenue South.

WHEREAS, Fargo has a need to obtain a temporary construction easement to assemble and store construction materials and perform limited excavation upon a portion of the property owned by Lantern Light during construction of the storm sewer lift station; and

WHEREAS, Fargo has a need to obtain easements to allow for storm sewer utilities, including a lift station, a levee, and future maintenance, as well as future installation and maintenance of other public utilities; and

WHEREAS, Lantern Light desires to connect its private sump pump lines to the City's storm sewer, which will be installed at the time of construction of the storm sewer lift station, and to have certain fixtures relocated from its property; and

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

1. Easements.

1.0 Lantern Light hereby agrees to grant unto Fargo a temporary construction easement effective until December 1, 2025, or a later date as mutually agreed by the parties, allowing Fargo to assemble and store construction related materials upon a portion of the Lantern Light property located at 1101 32nd Avenue South, during construction of the lift station. The temporary easement area is more particularly described in Exhibit A attached hereto.

1.1 Lantern Light also hereby agrees that it will grant unto Fargo a permanent storm sewer and utility easement for construction and future maintenance. The area of the storm sewer and utility easement is more particularly described in Exhibit B attached hereto.

1.3 Lantern Light also hereby agrees that it will grant unto Fargo a permanent levee easement allowing for a partial berm/levee to be located on Lantern Light property. The permanent levee easement is more particularly described in Exhibit C attached hereto.

2. Restoration of Parking Surface. At the conclusion of construction of the storm sewer lift station, Fargo hereby agrees to repave the parking surface located within the temporary easement area. Fargo will repave the portion of the parking surface within the temporary easement area as soon as reasonably practicable after completion of construction of the storm sewer lift station but agrees to complete the repaving by not later than December 1, 2025. After completion of the repaving work by Fargo, Lantern Light shall be responsible for all future operations and maintenance of the parking surface, including all snow removal.

3. Construction. Fargo shall be solely responsible for the construction and future maintenance of the storm sewer, levee, and related utilities and appurtenances.

4. Removal of Fixtures. Fargo hereby agrees to remove, at a mutually agreeable time, the monument/sign and statue fixtures located upon the Lantern Light property and relocate the monument/sign and statue to Shanley High School located at 5600 25th Street South in Fargo. Fargo shall use best efforts to ensure that the monument/sign and statue are not damaged during removal and relocation provided, however, that Fargo shall not be liable to reimburse Lantern Light or replace the monument/sign or statute if either is damaged during the removal and replacement process.

Fargo hereby agrees to also remove a gazebo structure located on the east side of the Lantern Light property and replace the gazebo structure with a concrete patio area. The concrete patio area shall be confined to the same surface dimensions as the gazebo structure. Fargo will also reconstruct any sidewalk that is damaged or removed during construction and restore it to the same size and location. After completion of the concrete patio and replacement of the sidewalk, Lantern Light shall be responsible for all future operations and maintenance of the concrete patio and sidewalk, including all snow removal.

5. Connection of Sump Lines. During Fargo's construction and installation of the storm sewer and related appurtenances, Fargo's contractor will connect Lantern Light's private sump pump discharge lines to Fargo's storm sewer main. Lantern Light will be the owner of the sump pump discharge lines from the point of origin to the storm sewer main. Lantern Light shall be responsible for all maintenance, repairs, replacements, and upkeep of its sump pump discharge lines. Lantern Light also agrees to abide by all Fargo requirements for allowing discharge of sump pumps into the storm sewer.

6. Land Exchange. Fargo is considering acquisition of real property located at 3000 11th Street South. The real property consists of a building with a parking area to the west of the building adjacent to an access road (the "West Parking Area"), and parking to the south of the

building. YWCA/Lantern Light is considering acquisition of real property located immediately to the west at 3003 11th Street South. The parties hereto hereby agree that if YWCA and/or Lantern Light acquire the property located at 3003 11th Street South and Fargo acquires the property located at 3000 11th Street South, then Fargo will quit claim deed the West Parking Area to the either YWCA or Lantern Light, whichever entity acquires the property at 3003 11th Street South, in exchange for Lantern Light granting unto Fargo the easement described herein. The conveyance would occur at a time and in a manner mutually agreed to by the parties at a future date.

7. Release and Waiver. To the extent allowed by law, Fargo shall hold Lantern Light and its agents, employees, and designees, harmless as a result of any injury, death, and property damage or loss arising as a result of Fargo's use of the Lantern Light parking surface for storage of construction materials.

8. Notice. Any notice or election required or permitted to be given or served by any party to this MOU upon any other will be deemed given or served in accordance with the provisions of this MOU if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Fargo:

City of Fargo
ATTN: City Auditor
Fargo City Hall
225 Fourth Street North
Fargo, ND 58102

If to the Lantern Light, LLC:

Lantern Light, LLC
ATTN: Erin Prochnow
4650 38th Avenue South, Suite 110
Fargo, ND 58104

If to the YWCA Cass Clay:

YWCA Cass Clay
ATTN: Erin Prochnow
4650 38th Avenue South, Suite 110
Fargo, ND 58104

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this MOU.

9. Time is of the Essence. Time is of the essence of each provision of this MOU and of all the conditions thereof.

10. Entire Agreement. This MOU constitutes the entire and complete agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements between the parties. 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 MOU and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties. It does not negate the parties' rights, duties and obligations under prior agreements related to the shared use path construction and operation, maintenance, and flood control system.

11. Amendments. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

12. No Forbearance. The failure or delay of any party to insist on the performance of any of the terms of this MOU, or the waiver of any breach of any of the terms of this MOU, 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 MOU, or the right to enforce each and every term of this MOU.

13. Remedies. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this MOU.

12. Binding Effect. All covenants, agreements, warranties and provisions of this MOU will be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns.

13. Governing Law. This MOU has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation. Any litigation arising out of this MOU will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

14. Rules of Construction. The parties acknowledge that they have had the opportunity to review this MOU, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this MOU.

15. Representation. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this MOU, and agree they have not been influenced by any representations or statements made by any other parties.

16. Headings. Headings in this MOU are for convenience only and will not be used to interpret or construe its provisions.

Dated this _____ day of _____, 2023

CITY OF FARGO, NORTH DAKOTA, a
municipal corporation

By: _____
Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

Dated this _____ day of _____, 2024

LANTERN LIGHT, LLC

By: _____
Erin Prochnow, Chief Executive Officer

Dated this _____ day of _____, 2024

YWCA CASS CLAY

By: _____
Erin Prochnow, Chief Executive Officer

Exhibit A

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

Commencing at the southwest corner of said Lot 1; thence North 86 degrees 32 minutes 51 seconds East, along the south line of said Lot 1 a distance of 41.78 feet; thence North 02 degrees 02 minutes 19 seconds West, a distance of 20.00 feet to the point of beginning; thence continuing North 02 degrees 02 minutes 19 seconds West, a distance of 44.10 feet; thence North 86 degrees 17 minutes 24 seconds East, a distance of 51.29 feet; thence South 04 degrees 13 minutes 39 seconds East, a distance of 17.77 feet; thence North 86 degrees 14 minutes 10 seconds East, a distance of 127.94 feet; thence South 04 degrees 33 minutes 20 seconds East, a distance of 21.64 feet; thence South 59 degrees 29 minutes 59 seconds West, a distance of 12.32 feet; thence South 86 degrees 32 minutes 51 seconds West, a distance of 170.00 feet to the point of beginning.

Said temporary easement contains 5,716 square feet, more or less, and is subject to all existing easements of record.

Exhibit B

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

The North 10.00 feet of the South 20.00 feet of the East 170.00 feet of the West 211.78 feet of said Lot 1.

Said parcel contains 1,700 square feet, more or less, and is subject to all existing easements of record.

Exhibit C

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

Commencing at the southwest corner of said Lot 1; thence North 86 degrees 32 minutes 51 seconds East, along the south line of said Lot 1, a distance of 211.78 feet; thence North 02 degrees 02 minutes 19 seconds West, a distance of 10.00 feet to the point of beginning; thence continuing North 02 degrees 02 minutes 19 seconds West, a distance of 10.00 feet; thence North 59 degrees 29 minutes 59 seconds East, a distance of 43.98 feet; thence North 27 degrees 14 minutes 01 second East, a distance of 42.85 feet; thence North 03 degrees 04 minutes 05 seconds West, a distance of 204.33 feet; thence North 15 degrees 14 minutes 30 seconds East, a distance of 66.20 feet to the south line of Lot 2, Block 1 of said PRESENTATION ADDITION; thence South 82 degrees 23 minutes 49 seconds East, along the south line of said Lot 2, a distance of 9.36 feet to the southeast corner of said Lot 2; thence North 09 degrees 51 minutes 29 seconds East along the easterly line of said Lot 2, a distance of 38.01 feet to the southwest corner of Lot 3, Block 1 of said PRESENTATION ADDITION; thence North 86 degrees 30 minutes 26 seconds East, along the south line of said Lot 3, a distance of 73.97 feet; thence South 26 degrees 59 minutes 31 seconds West, a distance of 116.73 feet; thence South 03 degrees 04 minutes 05 seconds East, a distance of 238.50 feet; thence North 86 degrees 32 minutes 51 seconds East, a distance of 259.56 feet to an existing utility easement described in Document No. 441364 which is of record in the office of the Cass County Recorder in said Cass County; thence South 64 degrees 02 minutes 51 seconds West, along the northerly line of said existing utility easement, a distance of 78.40 feet; thence South 86 degrees 32 minutes 51 seconds West, a distance of 302.16 feet to the point of beginning .

Said parcel contains 29,531 square feet, more or less, and is subject to all existing easements of record.

PERMANENT EASEMENT
(Storm Sewer and Levee)

KNOW ALL MEN BY THESE PRESENTS that **LANTERN LIGHT, LLC**, a North Dakota limited liability company, hereinafter referred to as “Grantor”, whether one or more, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid, the receipt whereof is hereby acknowledged, **HEREBY GRANT UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as “Grantee”, a permanent and perpetual easement over, under, upon and in the land hereafter described for the purpose of constructing and maintaining an earthen levee and storm sewer, together with any and all other appurtenant structures or devices, said tract of land being more particularly described as follows:

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

Commencing at the southwest corner of said Lot 1; thence North 86 degrees 32 minutes 51 seconds East, along the south line of said Lot 1, a distance of 211.78 feet; thence North 02 degrees 02 minutes 19 seconds West, a distance of 10.00 feet to the point of beginning; thence continuing North 02 degrees 02 minutes 19 seconds West, a distance of 10.00 feet; thence North 59 degrees 29 minutes 59 seconds East, a distance of 43.98 feet; thence North 27 degrees 14 minutes 01 second East, a distance of 42.85 feet; thence North 03 degrees 04 minutes 05 seconds West, a distance of 204.33 feet; thence North 15 degrees 14 minutes 30 seconds East, a distance of 66.20 feet to the south line of Lot 2, Block 1 of said PRESENTATION ADDITION; thence South 82 degrees 23 minutes 49 seconds East, along the south line of said Lot 2, a distance of 9.36 feet to the southeast

corner of said Lot 2; thence North 09 degrees 51 minutes 29 seconds East along the easterly line of said Lot 2, a distance of 38.01 feet to the southwest corner of Lot 3, Block 1 of said PRESENTATION ADDITION; thence North 86 degrees 30 minutes 26 seconds East, along the south line of said Lot 3, a distance of 73.97 feet; thence South 26 degrees 59 minutes 31 seconds West, a distance of 116.73 feet; thence South 03 degrees 04 minutes 05 seconds East, a distance of 238.50 feet; thence North 86 degrees 32 minutes 51 seconds East, a distance of 259.56 feet to an existing utility easement described in Document No. 441364 which is of record in the office of the Cass County Recorder in said Cass County; thence South 64 degrees 02 minutes 51 seconds West, along the northerly line of said existing utility easement, a distance of 78.40 feet; thence South 86 degrees 32 minutes 51 seconds West, a distance of 302.16 feet to the point of beginning .

Said parcel contains 29,531 square feet, more or less, and is subject to all existing easements of record.

The easement area is pictorially represented on Exhibit A attached hereto and incorporated herein by reference.

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

To the extent permitted by law, Grantee shall indemnify and hold Grantor and its tenants, residents, occupants, officers, agents, employees, contractors, and invitees harmless from and against any damages, injuries, claims, suits, liabilities, costs, expenses or the like, including, without limitation, reasonable attorney's fees and costs (whether or not any legal proceedings are commenced) arising out of or in any way related to the negligence or intentional conduct in the use of the easement area by Grantee and its officers, agents, employees, and contractors.

Grantor, its successors and assigns, further understands and agrees that they will not disturb, injure, molest or in any manner interfere with said earthen levee as constructed and the customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises. Grantor, its successors and assigns, further expressly warrants and states that no buildings, trees, shrubs, sprinkler systems or other obstacles

of any kind shall be placed or located upon the tract in any manner which may interfere with said earthen levee or storm sewer.

(Signatures on following pages.)

IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this 14th day of February, 2024.

GRANTOR:

LANTERN LIGHT, LLC

Erin Prochnow

By: ERIN PROCHNOW

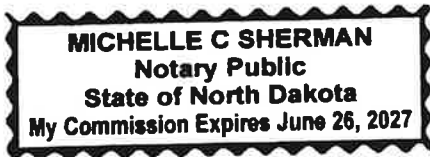
Its: MANAGING PARTNER

STATE OF North Dakota)

COUNTY OF Cass)

On this 14th day of February, 2024, before me, a notary public in and for said county and state, personally appeared Erin Prochnow to me known to be the Managing Partner of LANTERN LIGHT, LLC, and executed the within and foregoing instrument, and acknowledged the same.

(SEAL)

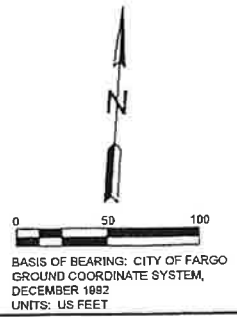
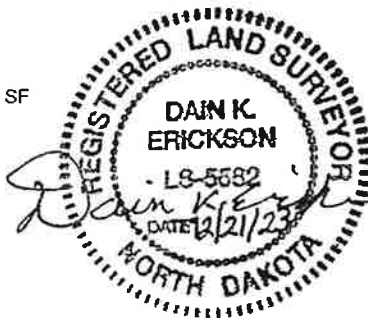
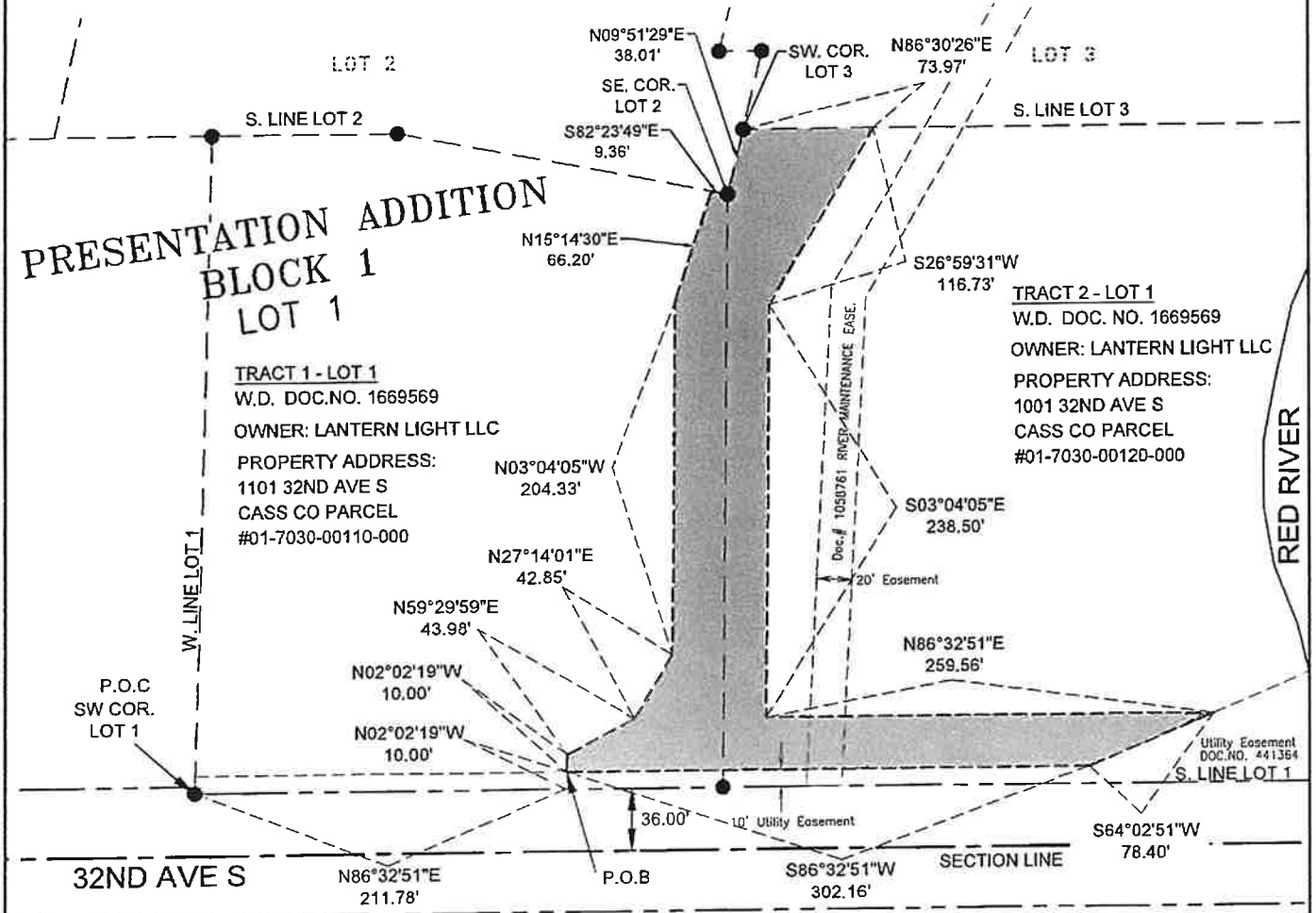


Michelle C Sherman

Notary Public

My Commission Expires: June 26, 2027

EASEMENT EXHIBIT "A"



PERPETUAL EASEMENT - PARCEL 3
32ND AVE S - LIFT STATION #27
LOT 1, BLOCK 1, PRESENTATION ADDITION
SECTION 19, T139N, R48W
FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
 Date: 12/21/2023
 Drawn By: Aaron H
 Checked By: Dain E
 Approved By: Dain E

EASEMENT EXHIBIT "A"

Parcel 3 (Perpetual Easement)

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

Commencing at the southwest corner of said Lot 1; thence North 86 degrees 32 minutes 51 seconds East, along the south line of said Lot 1, a distance of 211.78 feet; thence North 02 degrees 02 minutes 19 seconds West, a distance of 10.00 feet to the point of beginning; thence continuing North 02 degrees 02 minutes 19 seconds West, a distance of 10.00 feet; thence North 59 degrees 29 minutes 59 seconds East, a distance of 43.98 feet; thence North 27 degrees 14 minutes 01 second East, a distance of 42.85 feet; thence North 03 degrees 04 minutes 05 seconds West, a distance of 204.33 feet; thence North 15 degrees 14 minutes 30 seconds East, a distance of 66.20 feet to the south line of Lot 2, Block 1 of said PRESENTATION ADDITION; thence South 82 degrees 23 minutes 49 seconds East, along the south line of said Lot 2, a distance of 9.36 feet to the southeast corner of said Lot 2; thence North 09 degrees 51 minutes 29 seconds East along the easterly line of said Lot 2, a distance of 38.01 feet to the southwest corner of Lot 3, Block 1 of said PRESENTATION ADDITION; thence North 86 degrees 30 minutes 26 seconds East, along the south line of said Lot 3, a distance of 73.97 feet; thence South 26 degrees 59 minutes 31 seconds West, a distance of 116.73 feet; thence South 03 degrees 04 minutes 05 seconds East, a distance of 238.50 feet; thence North 86 degrees 32 minutes 51 seconds East, a distance of 259.56 feet to an existing utility easement described in Document No. 441364 which is of record in the office of the Cass County Recorder in said Cass County; thence South 64 degrees 02 minutes 51 seconds West, along the northerly line of said existing utility easement, a distance of 78.40 feet; thence South 86 degrees 32 minutes 51 seconds West, a distance of 302.16 feet to the point of beginning .

Said parcel contains 29,531 square feet, more or less, and is subject to all existing easements of record.

CERTIFICATION

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

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

Date 12/21/2023



PERPETUAL EASEMENT - PARCEL 3
32ND AVE S - LIFT STATION #27
LOT 1, BLOCK 1, PRESENTATION ADDITION
SECTION 19, T139N, R48W
FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
Date: 12/21/2023
Drawn By: Aaron H
Checked By: Dain E
Approved By: Dain E

PERMANENT EASEMENT
(Storm Sewer and Utility)

KNOW ALL MEN BY THESE PRESENTS that, **LANTERN LIGHT, LLC**, a North Dakota limited liability company, hereinafter referred to as “Grantor”, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as “Grantee”, a permanent easement under, over, upon and in the land hereinafter described for the purpose of constructing, operating, maintaining and repairing a storm sewer and other public utilities, together with the customary appurtenances, said tract being described as follows:

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

The North 10.00 feet of the South 20.00 feet of the East 170.00 feet of the West 211.78 feet of said Lot 1.

Said parcel contains 1,700 square feet, more or less, and is subject to all existing easements of record.

The easement area is pictorially represented on Exhibit A attached hereto and incorporated herein by reference.

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee’s officers, contractors, agents and employees may at any and all times when necessary or convenient

to do so, go under, over, in and upon said above-described tract of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor shall be allowed to make a direct connection of its private sump pump discharge lines to the Grantee's storm sewer main. Grantor shall be solely responsible for the ownership, maintenance, upkeep, and repair and all associated costs of the private sump pump discharge lines from the point of origin to the storm sewer main. Grantee shall not be responsible nor liable for any damages to the private sump pump discharge lines.

To the extent permitted by law, Grantee shall indemnify and hold Grantor and its tenants, residents, occupants, officers, agents, employees, contractors, and invitees harmless from and against any damages, injuries, claims, suits, liabilities, costs, expenses or the like, including, without limitation, reasonable attorney's fees and costs (whether or not any legal proceedings are commenced) arising out of or in any way related to the negligence or intentional conduct in the use of the easement area by Grantee and its officers, agents, employees, and contractors.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said storm sewer and customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings or other obstacles of any kind shall be placed or located upon the tract so as to interfere in any manner with the construction, operation, maintenance or repair of said storm sewer and public utilities, including customary appurtenances, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of constructing of said storm sewer and customary appurtenances was begun.

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this 14 day of February, 2024.

GRANTOR:

LANTERN LIGHT, LLC

Erin Prochnow

By: ERIN PROCHNOW

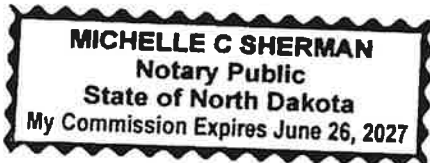
Its: MANAGING PARTNER

STATE OF North Dakota)

COUNTY OF Cass)

On this 14th day of February, 2024, before me, a notary public in and for said county and state, personally appeared Erin Prochnow to me known to be the Managing Partner of LANTERN LIGHT, LLC, and executed the within and foregoing instrument, and acknowledged the same.

(SEAL)



Michelle C. Sherman
Notary Public
My Commission Expires: June 26, 2027

GRANTEE:

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

Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

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

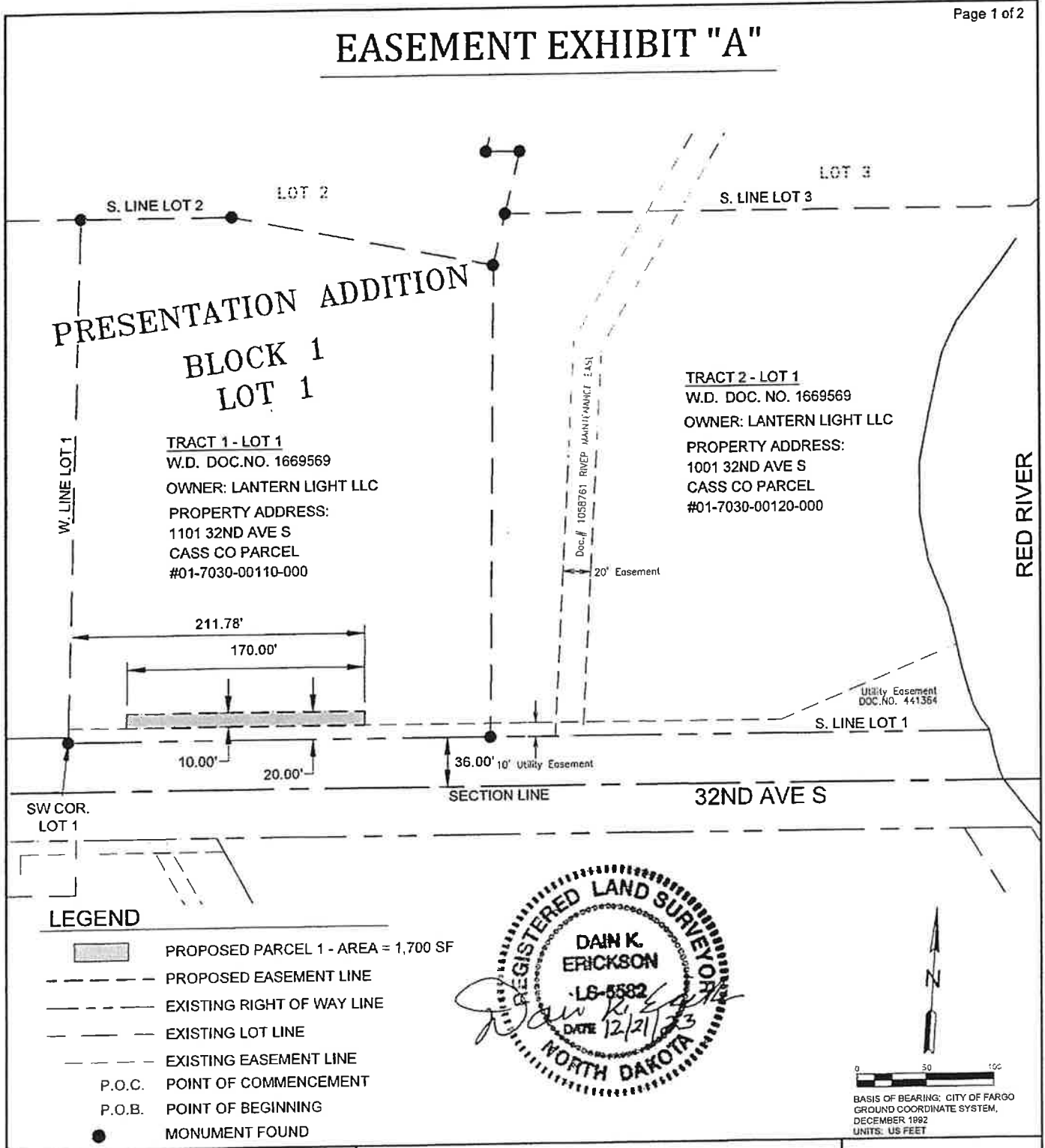
(SEAL)

Notary Public
My Commission Expires:

The legal description was prepared by:
Dain K. Erickson (LS-5582)
Professional Land Surveyor
Apex Engineering Group
4733 Amber Valley Pkwy S.
Fargo ND 58104
(701) 373-7980

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

EASEMENT EXHIBIT "A"



PERPETUAL EASEMENT - PARCEL 1
 32ND AVE S - LIFT STATION #27
 LOT 1, BLOCK 1, PRESENTATION ADDITION
 SECTION 19, T139N, R48W
 FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
 Date: 12/21/2023
 Drawn By: Aaron H
 Checked By: Dain E
 Approved By: Dain E

EASEMENT EXHIBIT "A"

Parcel 1
(Perpetual Easement)

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

The North 10.00 feet of the South 20.00 feet of the East 170.00 feet of the West 211.78 feet of said Lot 1.

Said parcel contains 1,700 square feet, more or less, and is subject to all existing easements of record.

CERTIFICATION

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



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

Date 12/21/2023



PERPETUAL EASEMENT - PARCEL 1
32ND AVE S - LIFT STATION #27
LOT 1, BLOCK 1, PRESENTATION ADDITION
SECTION 19, T139N, R48W
FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
Date: 12/21/2023
Drawn By: Aaron H
Checked By: Dain E
Approved By: Dain E

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **LANTERN LIGHT, LLC**, a North Dakota limited liability company, hereinafter referred to as “Grantor”, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as “Grantee”, a temporary construction easement under, over, upon and in the land hereinafter described for the purpose of constructing and installing a storm sewer lift station, together with the customary appurtenances, said tract being described as follows:

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

Commencing at the southwest corner of said Lot 1; thence North 86 degrees 32 minutes 51 seconds East, along the south line of said Lot 1 a distance of 41.78 feet; thence North 02 degrees 02 minutes 19 seconds West, a distance of 20.00 feet to the point of beginning; thence continuing North 02 degrees 02 minutes 19 seconds West, a distance of 44.10 feet; thence North 86 degrees 17 minutes 24 seconds East, a distance of 51.29 feet; thence South 04 degrees 13 minutes 39 seconds East, a distance of 17.77 feet; thence North 86 degrees 14 minutes 10 seconds East, a distance of 127.94 feet; thence South 04 degrees 33 minutes 20 seconds East, a distance of 21.64 feet; thence South 59 degrees 29 minutes 59 seconds West, a distance of 12.32 feet; thence South 86 degrees 32 minutes 51 seconds West, a distance of 170.00 feet to the point of beginning.

Said temporary easement contains 5,716 square feet, more or less, and is subject to all existing easements of record.

The easement area is pictorially represented on Exhibit A attached hereto and incorporated herein by reference.

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

To the extent permitted by law, Grantee shall indemnify and hold Grantor and its tenants, residents, occupants, officers, agents, employees, contractors, and invitees harmless from and against any damages, injuries, claims, suits, liabilities, costs, expenses or the like, including, without limitation, reasonable attorney's fees and costs (whether or not any legal proceedings are commenced) arising out of or in any way related to the negligence or intentional conduct in the use of the easement area by Grantee and its officers, agents, employees, and contractors.

Grantor, its successors and assigns, further agree that they will not disturb, injure, molest or in any manner interfere with said parcel to be used for constructing and installing a storm sewer lift station and all other construction activities during the construction phase of said project, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel during the construction phase. Grantee, at its own expense, shall leave the premises in as good condition as it was prior to the time construction activities began.

This Easement shall terminate on December 1, 2025, or upon completion of construction, whichever occurs later.

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this 14 day of February, 2024.

GRANTOR:

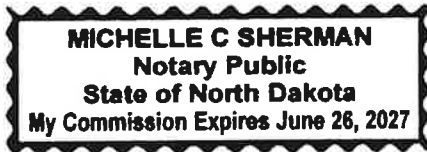
LANTERN LIGHT, LLC

Erin Prochnow
By: ERIN PROCHNOW
Its: MANAGING PARTNER

STATE OF North Dakota)
COUNTY OF Cass)

On this 14th day of February, 2024, before me, a notary public in and for said county and state, personally appeared Erin Prochnow to me known to be the Managing Partner of LANTERN LIGHT, LLC, and executed the within and foregoing instrument, and acknowledged the same.

(SEAL)



Michelle C. Sherman
Notary Public
My Commission Expires: June 26, 2027

GRANTEE:

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

Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

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

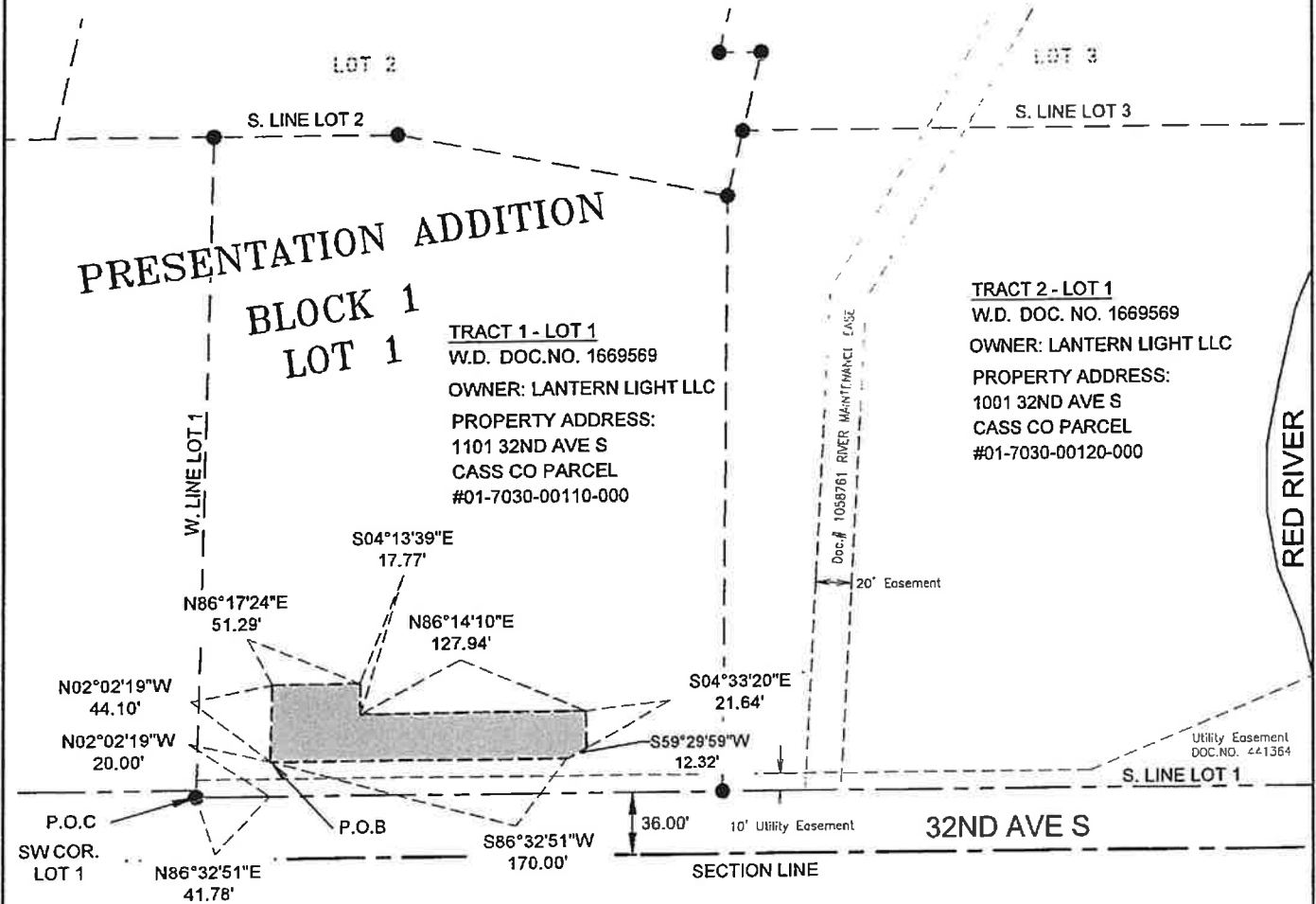
(SEAL)

Notary Public
My Commission Expires:

The legal description was prepared by:
Dain K. Erickson (LS-5582)
Professional Land Surveyor
Apex Engineering Group
4733 Amber Valley Pkwy S.
Fargo ND 58104
(701) 373-7980

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

EASEMENT EXHIBIT "A"



TEMPORARY EASEMENT - PARCEL 2
32ND AVE S - LIFT STATION #27
LOT 1, BLOCK 1, PRESENTATION ADDITION
SECTION 19, T139N, R48W
FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
Date: 12/21/2023
Drawn By: Aaron H
Checked By: Dain E
Approved By: Dain E

EASEMENT EXHIBIT "A"

Parcel 2 (Temporary Easement)

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

Commencing at the southwest corner of said Lot 1; thence North 86 degrees 32 minutes 51 seconds East, along the south line of said Lot 1 a distance of 41.78 feet; thence North 02 degrees 02 minutes 19 seconds West, a distance of 20.00 feet to the point of beginning; thence continuing North 02 degrees 02 minutes 19 seconds West, a distance of 44.10 feet; thence North 86 degrees 17 minutes 24 seconds East, a distance of 51.29 feet; thence South 04 degrees 13 minutes 39 seconds East, a distance of 17.77 feet; thence North 86 degrees 14 minutes 10 seconds East, a distance of 127.94 feet; thence South 04 degrees 33 minutes 20 seconds East, a distance of 21.64 feet; thence South 59 degrees 29 minutes 59 seconds West, a distance of 12.32 feet; thence South 86 degrees 32 minutes 51 seconds West, a distance of 170.00 feet to the point of beginning.

Said temporary easement contains 5,716 square feet, more or less, and is subject to all existing easements of record.

CERTIFICATION

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



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

Date 12/21/2023



TEMPORARY EASEMENT - PARCEL 2
32ND AVE S - LIFT STATION #27
LOT 1, BLOCK 1, PRESENTATION ADDITION
SECTION 19, T139N, R48W
FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
Date: 12/21/2023
Drawn By: Aaron H
Checked By: Dain E
Approved By: Dain E

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

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

New Paving and Utility Construction

16

Improvement

District No.

BN-23-E

Call For Bids	<u>February 20</u>	, <u>2024</u>
Advertise Dates	<u>February 28 & March 6</u>	, <u>2024</u>
Bid Opening Date	<u>March 27</u>	, <u>2024</u>
Substantial Completion Date	<u>September 30</u>	, <u>2024</u>
Final Completion Date	<u>October 30</u>	, <u>2024</u>

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

Project Engineer Jason Satterlund

Phone No. (701) 241-1545

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

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



**ENGINEER'S REPORT
NEW PAVING AND UTILITY CONSTRUCTION
IMPROVEMENT DISTRICT NO. BN-23-E
45TH STREET NORTH FROM 19TH AVENUE NORTH TO
32ND AVENUE NORTH**

Nature & Scope

This project is for new concrete pavement on 45th Street North between 19th Avenue North and 32nd Avenue North.

Purpose

The purpose of this project is to provide street connectivity between existing developments to existing infrastructure.

Special Assessment District

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

Feasibility

The estimated cost of construction is \$3,930,464.20. The cost breakdown is as follows:

Special Assessments

Construction Cost		\$3,930,464.20
Fees		

Admin	4%	\$157,218.57
Contingency	5%	\$196,523.21
Engineering	10%	\$393,046.42
Interest	4%	\$157,218.57
Legal	3%	\$117,913.93

Total Estimated Cost		\$4,952,384.90
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Funding

Special Assessments	86.58%	\$4,287,979.67
City of Reile's Acres Funds	13.42%	\$664,405.23

Miscellaneous Costs

Permanent ROW and Easements		\$56,600.00
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Total Miscellaneous Costs		\$56,600.00
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Funding

Special Assessments	100.00%	\$56,600.00
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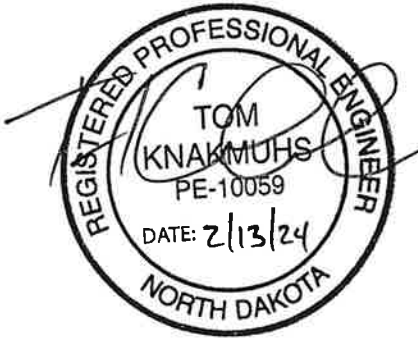
Project Funding Summary


Special Assessments	86.74%	\$4,344,579.67
City of Reile's Acres Funds	13.26%	\$664,405.23

Total Estimated Project Cost		\$5,008,984.90
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This project does not have any alternate or optional containers.

We believe this project to be cost effective.





Thomas Knakmuhs, PE
City Engineer



**LOCATION AND COMPRISING
NEW PAVING AND UTILITY CONSTRUCTION
IMPROVEMENT DISTRICT NO. BN-23-E
45TH STREET NORTH FROM 19TH AVENUE NORTH TO
32ND AVENUE NORTH**

LOCATION:

On 45th Street North between 19th Avenue North and 32nd Avenue North.
On 28th Avenue North from 45th Street North for 250' east.

COMPRISING:

The 95.01 acres of Southeast Quarter Section of Section 28, T140, R49W.
The 4.43 acres of Southeast Quarter Section of Section 28, T140, R49W.
All platted within 2016 Annexation.

Lot 1, Block 1.
Lot 1, Block 2.
All platted in 19th Avenue Northeast Pond Addition.

Lot 1, Block 1.
Platted in 19th Avenue Southwest pond addition.

Lot 1, Block 1.
Platted in Magnum North Addition.

Lots 1 through 2, and Lots 4 -13, Block 1.
Lots 1 through 7, Block 2.
Lots 1 through 5, Block 3.
Lot 1 and Lot 4, Block 4.
All Platted in Laverne's Addition.

Lot 1, Block 1.
Platted in Phoenix Addition.

Lots 1 through 2, Block 1.
All platted in NDSU West Addition.

Lots 1 through 2, Block 1.
All platted in Turf Tamers Addition.

Lots 1 through 11, Block 1.
Lots 1 through 4, Block 2.
Lots 1 through 6, Block 3.
Lots 1 through 4, Block 4.

Lots 1 through 4, Block 5.

All platted in Laverne's Second Addition.

Lot 1, Block 1.

Platted in Laverne's Third Addition.

The Southern Half of the Northeast Quarter Section of Section 28, T140, R49W of Cass County.

All of the foregoing is located in the City of Fargo, Cass County, North Dakota and its Extra-Territorial Area.



FUTURE BENEFITING AREA OUTSIDE CITY LIMITS

CITY OF FARGO ENGINEERING
DEPARTMENT

LOCATION & ASSESSMENT AREA

NEW PAVING & UTILITY CONSTRUCTION

IMPROVEMENT DISTRICT NO. BN-23-E

COVER SHEET
CITY OF FARGO PROJECTS

17

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

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

New Paving and Utility Construction

Improvement District No.

BN-23-J

Call For Bids	<u>February 20</u>	, <u>2024</u>
Advertise Dates	<u>February 28 & March 6</u>	, <u>2024</u>
Bid Opening Date	<u>March 13</u>	, <u>2024</u>
Substantial Completion Date	<u>August 15</u>	, <u>2024</u>
Final Completion Date	<u>September 14</u>	, <u>2024</u>

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

Project Engineer Jason Satterlund

Phone No. (701) 241-1545

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

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



**ENGINEER'S REPORT
NEW PAVING AND UTILITY CONSTRUCTION
IMPROVEMENT DISTRICT NO. BN-23-J**

**46TH AVENUE NORTH BETWEEN 33RD STREET NORTH
AND 37TH STREET NORTH, 33RD STREET NORTH FROM
100' SOUTH OF 46TH AVENUE NORTH TO 600' NORTH OF
46TH AVENUE NORTH.**

Nature & Scope

Infrastructure request to facilitate construction of new underground utilities, concrete pavement and incidentals as requested by the Developer.

Purpose

This project is to provide City infrastructure for the development of new commercial properties and to connect existing infrastructure.

Special Assessment District

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

Feasibility

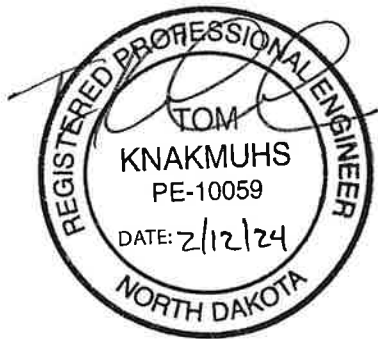
The estimated cost of construction is \$3,359,481.45. The cost breakdown is as follows:


Special Assessments		
Construction Cost		\$3,359,481.45
Fees		
Admin	4%	\$134,379.26
Contingency	5%	\$167,974.07
Engineering	10%	\$335,948.15
Interest	4%	\$134,379.26
Legal	3%	\$100,784.44
Total Estimated Cost		\$4,232,946.63
Funding		
Special Assessments	100.00%	\$4,232,946.63

Project Funding Summary		
Special Assessments	100.00%	\$4,232,946.63
Total Estimated Project Cost		\$4,232,946.63

This project does not have any alternate or optional containers.

We believe this project to be cost effective.




 Thomas Knakmuhs, PE
 City Engineer



**LOCATION AND COMPRISING
NEW PAVING AND UTILITY CONSTRUCTION
IMPROVEMENT DISTRICT NO. BN-23-J**

**46TH AVENUE NORTH BETWEEN 33RD STREET NORTH
AND 37TH STREET NORTH, 33RD STREET NORTH FROM
100' SOUTH OF 46TH AVENUE NORTH TO 600' NORTH OF
46TH AVENUE NORTH.**

LOCATION:

On 46th Avenue North between 33rd Street North and 37th Street North.

On 33rd Street North from 250' south of 46th Avenue North to 600' north of 46th Avenue North.

COMPRISING:

Lot 1, Block 1.

Platted in AMPC 2ND Addition.

Lots 6 through 7, Block 2.

Platted in RLN Business Park 1st Addition.

The easterly 97.63 acres less the easterly 16 acres of the Northwest Quarter Section of Section 14, T140N, R49W.

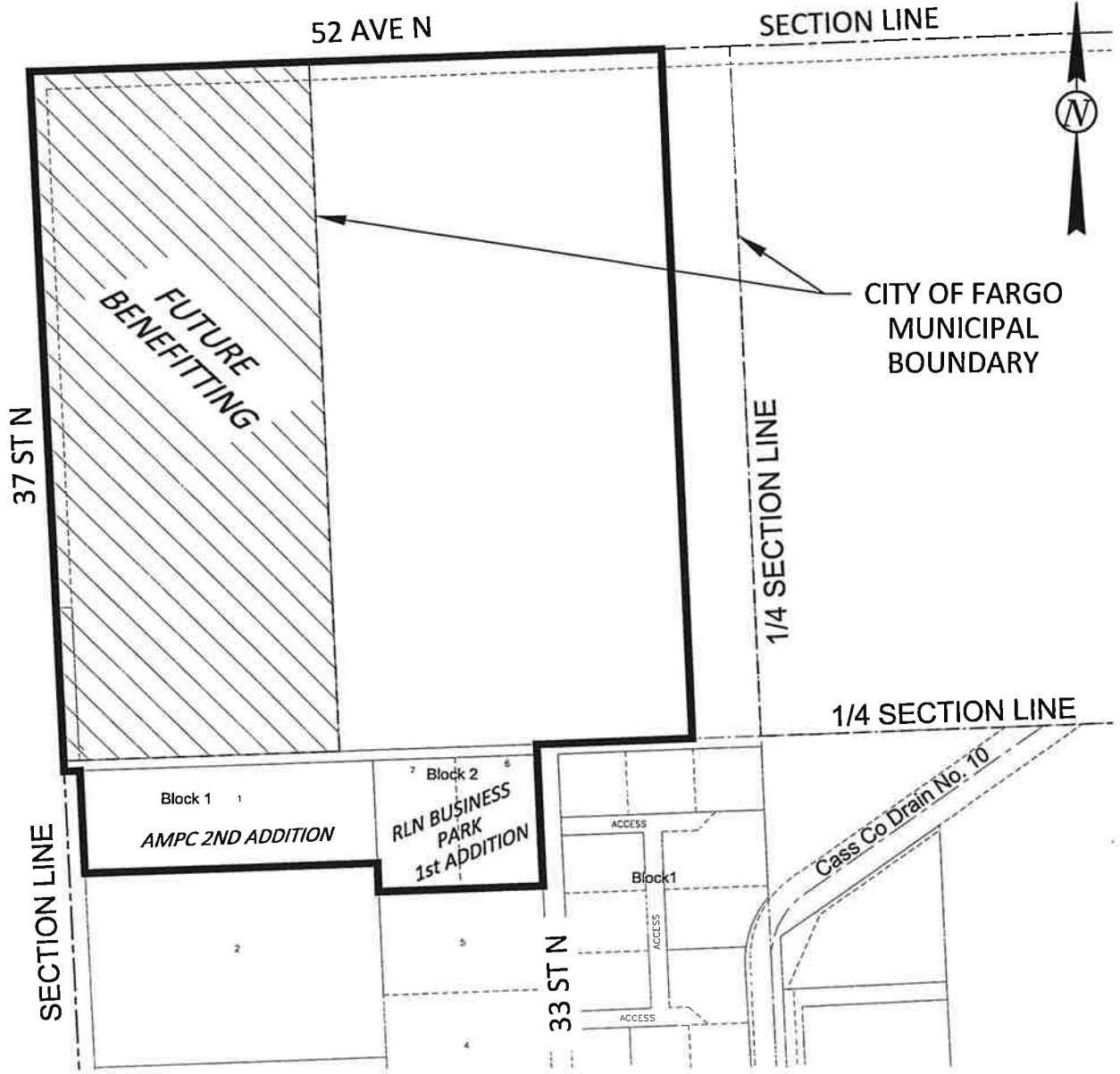
All platted within 2004 North Side Annexation.

The southwesterly 11.2 acres to be platted as part of 46th Avenue Industrial Park Addition.

The westerly 97.29 acres in the Northwest Quarter Section of Section 14, T140N, R49W.

The southerly 14.21 acres to be platted as part of 46th Avenue Industrial Park Addition.

All the foregoing located in the City of Fargo, Cass County, North Dakota, and its Extra-Territorial Area.



CITY OF FARGO ENGINEERING
DEPARTMENT

LOCATION & ASSESSMENT AREA

NEW PAVING AND UTILITY CONSTRUCTION

IMPROVEMENT DISTRICT NO. BN-23-J



FUTURE BENEFITTING AREA OUTSIDE CITY LIMITS

COVER SHEET
CITY OF FARGO PROJECTS

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

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

118

Asphalt Mill & Overlay

Improvement
District No.

PR-24-F

Call For Bids February 20, 2024

Advertise Dates February 28 & March 6, 2024

Bid Opening Date March 27, 2024

Substantial Completion Date September 14, 2024

Final Completion Date October 14, 2024

N/A

PWPEC Report (Part of 2024 CIP)

X

Engineer's Report (Attach Copy)

X

Direct City Auditor to Advertise for Bids

X

Bid Quantities (Attach Copy for Auditor's Office Only)

X

Notice to Property Owners (Dan Eberhardt)

N/A

Supplemental Funding Language Included

Project Engineer

Jason Hoogland

Phone No.

(701) 241-1545

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

X

Create District (Attach Copy of Legal Description)

X

Order Plans & Specifications

X

Approve Plans & Specifications

X

Adopt Resolution of Necessity

N/A

Approve Escrow Agreement (Attach Copy for Commission Office Only)

X

Assessment Map (Attach Copy for Auditor's Office Only)



**ENGINEER'S REPORT
ASPHALT MILL & OVERLAY
IMPROVEMENT DISTRICT NO. PR-24-F**

SECTION 1 - 3RD ST N TO BROADWAY BETWEEN 15TH AVE N TO 19TH AVE N, 15TH AVE N FROM BROADWAY TO ELM ST N., SECTION 2 - BROADWAY N FROM 9TH AVE N TO 12TH AVE N., SECTION 3 - 4TH ST N, 3RD AVE N & 5TH ST N., SECTION 4 - 14TH ST N AND NP AVE N., SECTION 5 - 23RD ST S AND 1ST AVE S., SECTION 6 - 23RD ST. S, 12TH AVE S, 11TH AVE S, 9TH AVE S & 6TH AVE S., SECTION 7 - 18TH ST S TO 21ST ST S BETWEEN 6TH AVE S AND 11TH AVE S., SECTION 8 - 36TH ST N BETWEEN MAIN AVE AND 7TH AVE N.

Nature & Scope

This project is part of the City's annual infrastructure improvement efforts and impacts multiple areas of Fargo each construction season. The purpose of the project is to correct deficiencies on the streets, which have developed over time. As part of the project, the Contractor will be mud-jacking sections of the curb and gutter in an effort to alleviate major drainage problems. This process involves coring small holes through the curb and gutter section (and driveway apron when necessary) and injecting grout through holes to raise the gutter to the desired grade. The Contractor will replace areas of broken up pavement as well as a limited amount of curb and gutter. The Contractor will also be replacing some sections of sidewalk that need to be updated to meet new standards for the Americans with Disabilities Act. The project will take place in eight different areas.

Purpose

A mill and overlay will provide a new wearing surface as well as correct deficiencies that have appeared over time. Rehabilitation at this time is a cost effective means of extending the useful life of the street.

Special Assessment District

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

Feasibility

The estimated cost of construction is \$2,571,679.50. The cost breakdown is as follows:

Section 1

Construction Cost		\$789,277.50
Fees		

Admin	4%	\$31,571.10
Contingency	5%	\$39,463.88
Engineering	10%	\$78,927.75
Interest	4%	\$31,571.10
Legal	3%	\$23,678.33

Total Estimated Cost		\$994,489.66
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Funding

Special Assessments	50.00%	\$497,244.83
Sales Tax Funds - Infrastructure - 420	48.19%	\$479,214.23
Utility Funds - Stormwater - 524	0.29%	\$2,882.25
Utility Funds - Street Lights - 528	1.52%	\$15,148.35

Section 2

Construction Cost		\$115,133.50
Fees		

Admin	4%	\$4,605.34
Contingency	5%	\$5,756.68
Engineering	10%	\$11,513.35
Interest	4%	\$4,605.34
Legal	3%	\$3,454.01

Total Estimated Cost		\$145,068.22
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Funding

Special Assessments	50.00%	\$72,534.11
Sales Tax Funds - Infrastructure - 420	45.12%	\$65,450.70
Utility Funds - Street Lights - 528	4.88%	\$7,083.41

Section 3

Construction Cost		\$295,408.00
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Fees

Admin	4%	\$11,816.32
Contingency	5%	\$14,770.40
Engineering	10%	\$29,540.80
Interest	4%	\$11,816.32
Legal	3%	\$8,862.24

Total Estimated Cost		\$372,214.08
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Funding

Special Assessments	50.00%	\$186,107.04
Sales Tax Funds - Infrastructure - 420	34.87%	\$129,803.94
Utility Funds - Stormwater - 524	0.28%	\$1,055.25
Utility Funds - Street Lights - 528	14.84%	\$55,247.85

Section 4

Construction Cost		\$88,818.00
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Fees

Admin	4%	\$3,552.72
Contingency	5%	\$4,440.90
Engineering	10%	\$8,881.80
Interest	4%	\$3,552.72
Legal	3%	\$2,664.54

Total Estimated Cost		\$111,910.68
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Funding

Special Assessments	50.00%	\$55,955.34
Sales Tax Funds - Infrastructure - 420	48.35%	\$54,107.55
Utility Funds - Street Lights - 528	1.65%	\$1,847.79

Section 5

Construction Cost		\$235,226.50
Fees		

Admin	4%	\$9,409.06
Contingency	5%	\$11,761.33
Engineering	10%	\$23,522.65
Interest	4%	\$9,409.06
Legal	3%	\$7,056.80

Total Estimated Cost		\$296,385.40
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Funding

Special Assessments	31.80%	\$94,264.70
Sales Tax Funds - Infrastructure - 420	29.31%	\$86,858.73
Utility Funds - Wastewater - 521	36.39%	\$107,856.00
Utility Funds - Street Lights - 528	2.50%	\$7,405.97

Section 6

Construction Cost		\$475,405.50
Fees		

Admin	4%	\$19,016.22
Contingency	5%	\$23,770.28
Engineering	10%	\$47,540.55
Interest	4%	\$19,016.22
Legal	3%	\$14,262.17

Total Estimated Cost		\$599,010.94
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Funding

Special Assessments	50.00%	\$299,505.47
Sales Tax Funds - Infrastructure - 420	47.95%	\$287,195.90
Utility Funds - Stormwater - 524	0.41%	\$2,457.00
Utility Funds - Street Lights - 528	1.64%	\$9,852.57

Section 7

Construction Cost		\$363,734.50
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Fees

Admin	4%	\$14,549.38
Contingency	5%	\$18,186.73
Engineering	10%	\$36,373.45
Interest	4%	\$14,549.38
Legal	3%	\$10,912.04

Total Estimated Cost		\$458,305.48
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Funding

Special Assessments	50.00%	\$229,152.74
Sales Tax Funds - Infrastructure - 420	50.00%	\$229,152.74

Section 8

Construction Cost		\$208,676.00
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Fees

Admin	4%	\$8,347.04
Contingency	5%	\$10,433.80
Engineering	10%	\$20,867.60
Interest	4%	\$8,347.04
Legal	3%	\$6,260.28

Total Estimated Cost		\$262,931.76
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Funding

Special Assessments	50.00%	\$131,465.88
Sales Tax Funds - Infrastructure - 420	44.74%	\$117,636.75
Utility Funds - Stormwater - 524	0.16%	\$425.25
Utility Funds - Street Lights - 528	5.10%	\$13,403.88

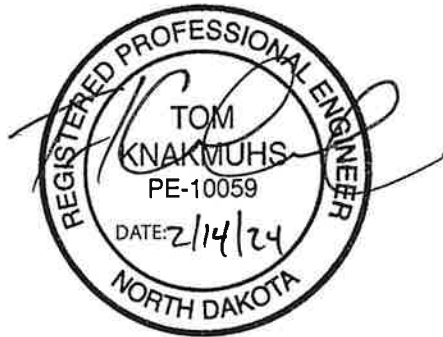
Project Funding Summary


Special Assessments	48.34%	\$1,566,230.11
Sales Tax Funds - Infrastructure - 420	44.73%	\$1,449,420.54
Utility Funds - Wastewater - 521	3.33%	\$107,856.00
Utility Funds - Stormwater - 524	0.21%	\$6,819.75
Utility Funds - Street Lights - 528	3.39%	\$109,989.82

Total Estimated Project Cost **\$3,240,316.22**

This project does not have any alternate or optional containers.

We believe this project to be cost effective.





Thomas Knakmuhs, PE
City Engineer



**LOCATION AND COMPRISING
ASPHALT MILL & OVERLAY
IMPROVEMENT DISTRICT NO. PR-24-F**

SECTION 1 - 3RD ST N TO BROADWAY BETWEEN 15TH AVE N TO 19TH AVE N, 15TH AVE N FROM BROADWAY TO ELM ST N., SECTION 2 - BROADWAY N FROM 9TH AVE N TO 12TH AVE N., SECTION 3 - 4TH ST N, 3RD AVE N & 5TH ST N., SECTION 4 - 14TH ST N AND NP AVE N., SECTION 5 - 23RD ST S AND 1ST AVE S., SECTION 6 - 23RD ST. S, 12TH AVE S, 11TH AVE S, 9TH AVE S & 6TH AVE S., SECTION 7 - 18TH ST S TO 21ST ST S BETWEEN 6TH AVE S AND 11TH AVE S., SECTION 8 - 36TH ST N BETWEEN MAIN AVE AND 7TH AVE N.

LOCATION:

LOCATION (Section 1):

- On 3rd Street North from 15th Avenue North to 19th Avenue North.
- On 4th Street North from 15th Avenue North to 19th Avenue North.
- On 5th Street North from 15th Avenue North to 19th Avenue North.
- On 15th Avenue North from Elm Street North to Broadway North.
- On 16th Avenue North from 3rd Street North to Broadway North.
- On 17th Avenue North from 3rd Street North to Broadway North.
- On 18th Avenue North from 3rd Street North to Broadway North.

LOCATION (Section 2):

- On Broadway North from 9th Avenue North to 12th Avenue North.

LOCATION (Section 3):

- On 4th Street North from 1st Avenue North to 5th Avenue North.
- On 5th Street North from 3rd Avenue North to 4th Avenue North.
- On 3rd Avenue North to 4th Street North to 178' west of 5th Street North.

LOCATION (Section 4):

- On 14th Street North from NP Avenue North to 1st Avenue North.
- On NP Avenue North from University Drive North to 14th Street North.

LOCATION (Section 5):

- On 23rd Street South from Main Avenue to 1st Avenue South.
- On 1st Avenue South from 18th Street South to 23rd Street South.

LOCATION (Section 6):

On 21st Street South from 5th Avenue South to 6th Avenue South.
On 22nd Street South from 11th Avenue South to 12th Avenue South.
On 23rd Street South from 5th Avenue South to 13th Avenue South.
On 6th Avenue South from 21st Street South to 23rd Street South.
On 9th Avenue South from 21st Street South to 25th Street South.
On 11th Avenue South from 22nd Street South to 23rd Street South.
On 12th Avenue South from 22nd Street South to 23rd Street South.

LOCATION (Section 7):

On 18th Street South from 7th Avenue South to 11th Avenue South.
On 19th Street South from 8th Avenue South to 11th Avenue South.
On 20th Street South from 7th Avenue South to 11th Avenue South.
On 21st Street South from 6th Avenue South to 9th Avenue South.
On 7th Avenue South from 18th Street South to 20th Street South.
On 8th Avenue South from 17th Street South to 19th Street South.
On 9th Avenue South from 17th Street South to 21st Street South.
On 11th Avenue South from 17th Street South to 21st Street South.

LOCATION (Section 8):

On 36th Street North from 300' south of 1st Avenue North to 7th Avenue North.

COMPRISING:

COMPRISING (Section 1):

Lots 1 through 3, Block 1, James Holes Subdivision.

Lots 1 through 4, Block 1.

Lots 10 through 13, Block 1.

Lots 1 through 4, Block 2.

Lots 10 through 13, Block 2.

All in Replat of the West El Zagal Park.

Lot 1, Block 1, El Zagal Addition.

Lot 5, El Zagal Park.

Lots 1 through 6, Buena Vista Subdivision.

Lots 21 & 22, Block 1.

Lots 20 through 37, Block 6.

All in Replat of McDermott Subdivision.

Lot 1, Block 1.
Lots 11 through 25, Block 1.
Lots 1 through 26, Block 2.
Lots 1 through 26, Block 3.
Lots 1 through 13, Block 4.
All in Hogan Addition.

Lots 1 & 2.
Lots 20 through 42.
Lots 61 through 119.
Lots 121 through 179.
Lots 181 through 239.
Lots 241 through 299.
Lots 301 through 359.
Lots 361 through 419.
All in North Broadway Addition.

COMPRISING (Section 2):

Lots 1 through 15, Block 1, Yerxa & Franklin's Addition.

Lots 1 through 14, Block 15.
Lots 17 & 18, Block 15.
All in Douglas Addition.

Lots 1 through 6, Block 1, Diamond Willow.

Lots 1 through 10, Block 16, Harwood's 2nd Addition.

Lots 1 through 12, Block 1, Truesdell's 2nd Addition.

Lots 1 & 6, Block 18, Marelius Subdivision of Blk 18 Chapin's Addition.

Lots 1 through 8, Block 1, Montplaisir's Subdivision of Blk 1 Chapin's Addition.

Lots 1 through 13, Block 16, Wilson's Subdivision of Blk 16 Chapin's Addition.

Lots 1 through 12, Block 1, Satterthwaite's Subdivision of Blk. 1 Chapin's Addition.

Lots 1 through 12, Block 2, Fleming's Subdivision of Blk. 2 in Chapin's Addition.

Lots 1 through 22, Block 3, Huntington's Subdivision of Blks. 3 & 4 Chapin's Addition.

Lots B & C, Block 15.

Lot A, Block 16.

Lots A, B, C, D, E, F, & G, Block 17.

Lots A, B, C, D, E, F, G, & H, Block 18.

All in Chapin's Addition.

Lots 1 through 17, Block 1.

Lots 1 through 6, Block 14.

All in Hector's Addition.

COMPRISING (Section 3):

Lots 1 through 18, Block 7.

Lots 10 through 21, Block 9.

Lots 1 & 12 through 18, Block 10.

Lots 1 & 8 through 18, Block 15.

Lots 2 through 13, Block 16.

All in Keeney & Devitt's Addition.

Lots 1 through 5, Block 22.

Lots 10 through 12, Block 22.

A strip of land 100 ft wide adj N side of 22, Less that part of 22 replatted as Great Northern Depot.

All in Keeney & Divitts 2nd Addition.

Lots 1 through 18, Block 23, Leach & Wells Subdivision.

Lots 1 through 3, Block 1.

Lots 1 through 3, Block 2.

Block 6.

Lots 1 & 2, Block 7.

Lots 1 through 4, Block 8.

All in North Dakota R1 Urban Renewal Addition.

COMPRISING (Section 4):

Lots 12 through 16, Block 20.

Lots 19 through 23, Block 20.

Lots 15 & 16, Block 21.

Lots 19 through 34, Block 21.

Lots 1 through 16, Block 22.

Lots 24 through 34, Block 22.

All in Reeve's Addition.

NP Outlot #1 & R/W

COMPRISING (Section 5):

Lots 1 through 24, Block 2.

Block 3.

Lots 13 through 24, Block 4.

Block 5.

Lots 1 & 12, Block 8.

Lots 1 through 3, Block 9.

Lots 9 through 12, Block 9.

Lots 1 through 3, Block 10.

Lots 11 & 12, Block 10.

All in Egbert, O'Neil & Haggart's Subdivision.

Lot 1, Block 1, Nicklaus Addition.

Lots 2 & 3, Block 1.

Lots 1 through 9, Block 3.

All in Arneson's Addition.

Unplatted land in NW ¼ SEC 12, TWP 139N, RGE 49W.

COMPRISING (Section 6):

Lots 1 through 6, Block 29.

Lots 1 through 14, Block 30.

Lots 7 through 14, Block 31.

Lots 1 & 8 through 14, Block 32.

All in in Plat of South Half of Egbert, O'Neil & Haggart Subdivision and Adjacent Ways.

Lots 1 through 15, Block 1.

Lots 1 through 12, Block 2.

Lots 1 through 18, Block 3.

Lots 1 through 22, Block 4.

Lots 1 through 22, Block 5.

Lots 1 through 18, Block 6.

Lots 1 through 6, Block 7.

Lots 1 through 6, Block 8.

Lots 1 through 7, Block 9.

Lots 1 through 7, Block 10.

All in Meehan's Addition.

Lots 1 through 6, Block 1.
Lots 10 through 12, Block 1.
Lots 1 through 8, Block 2.
Lots 1 through 13, Block 3.
All in Acme's 2nd Addition.

Block 1 of Acme's Addition.

Lots 1, Block 1, Green Acres Addition.

Lot 1, Block 1, Green Acres Second Addition.

Unplatted land in NW ¼ of SEC 12, TWP 139N, RGE 49W.

COMPRISING (Section 7):

Lots 6 through 12, Block 1.
Lots 1 through 12, Block 2.
All in Laurie's Subdivision of Hilleboe Terrace.

Lots 1, 2 & 10, Block 1.
Lots 20 through 60, Block 1.
Lots 1 through 3, Block 2.
Lots 1 through 3, Block 3.
Lots 1 through 27, Block 4.
Lot 1, Block 5.
Lots 13 through 26, Block 5.
Lots 1 through 26, Block 6.
Lots 1 through 26, Block 7.
Lots 1 through 15, Block 8.
Lot 26, Block 8.
Lots 6 & 7, Block 9.
Lots 1 through 14, Block 10.
Lot 1, Block 11.
Lots 1 through 6, Block 12.
All in Hilleboe Terrace.

Lots 5 through 15, Block 13.
All in replat of Blk. 13 of Hilleboe Terrace Addition.

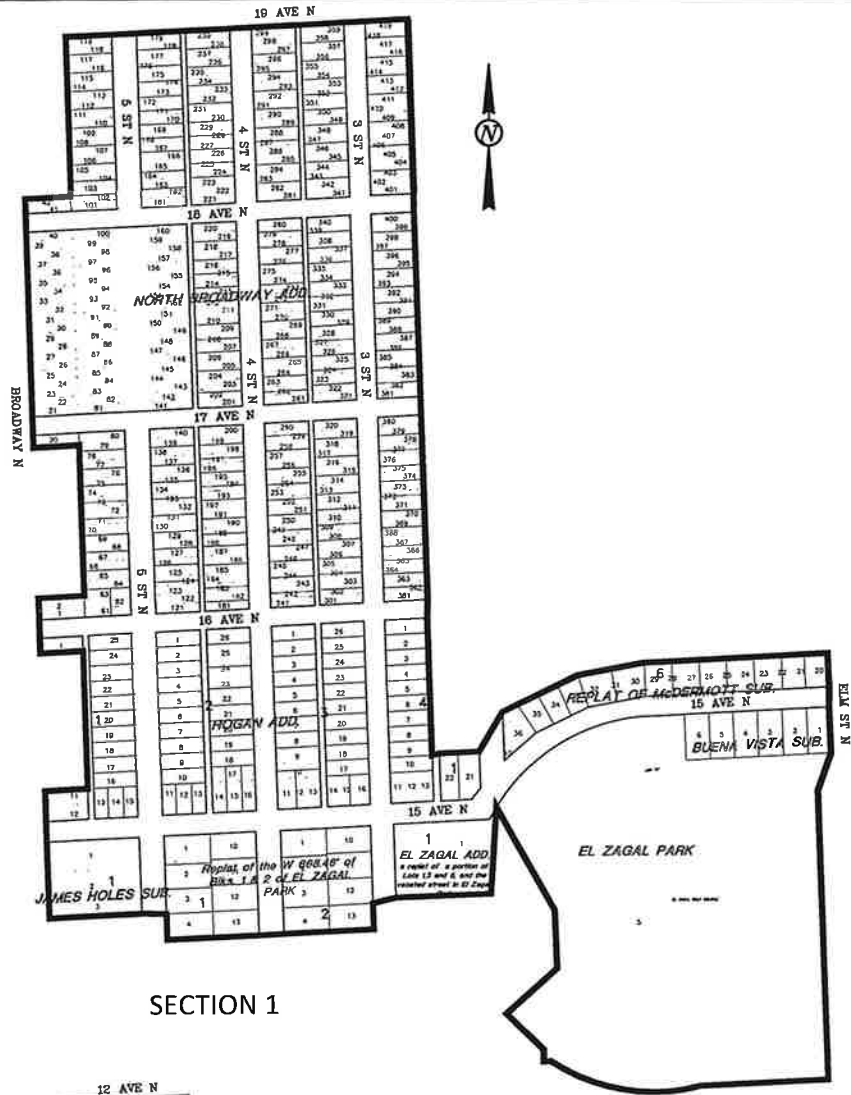
COMPRISING (Section 8):

Page 143

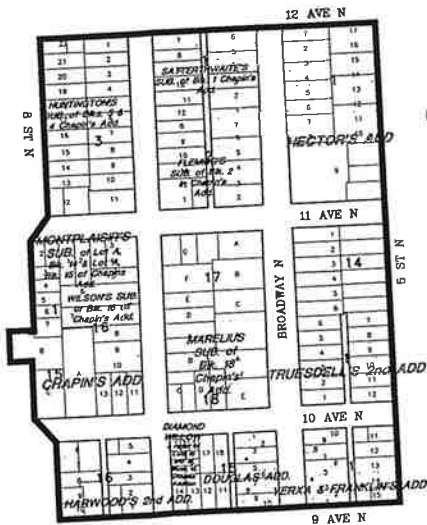
Tract A, B & C of Great Northern 4th Addition.

NP Outlot #1 & R/W

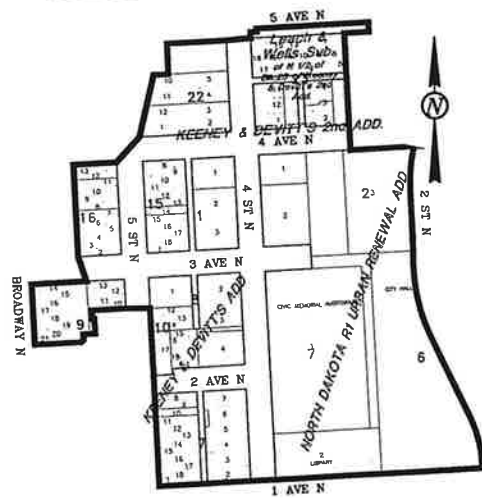
All of the foregoing is located in the City of Fargo, Cass County, North Dakota.



SECTION 1



SECTION 2



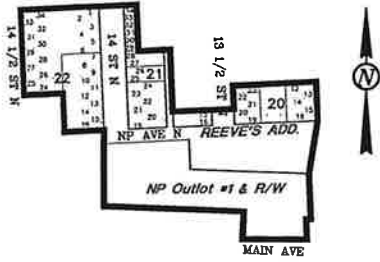
SECTION 3

CITY OF FARGO ENGINEERING
DEPARTMENT

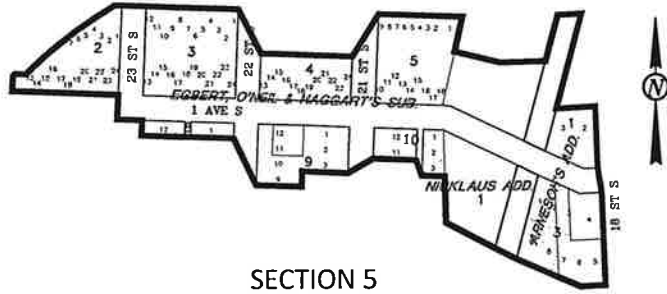
LOCATION & ASSESSMENT AREA

ASPHALT MILL & OVERLAY

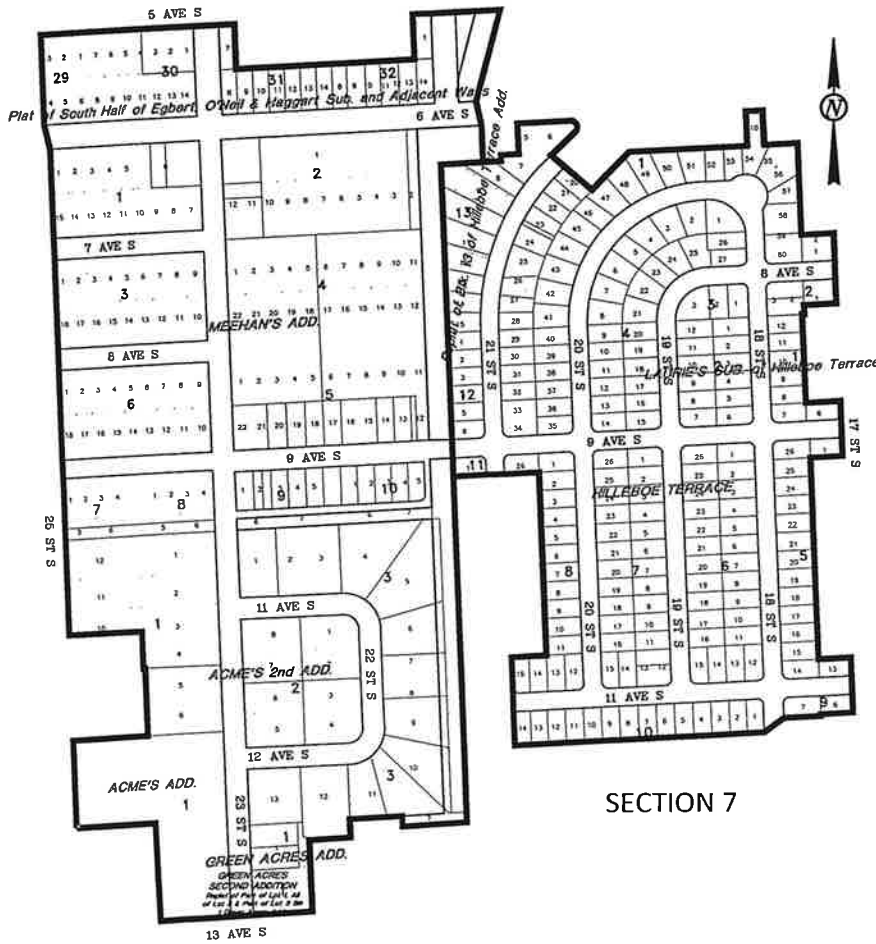
IMPROVEMENT DISTRICT NO. PR-24-F1



SECTION 4



SECTION 5



SECTION 6

SECTION 7



SECTION 8

CITY OF FARGO ENGINEERING
DEPARTMENT
LOCATION & ASSESSMENT AREA
ASPHALT MILL & OVERLAY
IMPROVEMENT DISTRICT NO. PR-24-F1



(20)

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

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: FEBRUARY 14, 2024

SUBJECT: FIRE DEPARTMENT PIGGYBACK PURCHASE – PBC 24123

The fire department has a process to rotate our structural firefighting gear. For 2024, the department is anticipating the need to purchase gear for 20 new employees and 20 current employees. Five years ago, the department completed an extensive evaluation of structural turnout gear available. At the conclusion of the evaluation it was determined that Innotex Energy provided the best protection and value.

For the past several years, we have been purchasing our gear through the Sourcewell cooperative purchasing agreement. There is only one local vendor that is authorized to sell Innotex Energy products, Great Plains Fire Equipment. The Sourcewell price sheet indicates that we will receive a 20% discount from MSRP.

RECOMMENDED MOTION:

Authorize the Fire Department a piggyback purchase of 40 sets of structural firefighting turnout gear through the Sourcewell Cooperatives Purchasing agreement in the amount of \$151,960.00.



PIGGYBACK PURCHASE REQUEST FORM (PBC)

Requested by:	Lee Soeth	Department:	Fire
Date of Request:	02/14/2024	Phone Number:	701-730-0538
E-mail:	lsoeth@fargond.gov		
Dept Head Signature:		Estimated Amount of Purchase:	\$151,960.00

Piggyback Purchase from a State or Cooperative Contract Requirement:

A contract less than \$100,000 may be awarded without competition when the purchasing manager determines in writing, that a State or Cooperative purchasing contract exists and allows municipalities to purchase from a list of approved vendors for the required supply, service, or material. Any purchase contract award greater than \$100,000 must also be approved by the Board of City Commissioners prior to a vendor award using this method. No quotes required.

Product or Service description:

40 sets of Innotex Engergy bunker gear that meets the Fargo Fire Departments current specification. These sets will be purchased through out the year of 2024 as new and replacement gear is needed.

Provide source of existing State contract and Contract number:

Sourcewell #032620-INO

Is a Vendor contract required? Yes No

Vendor Name: Great Plains Fire Equipment

Address: 17277 230th St

City: Fergus Falls State: MN Zip Code: 56537

Contact Person: Phil Isaacson

Title: Owner

Telephone: 218-770-8669

Email: phllisaacson@greatplainsfire.com

Purchasing Manager Approval:

Piggyback (PBC) Number:

PBC24123



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

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: FEBRUARY 14, 2024

SUBJECT: ASSISTANCE TO FIREFIGHTERS GRANT APPLICATION

City of Fargo grant policy requires City Commission approval prior to application for all federal grants. FEMA is now accepting applications through the Assistance to Firefighters Grant (AFG).

Cancer prevention efforts are an important aspect for fire service leadership. Due to increased exposure to carcinogens from vehicles and fires, certain types of cancer are much more prevalent with firefighters over the general public.

One method currently used to reduce carcinogen exposure would be improved by replacing a portion of the aging vehicle exhaust systems currently in each station with an updated hose assembly that uses a new technology for more secure attachment to the apparatus. The total cost for this partial replacement falls under a "micro grant" category that improves the chances of it being accepted and funded. Request - \$56,996.

SCBAs and equipment could be more fully cleaned using a commercial gear washer. Placing three of these at strategically located fire stations would provide crews the ability to more thoroughly clean this important equipment. Request - \$97,680.

The company that the FFD uses for its current station alerting system went out of business in August of 2023. A new system to replace the current system is important as the components may fail without an option for replacement. An option for text to speech would standardize dispatch instructions and improve communications. Request - \$250,772. Text to Speech option - \$173,000. Total - \$423,772.

RECOMMENDED MOTION: Authorize the fire department application for an Assistance to Firefighters Grant in the amount of \$578,448 for updated vehicle exhaust systems, gear washers, and station alerting system.



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

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: FIRE CHIEF STEVE DIRKSEN

DATE: FEBRUARY 14, 2024

SUBJECT: FIRE DEPARTMENT HMEP GRANT APPLICATION

The North Dakota Department of Emergency Services (NDDDES) – Division of Homeland Security has opened an application period for the FY 2024/2025 Hazardous Materials Emergency Preparedness grant. Funding from this grant will allow four hazardous materials team members to attend the 2025 International Hazardous Materials Response Teams conference, hosted by the International Association of Fire Chiefs (IAFC).

Grants funding supports all costs, including travel, registration, overtime, and backfill while the members are attending the conference. The total amount requested is \$22,200, with grant funds of \$17,760 and a match of in-kind funds of \$4,400 from the fire department budget.

RECOMMENDED MOTION: Authorize the fire department application for the HMEP grant in the amount of \$22,200 for the International Hazardous Materials Response Teams conference.



FARGO FIRE DEPARTMENT
637 NP Avenue North
Fargo, ND 58102-4916
Phone: 701.241.1540 | Fax: 701.241.8125
FargoFire.com

Date: February 14, 2024

To: Board of City Commissioners

From: Craig Nelson, Division Chief, Fargo Fire Department
Brady Scribner, City of Fargo Emergency Manager

Re: State Homeland Security Grant Application to Fund a RRVUASU Flight Operations Vehicle

Situation:

The North Dakota Department of Emergency Services (NDDes) is soliciting project applications for Round 2 of the Fiscal Year 2021 State Homeland Security (SHSP) Grant. The SHSP Grant assists states, local, tribal, and territorial efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism. An applicant's project must support one of the national grant priorities which includes "combating domestic violent extremism". The SHSP Grant does not require a local cost share as part of the application process which you will find in the attached copy of the SHSP Grant guidance. The Fargo Fire Department, in coordination with the Red River Valley Unmanned Aircraft Systems (RRVUAS) Board is working with partner departments to develop a SHSP Grant project application to acquire a RRVUAS Unit (RRVUASU) flight operations vehicle.

Background:

The RRVUASU provides aerial observation and remote sensing support for multi-hazard incident response within Cass County. Comprised of members from Fargo and West Fargo fire departments, Fargo and West Fargo police departments, and Cass County Sheriff's Office, the RRVUASU operates under the command of the RRVUAS Board. The RRVUASU responds upon request to incidents using vehicles that may be available at that time. When on scene, UAS operations are conducted from inside a fire engine or squad car if feasible but often occur outside of a vehicle at or near the area of operations.

In regard to domestic violence, the RRVUASU provided critical, real time situational awareness to responder agencies during the May 30th, 2020 civil unrest in Fargo. A total of 35 missions were flown for over 9 hours which provided crucial intelligence for tactical decision-making for our responder agencies. The footage collected during this incident was reviewed during after action review meetings and used to secure convictions of several individuals involved in the violence that occurred during this incident.

Assessment:

Use of vehicles that may or may not be available when a request for assistance is received by the RRVUASU can create prolonged response times that may impact incident response. All necessary equipment must be loaded from storage after obtaining a vehicle that is generally not in the same location. Vehicles used by the RRVUASU have limited direct visual line of sight required to safely and effectively operate the UAS. As a result, the UAS flight crew often operates outside of a vehicle and subjected to extreme weather conditions, adverse light conditions, and ambient noise; all elements that may impact the safety and effectiveness of the UAS mission.



FARGO FIRE DEPARTMENT
637 NP Avenue North
Fargo, ND 58102-4916
Phone: 701.241.1540 | Fax: 701.241.8125
FargoFire.com

A RRVUASU flight operations vehicle would establish a mobile base from which to operate flight missions safely and effectively in coordination with agencies on scene and leadership in incident command. A dedicated vehicle would improve incident response times, efficiently store and ready equipment, facilitate uninterrupted operations during long-duration incidents, and enable quick relocation of UAS operations during dynamic incidents. A RRVUASU flight crew operating inside of a suitable vehicle would be safely sheltered from environmental conditions that impact staff safety and functionality and utilize installed equipment that would enhance UAS mission capabilities.

Recommended Motion:

Approve submission of a State Homeland Security Grant project application in the amount of \$100,000 to fund a RRVUASU flight operations vehicle with associated equipment.

Attachments: FY2021 SHSP Round 2 Grant Program Guidance





**FISCAL YEAR 2021
STATE HOMELAND
SECURITY GRANT
PROGRAM (SHSP)
Round 2
APPLICATION GUIDANCE**

APPLICATION GUIDANCE

For Local Government
Jurisdictions and
Departments

**North Dakota Department
of Emergency Services
(NDDDES)**

Division of Homeland Security

[Leit: 3 a-1 Intentionally]

Program Description

Funding for this program is provided by the U.S. Department of Homeland Security (DHS): Federal Emergency Management Agency (FEMA) Grants Program Directorate (GPD). North Dakota applicants must apply for the funding through the North Dakota Department of Emergency Services (NDDDES): Division of Homeland Security.

The State Homeland Security Program (SHSP) assists states, local, tribal, and territorial efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.

Assistance Listings Title and Number

State Homeland Security Grant Program (97.067)

Federal Notice of Funding Opportunity Title and Number

Fiscal Year 2021 Homeland Security Grant Program (HSGP) (DHS-21-GPD-067-00-02)

PRIORITIES

Applicant's projects must support one of the following national priorities to be considered for funding:

- 1) **Combating domestic violent extremism.** Project Examples (this list is not all inclusive):
 - Training on threat management techniques to identify, evaluate, and analyze indicators and behaviors indicative of domestic violent extremists
 - Open-source analysis of misinformation campaigns, targeted violence, and threats to life, including tips/leads, and online/social media-based threats
 - training and awareness programs to help prevent radicalization to violence
 - training and awareness programs to educate public on misinformation campaigns and resources to help them identify, assess, and report potential threats
- 2) **Enhancing cybersecurity.** Project Examples (this list is not all inclusive):
 - projects that address vulnerabilities identified in the NCSR or State CMA
 - projects that implement key cybersecurity best practices
 - Implement of multi-factor authentication
 - Implement enhanced logging
 - Data encryption for data at rest and in transit
 - End use of unsupported/end of life software and hardware that are accessible from the Internet
 - Prohibit use of unknown/fixed/default passwords and credentials
 - Ensure the ability to reconstitute systems (backups); and
 - Migration to the .gov internet domain
 - cybersecurity training
 - cybersecurity tabletop exercises
 - cybersecurity planning

Funding Availability

The funding for this grant round is from previously awarded sub-recipients whose projects either

finished under budget or were withdrawn. As such, to meet the National Priority Area funding minimums available funds are restricted to the following category areas:

Domestic Violent Extremism (DVE): Approximately \$329,000 available

Cybersecurity: Approximately \$34,000 available

Funding Restrictions

The following types of projects will **not** be considered:

- Unmanned Aircraft Systems (UAS)
- Riot Suppression Gear
- Weapons/weapons accessories/ammunition
- Body Cameras/In-car Video Systems
- Covered (People’s Republic of China) Telecommunications Equipment or Services ([2 CFR § 200.216](#))
- Projects that require and Environmental and Historic Review (EHP)
 - Projects that require installation or replacement of racks that involve attaching the racks to floors and/or walls.
 - Projects that require installing of new equipment cabling where new holes are made through walls, floors, or ceilings. Installation of new conduit onto existing walls, ceilings, or floors.
 - Projects that require installation of uninterrupted power supply units (UPS) that involved attaching to floors or walls.
- Any project that cannot be completed by July 31, 2024.

SHSP Program Specific Application Instructions

Application Information

Local government jurisdictions/departments must apply for FY 2021 SHSP through NDDDES (the SAA). *Local government* means any unit of government within North Dakota, such as a:

- County, City, or Town
- Local public authority
- Special district (example: fire protection district)
- School district
- Any other agency or instrumentality of a local government
- Tribal government

By submitting an application to NDDDES, the applicant agrees to comply with the requirements of the Department of Homeland Security (DHS) [Notice of Funding Opportunity](#) for Fiscal Year (FY) 2021 Homeland Security Grant Program (HSGP) and the terms and conditions of the award, should the applicant receive an award.

Date Application Posted to NDDDES grant website:

January 25, 2024

Application Submission Deadline

February 26, 2024, 12:00 p.m. (noon) CT

Applicants must submit their application to NDDDES (SAA) by Monday, February 26, 2024, no later than 12:00 p.m. (noon) CT.

All applications **must** be received by the established deadline. **Applicants are solely responsible for completing their application prior to the established deadline.**

Unique Entity Identifier

Applicants applying for SHSP funding through NDDDES (SAA) **must** have a Unique Entity Identifier (UEI) number. The applicant must provide a UEI with their application.

If you are going to apply for this funding opportunity and have not obtained a UEI, please obtain a UEI by February 11, 2024. If your organization does not yet have a UEI, visit [SAM.gov](https://sam.gov) to get a UEI and select "Get Started", then choose "Get Unique Entity ID."

Obtaining a UEI is free of charge, so if you encounter any organizations or websites soliciting a fee or charge to acquire a UEI it is likely a scam or fraudulent.

Note: If you do not have a UEI by the time the application is due on February 26th, then your application will not be considered for funding.

Content and Form of Application Submission

Applying for an award under this program is a multi-step process and requires time to complete. To ensure that an application is submitted on time applicants are advised to start the required steps well in advance of their submission. Failure of the applicant to comply with any of the required steps before the application deadline may disqualify their application from funding.

The steps to apply for an award are:

1. Apply for, updating, or verifying the UEI Number.
2. Completing application package.
3. Submitting the complete application package to NDDDES by the deadline.
 - a. Application (within GMS system)
 - b. Certification Regarding Lobbying form (uploaded to GMS system)

Authorized Organizational Representative (AOR)

The AOR should be the individual who is able to make legally binding commitments for the applicant organization.

Electronic Signature

Applications submitted through the NDDDES Grants Management System constitute a submission as electronically signed applications. When submitting the application through GMS the applicant's AOR will type his/her name into the signature line of the application.

As part of the FY 2021 SHSP application, each applicant must address the following in their application:

How to Submit an Application to NDDDES via NDDDES Grants Management System

Applications must be submitted to NDDDES via the NDDDES Grants Management System. Below are the steps to apply.

Step 1: Request Access to the Website by going to <http://grants.des.nd.gov>

- Underneath the login area, click the link titled “Register for Access”
- Fill out the access request form and click “Register” at the bottom of the form. This will send the request to our system administrators for approval.
 - **New Users:** In the “Request Type:” field, select “New User Requesting Access”
 - **Existing Users:** In the “Request Type:” field select, “Existing User Requesting Additional Access”
- When granted access to the website, the user will be notified by email Monday through Friday 8:00 a.m. to 5:00 p.m. Requests made after hours or on the weekends will not be addressed until the next business day.
 - **New Users** will be given a temporary password to access the site. Once logged in, the website will prompt the user to enter the temporary password to create a permanent password for future site access.
 - **Existing Users** will be able to use their existing password.

Note: If you do not receive an email, check you Junk Email box before calling NDDDES.

Step 2: Starting the Application

- Once a user is active and access to grants.des.nd.gov has been granted, the user will only have access to the jurisdiction or organization they represent. All applicants are separated to ensure privacy and prevent fraud.
- To apply for an SHSP grant, the first step is to complete the application. After logging into the website, the user’s jurisdiction or organization name will be located along the right-hand side of the screen under “Applicant You Represent”
- Under the applicant name will be a link that says, “Apply for Grant”. Click the “Apply for Grant” link and a new window will open that allows the choice of which specific Grant and Project Type can be applied for.
 - For the Grant, choose “FY 2021 State Homeland Security Program (SHSP)”
 - For the Project Type, the only option to choose is GEN-General SHSP
 - Once these are selected, click the “Create” button and a new application will be opened

Step 3: Completing the Application:

Once in the application, click on the left tab entitled “Form”. The word “Form” will be in red with a red star next to it. The red color and star indicate that the form has not been completed and needs additional information before it can be submitted. The application cannot be submitted until all

required information has been entered into the form.

Introduction Page

- Title: Identify the Project Name, include the appropriate national priority in the name (ex. Enhancing Protection – Security Cameras)
- Primary Contact: This must be a legal representative of the jurisdiction that is applying since the jurisdiction will be legally responsible for the project.
- Alternate Contact: Representative of the jurisdiction other than primary contact.
- Authorized Contact: Representative of the jurisdiction other than primary contact.
- Work Activity: Areas that coincide with your work activity and costs. Choose Planning, Training, Exercise, Equipment and/or M&A. *Hold the Ctrl key to select multiple areas.*
- Mark the appropriate statement at the bottom of the page.

Costs Page:

This represents your budget request for the SHSP grant. The costs for a project should be broken down into direct cost categories. For each cost, click the “Add Line” button and enter the specific information for that cost item.

- Cost Line Items
 - Area: Choose Planning, Training, Exercise, Equipment, or M&A
 - Type: Choose Contractor, Equipment, Materials and Supplies, Travel, Other
 - AEL Code: Enter the AEL Code. If you are unsure of the Code, you can click on the blue “List” link and it will show you the available codes.
 - Description: When you enter the AEL Code the Description will auto-populate. **DO NOT CHANGE THE AUTO-POPULATED DESCRIPTION.**
 - Quantity: Enter the Quantity of the item.
 - Price: Enter the Unit Price of the item.
 - Total: The Total column will auto-calculate.
- Funding Sources: Simply click on the “By Percent” button and enter 100 into the Estimated Federal Share.

Agreements Page

- Check the small box stating the documentation is being electronically signed
- Enter name and date of Agency Authorized Representative

Work Activity Pages:

- Start Date: Enter the date the project is estimated to start. Note projects should not have a start date prior to March 1, 2024.
- End Date: Enter the date the project is estimated to be complete. Note projects **must** be complete by July 31, 2024.
- Objective: Explain the goal your project is intended to accomplish. Use the S.M.A.R.T philosophy when developing your objective/goal.
- Justification: Provide justification demonstrating and explaining the required information described below:
 - Demonstrate how the proposed project supports terrorism preparedness,

- Demonstrate how the proposed project supports closing capability gaps or sustains capabilities identified in the community's county Threat and Hazard Identification and Risk Assessment (THIRA); **Projects must address gaps identified in the County THIRA.** Contact your county emergency manager for assistance to determine if gap is identified and where in THIRA it is identified.
- Explain how the proposed project will support the applicant's efforts to:
 - Prevent a threatened or actual act of terrorism; and/or
 - Prepare for all hazards and threats, while explaining the nexus to terrorism preparedness; and/or
 - Protect citizens, residents, visitors, and assets against the greatest threats and hazards, relating to acts of terrorism; and/or
 - Respond quickly to save lives, protect property and the environment, and meet basic human needs in the aftermath of an act of terrorism or other catastrophic incidents.
- Action Steps: Explain the steps required for successful completion of the project.

Finishing the Application

Once you have completed the application be sure to hit the **"Save"** button at the top of the page. From there, the user will need to upload their backup documentation, including any additional forms required in the Notice of Funding Opportunity.

- Uploading documents:
 - Click on the Summary tab above the Form tab in the application.
 - Click the "Add Document" button at the bottom of the page. This will bring up a window to add files.
 - Select the "Choose Files" button, locate and select the files needing to be uploaded and click Open.
 - Once they are added to the list, assign a document type from the drop-down list.
 - Click the Upload button

After everything is uploaded and completed, hit the **"Advance"** button. This will notify NDDDES that the application is ready for review. NDDDES will review the application for eligibility and completeness. If the application is missing documentation or needs revisions, the application will be returned to the applicant with a Request for Information (RFI) that outlines what revisions are required. Once the RFI has been completed, the applicant will need to re-submit the application to the State again for further review.

Review and Selection Process

State Review

Application packages are submitted by the applicant to NDDDES (the SAA) based on the established criteria described in the [NOFO](#).

The SAA will review applications and recommend to DHS/FEMA which applications should be selected for funding.

Successful applicants will be notified via the Grants Management System (GMS) no later than February 29, 2024.

Review Criteria

State's review will include verification that the project:

- Aligns with at least one of the national priorities (10 maximum)
- Demonstrates how project supports closing gaps identified in the County THIRA process (Objective) (20 points maximum)
- Is feasible and effective at reducing the risks for which the project is designed (Justification) (40 points maximum)
- Has a project schedule with clear milestones (Action Steps) (20 points maximum)
- Budget that maximizes \$ requested (10 points maximum)

Projects that do not align with at least one of the priorities listed on page 5 will not be considered for funding.

Bonus points (5) will be given to eligible entities that have not funded previously.

Bonus points (5) will be given to eligible entities with populations under 50,000.

Award Administration Information

Notice of Grant Award

Notification of award approval is made through the NDDes Grants Management System (GMS) to the sub-recipient's authorized official listed in the initial application. The sub-recipient should follow the directions in the notification to confirm acceptance of the award.

Sub-recipients must accept their awards no later than 10 days from the award date. The sub-recipient shall notify NDDes of its intent to accept and proceed with work under the award by signing the Notice of Grant Award and uploading it to the Project page in the GMS.

Funds will remain on hold until the sub-recipient accepts the award and all other conditions of award have been satisfied, or the award is otherwise rescinded. Failure to accept the grant award within the 10-day timeframe may result in a loss of funds. Sub-recipients who wish to decline the award must provide a written notice of intent to decline through the GMS.

Sub-award of sub-recipients whose project(s) require an EHP and who's EHP is not approved by DHS/FEMA within 30 days of the State receiving the federal award, will include the condition that the project cannot be started or any funds expended until the EHP is approved. Projects started prior to EHP approval will result in the award being rescinded. NDDes will notify the sub-recipient when the EHP has been approved.

See the [Preparedness Grants Manual](#) for information on federal administrative and national policy requirements, including the DHS Standard Terms and Conditions.

Before accepting the award, the AOR should carefully read the award package for instructions on administering the grant award and the terms and conditions associated with responsibilities under Federal Awards. Sub-recipients must accept all conditions in the [NOFO](#) as well as any Special Terms and Conditions in the Notice of Award to receive an award under this program.

Reporting

Sub-recipients are required to submit various financial and programmatic reports as a condition of their award acceptance. Future awards and funds reimbursement may be withheld if these reports are delinquent. **Reporting will be done electronically through the NDDDES Grants Management System (GMS) located at <https://grants.des.nd.gov/>.**

In addition, sub-recipients may have additional reporting requirements to the federal awarding agency. See the [Preparedness Grants Manual](#) for information on federal reporting requirements, including financial, programmatic, and closeout reporting and disclosing information per 2 C.F.R. § 180.335.

Financial Reporting Requirements

Sub-recipients must submit at least one reimbursement request through the NDDDES Grants Management System (GMS) upon completion of the project; however, quarterly reimbursement requests as the project progresses are preferred. See the [Reimbursement Processing Checklist](#) for a list of documentation that must be included with the reimbursement request.

NDDDES uses the Direct Deposit/Electronic Funds Transfer (DD/EFT) method of payment to sub-recipients. To enroll in the DD/EFT, the sub-recipient must complete and submit to NDDDES a Substitute IRS Form W-9 (SFN 53656) <http://www.nd.gov/efrms/Doc/sfn53656.pdf> and a voided check.

Program Performance Reporting Requirements

Sub-recipients are responsible for providing updated performance reports on a quarterly basis through the NDDDES Grants Management System (GMS).

Program Performance Reporting Periods Due Dates

The following reporting periods and due dates apply for the performance progress reports:

Reporting Period	Report Due Date
March 1 – March 31, 2024	April 15, 2024
April 1 – June 30, 2024	July 15, 2024
July 1 – July 31, 2024	August 15, 2024

Closeout Reporting Requirements

Within 15 days after the end of the Period of Performance, sub-recipients must submit a final reimbursement request and final project status report detailing all accomplishments and a qualitative summary of the impact of those accomplishments throughout the Period of

Performance, as well as other documents required by program guidance or terms and conditions of the award, to include the [tangible personal property report](#) (inventory of all equipment and software acquired using funds from the award).

The sub-recipient must liquidate all obligations incurred under the HSGP award by the end of the period of performance. Unliquidated obligations at the end of the period of performance will result in the costs being disallowed.

After these reports have been reviewed and approved by NDDDES, a close-out notice will be completed to close out the grant. The notice will indicate the Period of Performance is closed, list any remaining funds that will be de-obligated, address the requirement of maintaining the grant records for three years from the date of the final Federal Financial Report submitted by NDDDES to DHS/FEMA, and disposition and reporting requirements for any equipment purchased using HSGP funding.

Federal rules require that all equipment purchased with federal funds must be inventoried and tagged. Sub-recipients are to record equipment purchased with a value of \$5,000 or more on the [Inventory List form](#) and submit it to NDDDES. NDDDES will then issue the sub-recipient inventory tags based on the submitted form. All inventory tags must be placed on identified equipment within 30 days of receiving the tags.

NDDDES Awarding Agency Contact Information

NDDDES staff will provide programmatic support and technical assistance. A list of contacts is provided below:

- Programmatic or Administrative Questions (grant guidance, reimbursement requests, change requests, etc.)
 - Dave Rice drice@nd.gov
 - Debbie LaCombe dlacombe@nd.gov
 - Karen Hilfer khilfer@nd.gov



(24)

MEMORANDUM

Date: February 14, 2024

To: Board of City Commissioners

From: Michael Bernier, Fargo Police Department Lieutenant
Brady Scribner, City of Fargo Emergency Manager

Re: State Homeland Security Grant Application to Fund a Displays for Special Event Emergency Operations

Situation:

The North Dakota Department of Emergency Services (NDES) is soliciting project applications for Round 2 of the Fiscal Year 2021 State Homeland Security (SHSP) Grant. The SHSP Grant assists states, local, tribal, and territorial efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism. An applicant's project must support one of the national grant priorities which includes "combating domestic violent extremism". The SHSP Grant does not require a local cost share as part of the application process which you will find in the attached copy of the SHSP Grant guidance. The Fargo Police Department is working with Emergency Management to develop an SHSP Grant project application to purchase TVs to be used for special event emergency operations coordination.

Background:

Special event emergency operations planning and coordination involves collaboration between event organizers, emergency response agencies, and community partners to ensure public safety while preparing for emergencies that might occur during the event. Staff from designated agencies gather on the day (or days) of the event to manage agency roles, coordinate actions across departments and organizations, and share information to maintain situational awareness for all involved.

Assessment:

The risk of violent attacks to attendees of public events is a known threat to communities across the nation. No greater emphasis of this threat can be provided as the violent attack at a parade in Kansas City, Missouri is occurring while this memo is being written. Event coordinators and emergency response agencies have committed staff and resources to special event preparedness and emergency response action planning. Suitable space that can support event day emergency operations coordination while adequately facilitating situational awareness content and information is limited to a few locations. These events occur throughout the community with downtown Fargo being a common location for events.

Recommended Motion:

Approve submission of a State Homeland Security Grant project application in the amount of \$5,000 to purchase TVs. These displays will be installed in new locations to establish appropriate space for special event emergency coordination. The displays will centralize situational awareness through real-time data and information sharing related to special event operations.

Attachments: FY2021 SHSP Round 2 Grant Program Guidance

(25)

To: Board of City Commissioners

From: Jill Minette, Director of Human Resources

Re: Blue Cross Blue Shield of North Dakota - Health Insurance Benefit Plan Agreement and Dental Insurance Group Insurance Policy

Date: February 13, 2024

Please see the attached Blue Cross Blue Shield of North Dakota (BCBSND) Health Insurance Benefit Plan Agreement and Dental Group Insurance Policy. The health insurance agreement and dental insurance policy reflect the renewal terms previously approved for the 2024 plan year and have been reviewed by the City Attorney.

RECOMMENDED MOTION: To approve the Blue Cross Blue Shield of North Dakota (BCBSND) Health Insurance Benefit Plan Agreement and Dental Group Insurance Policy.

**GROUP INSURANCE POLICY
for
Dental Benefits**

**Blue Cross Blue Shield of North Dakota
4510 13th Avenue South
Fargo, North Dakota 58121**

City of Fargo

253973

Effective Date: January 1, 2024

Term: 12 months

The Policyholder has established and maintains a fully insured group dental plan (the Plan) which provides, among other things, various benefits to Members, as set forth in the Certificate of Insurance (Certificate). The Policyholder and Blue Cross Blue Shield of North Dakota the (Company) will make the dental benefits available to eligible Certificate Holders of the Policyholder and/or their Dependents at 12:01 AM on the Effective Date and upon the terms and conditions contained in this Group Insurance Policy (Group Policy). The Company will pay the benefits described in the Certificate and any Schedule of Benefits or amendments attached hereto, subject to the Group Policy terms. The Certificate is attached to this Group Policy as Exhibit A and incorporated by reference. The parties shall fulfill the obligations stated herein.

Certain terms in this Group Policy have specific meanings as set forth in the Definitions section of this Group Policy and in the Definitions section of the Certificate.

GROUP POLICY AND CONSIDERATION: In consideration of payment of all Premiums when due and receipt of accurate and complete application information, the Company will insure those Members enrolled in the Policyholder's Group Policy for dental benefits in accordance with the terms and conditions of this Group Policy. Coverage will begin at 12:01 AM on the Effective Date shown above. It will remain in force for the initial Term and for such further periods for which it is renewed.



Its President and CEO

January 2, 2024

DEFINITIONS

- A. **CERTIFICATE HOLDER** – any employee of the Policyholder who is or may become eligible to receive a benefit under this Plan. The term includes all common law employees as well as any proprietors, partners or other owners who work for the Policyholder, if any, and who are otherwise entitled to coverage under the Plan. Notwithstanding the above, in no case shall the term Certificate Holder include any person not otherwise entitled to coverage under the terms of the Plan.
- B. **CLAIM** – notification in a form acceptable to the Company that services have been provided or furnished to a Member.
- C. **COMPANY** – Blue Cross Blue Shield of North Dakota (BCBSND), or a third party with which BCBSND contracts for a provider network and to perform certain functions to administer the terms of the Group Policy and coverage within the Certificate.
- D. **DATA AGGREGATION** – the combining of Protected Health Information the Company creates or receives for or from the Plan and for or from other health plans or health care providers for which the Company is acting as a business associate to permit data analyses that relate to the Health Care Operations of the Plan and those other health plans or providers.
- E. **DEPENDENT** – those individuals eligible to enroll for coverage under the Group Policy because of their relationship to the Certificate Holder.
- F. **HEALTH CARE OPERATIONS** – any of the activities of a health plan to the extent the activities relate to those functions that make it a health plan.
- G. **MEMBER** – the Certificate Holder and any Dependent of a Certificate Holder or any other person designated by the Certificate Holder or by the terms of the Plan who is or may become entitled to a benefit under the Plan. The term shall also include any proprietor, partner or owner of the Policyholder, if any, who is designated by the terms of the Plan who is or may become entitled to a benefit under the Plan. In no case shall the term Member include any person not otherwise entitled to coverage under the terms of the Plan.
- H. **POLICYHOLDER** – the entity identified as the Policyholder on the first page of this Group Policy that is also the Plan Sponsor and Plan Administrator for purposes of the Employee Retirement Income Security Act of 1974 (ERISA), as amended.
- I. **PROTECTED HEALTH INFORMATION (PHI)** – individually identifiable health information, including summary and statistical information, collected from or on behalf of a Member that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium and that:
1. is created by or received from a health care provider, health care employer or health care clearinghouse;
 2. relates to a Member's past, present or future physical or mental health or condition;
 3. relates to the provision of health care to a Member;
 4. relates to the past, present, or future payment for health care to or on behalf of a Member; or
 5. identifies a Member or could reasonably be used to identify a Member.
- Educational records and employment records are not considered PHI under federal law.
- J. **SECURITY INCIDENT** – any attempted or successful unauthorized access, use, disclosure, modification or destruction of a Member's electronic PHI or interference with the Company's system operations in the Company's information systems.

- K. **STANDARD TRANSACTIONS** – health care financial or administrative transactions conducted electronically for which standard data elements, code sets and formats have been adopted in accordance with federal or state law.
- L. **SUCCESSFUL SECURITY INCIDENTS** – Security Incidents that result in unauthorized access, use, disclosure, modification or destruction of information or interference with system operations.
- M. **UNSUCCESSFUL SECURITY INCIDENTS** – Security Incidents that do not result in unauthorized access, use, disclosure, modification or destruction of information or interference with system operations.

INSURANCE RULES

A. **ELIGIBILITY:**

In order to be eligible to enroll for benefits under this Group Policy, a Certificate Holder and any Dependents must meet the Policyholder's eligibility requirements, satisfy the requirements and definitions set forth in the Certificate, and meet any requirements of applicable law or regulation.

No person who meets the eligibility requirements of this Group Policy shall be refused enrollment or re-enrollment because of age, race, color, national origin, disability, sexual orientation, gender identity, sex, dental health status, genetic disorder or the existence of a pre-existing dental condition.

B. **ENROLLMENT:**

Eligible Certificate Holders and/or their Dependents shall become enrolled under the Group Policy as set forth in the Certificate and this Group Policy. An open enrollment period may be provided in which Certificate Holders may elect to enroll or disenroll themselves and Dependents under this Group Policy. Open enrollment occurs at a time and frequency stipulated by the Company subject to the request of the Policyholder or its authorized representative.

GENERAL POLICY RULES

A. **PAYMENT OF PREMIUMS:**

In consideration of the dental Benefit Plan made available to the Members by the Company, the Premium listed below is payable in accordance with the Premium payment provisions of this Group Policy. The Company reserves the right to seek reimbursement from the Policyholder for any bank charges incurred for insufficient funds on a payment by the Policyholder.

	Individual Coverage	Parent and Child(ren) Coverage	Two Person Coverage	Family Coverage
BlueDental Elite+ 100 1000	\$45.50	\$88.78	\$91.00	\$135.13

B. TERM OF GROUP POLICY:

This Group Policy shall begin at 12:01 A.M. on the Effective Date, continue in effect for the initial term shown on the first page of this Group Policy and automatically renew thereafter for terms indicated in the Group Policy renewal notices, subject to the following:

1. Either the Policyholder or the Company may elect not to renew the Group Policy by providing 60 days prior written notice. In the absence of notice from the Policyholder of its intention not to renew, receipt of the renewal Premium constitutes the Policyholder's acceptance of the renewal. In the event of non-renewal by the Policyholder, any unpaid Premium due for months prior to the termination shall be due and payable on the termination date.
2. The Company may terminate this Group Policy upon default in the payment of Premium by giving to the Policyholder 31 days prior written notice of such termination. Notice to the Policyholder shall state the amount of Premium due and the 31 day grace period for payment. Coverage under the Group Policy will remain in effect during the 31 day grace period. Payment of said sum prior to the date of intended termination shall continue this Group Policy in full force and effect. The Policyholder shall remain liable to the Company for Premiums accrued during the grace period. For purposes of this section, the Company will apply these default provisions to any separate billing locations of the Policyholder when the Policyholder elects to structure its Group with separate billing locations that are independently responsible for Premium payment.
3. The Company may terminate this Group Policy with 31 days advance notice if the number of Certificate Holders enrolled under this Group Policy totals less than the Company's required minimum participation.
4. The Company may also adjust the Premium or benefits with 31 days advance notice if the extent or nature of the risk changes significantly.
5. The Group Policy or coverage of a Member may be terminated immediately when there is fraud or misrepresentation by the Policyholder or Member respectively.
6. In the event of a breach by either party, other than for nonpayment of Premium, the other party may terminate this Group Policy by written notice to the breaching party. The breaching party has 31 days to fully cure the breach. If the breach is not cured within 31 days after written notice, this Group Policy will immediately terminate.
7. The Plan Administrator will have the right to terminate this Group Policy if the Company has engaged in a pattern of activity or practice that constitutes a material breach or violation of the Company's obligations regarding PHI under this Group Policy and, on notice of such material breach or violation from the Plan Administrator, fails to take reasonable steps to cure the breach or end the violation.

If the Company fails to cure the material breach or end the violation after the Plan Administrator's notice, the Plan Administrator may terminate this Group Policy by providing the Company written notice of termination setting forth the uncured material breach or violation serving as the basis for the termination and specifying the effective date of the termination.

8. Notwithstanding the above provisions, either the Company or the Policyholder may terminate this Group Policy with at least 31 days advance written notice. Any unpaid Premium due for months prior to the termination shall be due and payable on the termination date.

C. POLICYHOLDER OBLIGATIONS:

The Policyholder agrees, in addition to any other obligations contained herein, that it shall:

1. Have the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules and regulations, including any licensing, filing, reporting and disclosure requirements that may apply to the Plan. The Company will have no responsibility for or liability with respect to the Plan's compliance or noncompliance with any applicable federal, state or local law, rule or regulation.
2. By executing this Group Policy, the Plan Sponsor certifies to the Company that its Plan documents have been amended to incorporate the provisions required by and under federal law, and agrees to comply with the Plan Administrator's plan documents.

The Company may rely on Plan Sponsor's certification and Plan Administrator's written authorization, and will have no obligation to verify (1) that the Plan Administrator's plan documents have been amended to comply with the requirements of federal law or this Group Policy or (2) that the Plan Sponsor is complying with the Plan Administrator's plan document as amended.

3. Define its eligibility requirements for enrollment of Members under the Group Policy and communicate such requirements, including any changes, to Members. During the term of this Group Policy, no change in the Policyholder's eligibility requirements, participation requirements or renewal date shall be permitted to affect eligibility or enrollment unless such change is agreed to in advance by the Company.
4. Collect from its Certificate Holders any contribution toward the Premium and notify Certificate Holders of any change in such contribution. Pay in full when due the Premium specified in this Group Policy or renewal notice for this Group Policy for all enrolled Certificate Holders and Dependents, as reported to the Company. Unless otherwise agreed between the Policyholder and the Company or dictated by applicable law or regulation, Premium for Members who become ineligible during the course of this Group Policy is due through the end of such month in which they become ineligible.
5. Send accurate and timely enrollment data including additions, terminations and changes required by the Company to perform its duties under this Group Policy and to determine Premium rates. The Policyholder will be held liable for the cost of Claims incurred as a result of inaccurate enrollment data, or retroactive terminations of enrollment that exceed the guidelines of the Company. All records of the Policyholder that bear on the insurance including eligibility, enrollment and payment of Premium must be open to the Company for its inspection and to make copies at any reasonable time and with reasonable notice to the Policyholder.
6. Notify the Company as soon as possible when coverage is to be continued for ineligible Members under any state or federal law or regulation. It is the Policyholder's obligation to notify Certificate Holders and Dependents of their rights and any Premium due for continuation coverage as required by law.
7. Notify all Certificate Holders of the termination of the Group Policy. Coverage will be terminated regardless of whether the notice is given.

D. COMPANY OBLIGATIONS:

The Company or its authorized representative shall perform administrative functions necessary to ensure the provision of benefits for the Policyholder and its Members. Such functions may include, but are not limited to billing, processing Claims, providing a Certificate for Certificate Holders, responding to inquiries and complaints related to this Group Policy and maintaining records.

The Company does not disclose Claim or eligibility records except as allowed or required by law. The Company maintains physical, electronic and procedural safeguards to guard Claims and eligibility information from unauthorized access, use and disclosure. Claim records are owned by and are proprietary to the Company.

1. Privacy of Protected Health Information (PHI)

- a. The Company will keep confidential all Claim records and all other PHI the Company creates or receives in the performance of its duties under this Group Policy. Except as permitted or required by this Group Policy for the Company to perform its duties under this Group Policy, the Company will not use or disclose such Claim information or other PHI without the authorization of the Member who is the subject of such information or as required by law.
- b. The Company will neither use nor disclose Members' PHI (including any Members' PHI received from a business associate of the Plan) except (1) as permitted or required by this Group Policy, (2) as permitted in writing by the Plan Administrator, (3) as authorized by Members or (4) as required by law.
- c. The Company will be permitted to use or disclose Members' PHI only as follows:
 1. The Company will be permitted to use and disclose Members' PHI (a) for the management, operation and administration of the Plan that the Plan Administrator offers Members, and (b) for the services set forth in the Plan, which include payment activities, Health Care Operations, and Data Aggregation as these terms are defined under federal law. The Company also may de-identify PHI it obtains or creates in the course of providing services for the Plan Administrator.
 - (i) The Company will be permitted to use Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities.
 - (ii) The Company will be permitted to disclose Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities only if (i) the disclosure is required by law, or (ii) before the disclosure, the Company obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written Group Policy, that the entity will hold Members' PHI in confidence, use or further disclose Members' PHI only for the purposes for which the Company disclosed it to the entity or as required by law, and notify the Company of any instance the entity becomes aware of where the confidentiality of any Members' PHI was breached.
 2. The Company will make reasonable efforts to use, disclose or request only a limited data set where practical. Otherwise, the minimum necessary amount of Members' PHI to accomplish its intended purpose.
- d. Other than disclosures permitted by General Policy Rules (D.1.c), the Company will not disclose Members' PHI to the Plan Administrator or to the Plan's business associate except as directed by the Plan Administrator in writing.

- e. The Company will require each subcontractor and agent to which the Company is permitted by this Group Policy or in writing by the Plan Administrator to disclose Members' PHI to provide reasonable assurance, evidenced by written contract, that such other entity will comply with the same privacy and security obligations with respect to Members' PHI as this Group Policy applies to the Company.
- f. The Company will not disclose any Members' PHI to the Plan Sponsor, except as permitted by and in accordance with General Policy Rules (D.1.c).
- g. Disposition of Protected Health Information.

The parties agree that upon termination, cancellation, expiration or other conclusion of this Group Policy, the Company will return or destroy all PHI received or created by the Company on the Plan Administrator's behalf as soon as feasible. Due to various regulatory and legal requirements, the Plan Administrator acknowledges that immediate return or destruction of all such information is not feasible. The Company agrees that upon conclusion of this Group Policy for any reason, it will use or disclose the PHI it received or created on the Plan's behalf only as necessary to meet the Company's regulatory and legal requirements and for no other purposes unless permitted in writing by the Plan Administrator. The Company will destroy PHI received or created by the Company on the Plan Administrator's behalf that is in the Company's possession under such circumstances and upon such schedule as the Company deems consistent with its regulatory and other legal obligations.

1. The Company will meet all obligations imposed upon it by the HIPAA Privacy Rule.

2. Information Safeguards

- a. The Company will maintain reasonable and appropriate administrative, technical and physical safeguards to protect the privacy of Member PHI. The safeguards must reasonably protect Member PHI from any intentional or unintentional use or disclosure in violation of federal law and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Group Policy.
- b. The Company will implement administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI the Company creates, receives, maintains or transmits on behalf of the Plan Administrator as required by federal law.

3. Inspection of Books and Records

- a. The Company will make its internal practices, books and records relating to its use and disclosure of PHI created or received for or from the Plan Administrator available to the U.S. Department of Health and Human Services to determine compliance with federal law or this Group Policy.
- b. The Company will prepare and distribute a notice of privacy practices appropriate for the Plan to meet its notice obligations under federal law. The Plan Administrator authorizes the Company to disclose the minimum necessary PHI to the Plan Sponsor for Plan Administration functions specified in the Plan documents as amended.

4. Information Privacy and Safeguard Provisions Survive Termination of Group Policy

These responsibilities agreed to by the Company and related to protecting the privacy of PHI, as well as any terms directly related thereto, shall survive the termination of this Group Policy and where applicable, shall govern the Company's receipt and use of PHI obtained pursuant to the terms of this Group Policy.

E. GENERAL PROVISIONS:

1. Where federal law is not applicable, this Group Policy shall be governed by the laws of the state of North Dakota.
2. This Group Policy consists of the attached Certificate, Schedule of Benefits and amendments to the previously mentioned forms and represents the entire agreement between the Policyholder and the Company with respect to the subject matter. The failure of any section or subsection of this Group Policy shall not affect the validity, legality and enforceability of the remaining sections hereof.
3. The provisions of the Certificate and all of its Schedule of Benefits issued to amend this Group Policy after its Effective Date are made a part of this Group Policy.
4. Except as otherwise herein provided, each amendment to this Group Policy, including a change in the Premium or benefits, shall be proposed by the Company to the Policyholder at renewal and in writing. Except as otherwise provided herein, each amendment shall become effective on the date this Group Policy renews in accordance with General Policy Rules (B).
5. An amendment mutually agreed to by both parties can be proposed at any time by either party in writing to the other with the advance notice indicated on the first page of this Group Policy. The effective date must be mutually agreed to by both parties. Payment of Premium will confirm acceptance of amendment. A change in the Group Policy may be made at any time without mutual agreement of the parties if the change is necessary to satisfy the requirements of any state or federal law applicable to the Group Policy. An amendment will not affect a Claim incurred prior to the effective date of the change.
6. Only a duly designated officer of the Company has the authority to: (a) waive any conditions or restrictions of the Group Policy; (b) extend the time in which a Premium may be paid; (c) make or change a contract; and (d) bind the Company by a promise or representation or by information given or received. An agent of the Company is not an officer. No agent has such authority.
7. The Plan Administrator agrees to abide by all underwriting requirements established by the Company as these underwriting requirements relate to, including but not limited to, rating factors, the minimum participation of eligible Members, minimum employer contributions, reporting employer contribution rates and provider network restrictions, as permitted and restricted under federal and/or state laws.
8. The Company will provide formal policy and procedure guidelines to the Plan Administrator for the conduct of external audits or reviews commissioned by the Plan Administrator. The Company shall cooperate with all external audit or review teams.

The Plan Administrator shall provide the Company with the scope and requirements of any audit or review prior to the commencement of the audit or review. If a sample of Claims is required, the Company will provide the Plan Administrator with a statistically valid computerized sample of Claims.

All audit or review findings shall be discussed with the Company upon discovery to allow further investigation or implementation of corrective action.

All Member records shall be kept confidential and considered proprietary. Such records shall be available for audit or review only after disclosure statements have been signed by the external audit or review team to ensure the information remains confidential and is utilized for the stated purpose only. If any records are removed from the Company's office for purposes of the audit or review, approval must be granted. All records will be subject to the minimum necessary requirements.

9. The Plan Administrator hereby expressly acknowledges and understands that BCBSND is an independent corporation operating under a license with the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the "Association"), permitting BCBSND to use the Blue Cross and Blue Shield Service Marks in the state of North Dakota, and that BCBSND is not contracting as an agent of the Association. The Plan Administrator further acknowledges and agrees this Group Policy was not entered into based upon representations by any person or entity other than BCBSND and that no person, entity, or organization other than BCBSND shall be held accountable or liable to the Plan Administrator for any of BCBSND's obligations to the Plan Administrator created under this Group Policy. This paragraph shall not create any additional obligations whatsoever on the part of BCBSND other than those obligations created under other provisions of this Group Policy.
10. It shall be the sole responsibility of the Plan Administrator to distribute Certificates to Certificate Holders of the Plan and to advise Members of their rights under ERISA, including, but not limited to Claims appeals procedures. In the event a Claim is paid due to the Certificate not being distributed to the Certificate Holder, the Plan Administrator shall be liable for all such Claims. The Certificate is not the Summary Plan Description but contains some of the information that the Plan Administrator may deem essential for inclusion in the Summary Plan Description. The Plan Administrator has the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules and regulations, including the creation and distribution of a Summary Plan Description.
11. If the Plan Administrator has a digital or online version of the Certificate available to its employees, the Plan Administrator agrees that it will not alter, modify or change the language of the Certificate, and further agrees the Certificate, attached as Exhibit A, will be the controlling document in the event of any conflict or liability that might arise as the result of any alterations, modifications or changes made by the Plan Administrator. In the event a Claim is paid based on the Plan Administrator's digital or online Certificate, the Plan Administrator is liable for all such Claims. The Plan Administrator further agrees that no waiver of this Group Policy is valid unless in writing and approved by the Company.
12. Upon the effective date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of health information or other aspects of the Health Insurance Portability and Accountability Act of 1996 applicable to this Group Policy, this Group Policy will automatically amend such that the obligations imposed on the Plan Sponsor, the Plan Administrator and the Company remain in compliance with such regulations, unless the Company elects to terminate this Group Policy by providing the Plan Sponsor and the Plan Administrator notice of termination in accordance with this Group Policy at least 31 days before the Effective Date of such final regulation or amendment to final regulations.

13. Any notice required under this Group Policy shall be in writing and shall be effective when delivered in person or sent by certified mail to a party at its respective address. Notices to the Company shall be sent to:

**Attention: President and CEO
Blue Cross Blue Shield of North Dakota
4510 13th Avenue South
Fargo, North Dakota 58121**

F. INDEMNIFICATION CLAUSE:

Each party agrees to indemnify and hold harmless the other party for all causes of action, suits, claims, judgments, settlements, liabilities, damages of any kind, penalties, losses, expenses, court costs and attorneys' fees resulting from or arising out of any duty under this Group Policy, if the liability was the consequence of the actions of the indemnifying party.

G. BINDING EFFECT:

This Group Policy shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Exhibit "A"

City of Fargo

January 1, 2024 through December 31, 2024

BENEFIT PLAN AGREEMENT

This Benefit Plan Agreement ("Agreement") is entered into between City of Fargo ("the Plan Sponsor"), City of Fargo ("the Plan Administrator") and Blue Cross Blue Shield of North Dakota ("BCBSND"). Throughout this Agreement, BCBSND is referred to as the "Company."

The Plan Sponsor has established and maintains a fully insured group health plan (the Plan) which provides, among other things, various benefits to Members in the Plan, as set forth in the Certificate of Insurance provided to plan Members. The Plan Administrator is the administrator of the Plan established through this Agreement.

In consideration of payment of required premium and acceptance of applications, the Company enters into this Agreement with the Plan Sponsor and the Plan Administrator. The Company agrees to provide plan Members the benefits set forth in the Certificate of Insurance, in accordance with its terms and conditions. This Agreement also includes the Certificate of Insurance, applications, Identification Cards and any endorsements, supplements, attachments, addenda or amendments.

FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. EFFECTIVE DATE AND PLAN YEAR

This Agreement is effective January 1, 2024, through December 31, 2024, unless terminated as provided in Section 7. TERMINATION.

For the purposes of the costs of any and all benefits and services extended through this Benefit Plan, including the implementation of any benefit changes required under federal or state law, the Plan Administrator agrees that the Plan Year shall commence on January 1, unless it is terminated by one of the parties as specified in Section 7. TERMINATION.

2. DEFINITIONS

This section defines the terms used in this Agreement. These terms will be capitalized throughout this Agreement when referred to in the context defined.

- 2.1 **CLAIM** – notification in a form acceptable to the Company that services have been provided or furnished to a Member.
- 2.2 **DATA AGGREGATION** – the combining of Protected Health Information the Company creates or receives for or from the Plan and for or from other health plans or health care providers for which the Company is acting as a business associate to permit data analyses that relate to the Health Care Operations of the Plan and those other health plans or providers.
- 2.3 **HEALTH CARE OPERATIONS** – any of the activities of a health plan to the extent the activities relate to those functions that make it a health plan.
- 2.4 **MEMBER** – the Subscriber and any dependent of a Subscriber or any other person designated by a Subscriber or by the terms of the Plan who is or may become entitled to a benefit under the Plan. The term shall also include any proprietor, partner, or owner of the Plan Sponsor, if any, who is designated by the terms of the Plan who is or may become entitled to a benefit under the Plan. In no case shall the term Member include any person not otherwise entitled to coverage under the terms of the Plan.

For the purposes of determining the various benefits and restrictions or other limitations thereto made available to a Member under the terms of this Agreement, all benefits under any Plan option or tier (and any restrictions or other limitations thereto) made available to or received by a Member shall accumulate toward that Member's benefits and any restrictions and other limitations thereto.

- 2.5 **PAYMENT** – activities undertaken to obtain premiums, determine or fulfill coverage and benefits, or obtain or provide reimbursement for health care services.
- 2.6 **PROTECTED HEALTH INFORMATION (PHI)** – individually identifiable health information, including summary and statistical information, collected from or on behalf of a Member that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium and that:
 - A. is created by or received from a Health Care Provider, health care employer, or health care clearinghouse;
 - B. relates to a Member's past, present or future physical or mental health or condition;
 - C. relates to the provision of health care to a Member;
 - D. relates to the past, present, or future payment for health care to or on behalf of a Member; or
 - E. identifies a Member or could reasonably be used to identify a Member.

Educational records and employment records are not considered PHI under federal law.

- 2.7 **SECURITY INCIDENT** – any attempted or successful unauthorized access, use, disclosure, modification, or destruction of a Member's electronic PHI or interference with the Company's system operations in the Company's information systems.
- 2.8 **STANDARD TRANSACTIONS** – health care financial or administrative transactions conducted electronically for which standard data elements, code sets and formats have been adopted in accordance with federal or state law.
- 2.9 **SUBSCRIBER** – any employee of the Plan Sponsor who is or may become eligible to receive a benefit under the Plan. The term includes all common law employees as well as any proprietors, partners, or other owners who work for the Plan Sponsor, if any, and who are otherwise entitled to coverage under the Plan. Notwithstanding the above, in no case shall the term Subscriber include any person not otherwise entitled to coverage under the terms of the Plan.
- 2.10 **SUCCESSFUL SECURITY INCIDENTS** – Security Incidents that result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.
- 2.11 **UNSUCCESSFUL SECURITY INCIDENTS** – Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.

3. **PREMIUMS**

- 3.1 All premiums are due and payable before the first of the month. If premiums are not received before the date due, a grace period of 31 days is allowed. The Plan Administrator remains responsible for payment of any premium due during the grace period. If the Plan Administrator provides written notice of cancellation during the grace period, the Plan Administrator will be charged a pro rata premium.
- 3.2 The Company will advise the Plan Administrator of any change in required premium at least 31 days prior to the anniversary date of this Agreement, unless otherwise specifically agreed to by the parties. In addition, the Company reserves the right, upon providing at least 31 days notice, to change the required premium in response to any change in the rate of insurance premium tax assessed by the state of North Dakota or if the Plan Administrator should choose to offer a dual choice option.

3.3 Health Premiums:

	Individual Coverage	Parent and Child Coverage	Parent and Children Coverage	Two Person Coverage	Family Coverage
BlueAccess	\$745.50	\$1,803.90	\$1,803.90	\$1,803.90	\$1,803.90

4. **PRIVACY USE AND DISCLOSURE RESPONSIBILITIES**

4.1 **RESPONSIBILITIES OF THE COMPANY**

A. **Privacy of Protected Health Information (PHI)**

1. The Company will keep confidential all Claim records and all other PHI the Company creates or receives in the performance of its duties under this Agreement. Except as permitted or required by this Agreement for the Company to perform its duties under this Agreement, the Company will not use or disclose such Claim information or other PHI without the authorization of the Member who is the subject of such information or as required by law.
2. The Company will neither use nor disclose Members' PHI (including any Members' PHI received from a business associate of the Plan) except (1) as permitted or required by this Agreement, (2) as permitted in writing by the Plan Administrator, (3) as authorized by Members, or (4) as required by law.
3. The Company will be permitted to use or disclose Members' PHI only as follows:
 - a. The Company will be permitted to use and disclose Members' PHI (a) for the management, operation and administration of the Plan that the Plan Administrator offers Members, and (b) for the services set forth in the Plan, which include Payment activities, Health Care Operations, and Data Aggregation as these terms are defined under federal law. The Company also may de-identify PHI it obtains or creates in the course of providing services for the Plan Administrator.
 - (1) The Company will be permitted to use Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities.
 - (2) The Company will be permitted to disclose Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities only if (i) the disclosure is required by law, or (ii) before the disclosure, the Company obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written Agreement, that the entity will hold Members' PHI in confidence, use or further disclose Members' PHI only for the purposes for which the Company disclosed it to the entity or as required by law, and notify the Company of any instance the entity becomes aware of where the confidentiality of any Members' PHI was breached.
 - b. The Company will make reasonable efforts to use, disclose, or request only a limited data set where practical. Otherwise, the minimum necessary amount of Members' PHI to accomplish its intended purpose.
4. Other than disclosures permitted by Section 4.1(A)3, the Company will not disclose Members' PHI to the Plan Administrator or to the Plan's business associate except as directed by the Plan Administrator in writing.

5. The Company will require each subcontractor and agent to which the Company is permitted by this Agreement or in writing by the Plan Administrator to disclose Members' PHI to provide reasonable assurance, evidenced by written contract, that such other entity will comply with the same privacy and security obligations with respect to Members' PHI as this Agreement applies to the Company.
6. The Company will not disclose any Members' PHI to the Plan Sponsor, except as permitted by and in accordance with Section 4.1(A)3.
7. Disposition of Protected Health Information

The parties agree that upon termination, cancellation, expiration or other conclusion of this Agreement, the Company will return or destroy all PHI received or created by the Company on the Plan Administrator's behalf as soon as feasible. Due to various regulatory and legal requirements, the Plan Administrator acknowledges that immediate return or destruction of all such information is not feasible. The Company agrees that upon conclusion of this Agreement for any reason, it will use or disclose the PHI it received or created on the Plan's behalf only as necessary to meet the Company's regulatory and legal requirements and for no other purposes unless permitted in writing by the Plan Administrator. The Company will destroy PHI received or created by the Company on the Plan Administrator's behalf that is in the Company's possession under such circumstances and upon such schedule as the Company deems consistent with its regulatory and other legal obligations.

These responsibilities agreed to by the Company and related to protecting the privacy and safeguarding the security of PHI, as well as any terms directly related thereto, shall survive the termination of this Agreement and, where applicable, shall govern the Company's receipt, use or disclosure of PHI pursuant to the terms of this Agreement.

8. The Company will meet all obligations imposed upon it by the HIPAA Privacy Rule.

B. Information Safeguards

1. The Company will maintain reasonable and appropriate administrative, technical and physical safeguards to protect the privacy of Member PHI. The safeguards must reasonably protect Member PHI from any intentional or unintentional use or disclosure in violation of federal law and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
2. The Company will implement administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI the Company creates, receives, maintains, or transmits on behalf of the Plan Administrator as required by federal law.

C. Inspection of Books and Records

The Company will make its internal practices, books, and records relating to its use and disclosure of PHI created or received for or from the Plan Administrator available to the U.S. Department of Health and Human Services to determine compliance with federal law or this Agreement.

- D. The Company will prepare and distribute a notice of privacy practices appropriate for the Plan to meet its notice obligations under federal law. The Plan Administrator authorizes the Company to disclose the minimum necessary PHI to the Plan Sponsor for plan administration functions specified in the Plan documents as amended.

E. Information Privacy and Safeguard Provisions Survive Termination of Agreement

These responsibilities agreed to by the Company and related to protecting the privacy of PHI, as well as any terms directly related thereto, shall survive the termination of this Agreement and where applicable, shall govern the Company's receipt and use of PHI obtained pursuant to the terms of this Agreement.

F. Specific Cost or Quality of Care Information or Data

The parties agree, notwithstanding the foregoing, that nothing in Section 4 of this Agreement shall be construed as restricting or otherwise limiting the provision of specific cost or quality of care information or data through a consumer engagement tool or any other means anticipated through Section 8.14.

4.2 RESPONSIBILITIES OF THE PLAN SPONSOR

- A. The Plan Sponsor retains full and final authority and responsibility for the Plan and its operation. The Company is empowered to act on behalf of the Plan only as stated in this Agreement or as mutually agreed in writing by the Plan Sponsor and the Company.
- B. The Plan Sponsor will have the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules, and regulations, including any licensing, filing, reporting, and disclosure requirements, that may apply to the Plan. The Company will have no responsibility for or liability with respect to the Plan's compliance or noncompliance with any applicable federal, state, or local law, rule, or regulation.

If the Group offers a high deductible health plan, the Plan Sponsor assumes sole responsibility for determining whether the Plan qualifies as a high deductible health plan under Section 223(c)(2) of the U.S. Internal Revenue Code. THE COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THE PLAN.

If the Group offers a high deductible health plan, the Company does not provide legal or tax advice, and expressly disclaims responsibility for determining, on behalf of any individual or group, the legal and tax implications of: (1) establishing a health savings account; (2) eligibility for a health savings account; (3) the contributions made to a health savings account; (4) the deductibility of contributions to a health savings account; and (5) withdrawals from a health savings account and related taxation.

- C. By executing this Agreement, the Plan Sponsor certifies to the Company that its Plan documents have been amended to incorporate the provisions required by and under federal law, and agrees to comply with the Plan Administrator's plan documents.

The Company may rely on Plan Sponsor's certification and Plan Administrator's written authorization, and will have no obligation to verify (1) that the Plan Administrator's plan documents have been amended to comply with the requirements of federal law or this Agreement or (2) that the Plan Sponsor is complying with the Plan Administrator's plan document as amended.

- D. By executing this Agreement, the Plan Sponsor also certifies to the Company that its Plan does not contain a waiting period, as defined under applicable federal HIPAA portability regulations, exceeding 60 days. The Plan Sponsor acknowledges that the Company will rely on the Plan Sponsor's certification and that the Plan Sponsor shall have a continuing obligation to immediately notify the Company if any revisions are made to the Plan's waiting period.

5. **INTER-PLAN ARRANGEMENTS**

BCBSND has a variety of relationships with other Blue Cross and/or Blue Shield Licensees referred to generally as "Inter-Plan Arrangements." These Inter-Plan Arrangements operate under rules and procedures issued by the Blue Cross Blue Shield Association ("Association"). Whenever a Member accesses health care services outside of the geographic area BCBSND serves, the claim for those services may be processed through one of these Inter-Plan Arrangements and presented to BCBSND for payment in accordance with the rules of the Inter-Plan Arrangements. The Inter-Plan Arrangements are described generally below.

Typically when accessing care outside the geographic area BCBSND serves, a Member obtains care from health care providers that have a contractual agreement ("participating health care providers") with the local Blue Cross and/or Blue Shield Licensee in that other geographic area ("Host Blue"). In some instances, a Member may obtain care from health care providers in the Host Blue geographic area that do not have a contractual agreement ("nonparticipating health care providers") with a Host Blue. BCBSND remains responsible for fulfilling its contractual obligations to the Plan Administrator. BCBSND payment practices in both instances are described below.

All claim types are eligible to be processed through Inter-Plan Arrangements, as described above, except for all dental care benefits and vision care benefits (except when paid as medical claims/benefits), and those prescription drug benefits that may be administered by a third party contracted by BCBSND to provide the specific service or services.

A. **BlueCard® Program**

The BlueCard Program is an Inter-Plan Arrangement. Under this Arrangement, when Members access Covered Services within the geographic area served by a Host Blue, the Host Blue will be responsible for contracting and handling all interactions with its participating health care providers. The financial terms of the BlueCard Program are described generally below.

Liability Calculation Method Per Claim:

Unless subject to a fixed dollar copayment, the calculation of Member liability on claims for Covered Services processed through the BlueCard Program will be based on the lower of the Host Blue's participating health care provider's billed charges or the negotiated price made available to BCBSND by the Host Blue.

Host Blues determine a negotiated price, which is reflected in the terms of each Host Blue's health care provider contracts. The negotiated price made available to BCBSND by the Host Blue may represent one of the following:

1. the actual price. An actual price is a negotiated rate of payment without any other increases or decreases; or
2. an estimated price. An estimated price is a negotiated rate of payment reduced or increased by a percentage to take into account certain payments negotiated with the provider and other claim- and non-claim-related transactions. Such transactions may include, but are not limited to, anti-fraud and abuse recoveries, provider refunds not applied on a claim-specific basis, retrospective settlements, and performance-related bonuses or incentives; or
3. an average price. An average price is a percentage of billed covered charges representing the aggregate payments negotiated by the Host Blue with all of its health care providers or a similar classification of its providers and other claim- and non-claim-related transactions. Such transactions may include the same ones as noted above for an estimated price.

Host Blues determine whether or not they will use an actual, estimated or average price. Host Blues using either an estimated price or an average price may prospectively increase or reduce such prices to correct for over- or underestimation of past prices (i.e., prospective adjustments may mean that a current price reflects additional amounts or credits for claims already paid or anticipated to be paid to providers or refunds received or anticipated to be received from providers). However, the BlueCard Program requires that the amount paid by the Member is a final price; no future price adjustment will result in increases or decreases to the pricing of past claims. The method of claims payment by Host Blues is taken into account by BCBSND in determining premiums.

B. Value-Based Programs

BCBSND has included a factor for bulk distributions from Host Blues in the Plan Administrator's premium for Value-Based Programs when applicable under this Agreement. "Value-Based Program" means an outcomes-based payment arrangement and/or a coordinated care model facilitated with one or more local health care providers that is evaluated against cost and quality metrics/factors and is reflected in provider payment.

C. Return of Overpayments

Under the Inter-Plan Arrangements, recoveries from a Host Blue or from participating health care providers of a Host Blue can arise in several ways, including, but not limited to, anti-fraud and abuse recoveries, provider/hospital bill audits, credit balance audits, utilization review refunds, and unsolicited refunds. In some cases, the Host Blue will engage third parties to assist in discovery or collection of recovery amounts, which generally require correction on a claim-by-claim or prospective basis. The fees of such a third party may be charged to the Plan Administrator as a percentage of the recovery.

D. Federal/State Taxes/Surcharges/Fees

In some instances federal or state laws or regulations may impose a surcharge, tax or other fee that applies to insured accounts. If applicable, BCBSND will include any such surcharge, tax or other fee in determining premiums.

E. Nonparticipating Health Care Providers Outside the BCBSND Service Area

1. Member Liability Calculation

When Covered Services are provided outside of BCBSND's service area by nonparticipating health care providers, the amount the Member pays for such services will generally be based on either the Host Blue's nonparticipating health care provider local payment or the pricing arrangements required by applicable state law. In these situations, the Member may be responsible for the difference between the amount that the nonparticipating health care provider bills and the payment BCBSND will make for the Covered Services as set forth in this paragraph. Payments for out-of-network emergency services, certain services provided by out-of-network providers at in-network facilities, and out-of-network air ambulance services are governed by applicable federal and state law.

2. Exceptions

In certain situations, BCBSND may pay claims based on the payment BCBSND would make if the Covered Services had been obtained within the BCBSND service area. Such situations include where a Member did not have reasonable access to a participating health care provider, as determined by BCBSND in its sole and absolute discretion or by applicable state law. In other situations, BCBSND may pay such a claim based on the payment BCBSND would make if BCBSND were paying a nonparticipating health care provider inside of BCBSND's service area (as described in the Member's Certificate of Insurance) where the Host Blue's corresponding payment would be more than BCBSND's payment to a nonparticipating health care provider within the BCBSND service area. BCBSND may also in its sole and absolute discretion, negotiate a payment with such a health care provider on an exception basis. In any of these situations, the Member may be responsible for the difference between the amount that the nonparticipating health care provider bills and payment BCBSND will make for the Covered Services as set forth in this paragraph.

F. Blue Cross Blue Shield Global Core

If Members are outside the United States, the Commonwealth of Puerto Rico and the U.S. Virgin Islands ("BlueCard service area"), they may be able to take advantage of Blue Cross Blue Shield Global Core when accessing Covered Services. Blue Cross Blue Shield Global Core is not served by a Host Blue.

1. Inpatient Services

In most cases, if a Member contacts the Blue Cross Blue Shield Global Core Service Center for assistance, hospitals will not require the Member to pay for covered inpatient services, except for Cost Sharing Amounts. In such cases, the hospital will submit the Member's claims to the Blue Cross Blue Shield Global Core Service Center to initiate claims processing. However, if the Member paid in full at the time of service, the Member must submit a claim to obtain reimbursement for Covered Services.

2. Outpatient Services

Physicians, urgent care centers and other outpatient health care providers located outside the BlueCard service area will typically require a Member to pay in full at the time of service. The Member must submit a claim to obtain reimbursement for Covered Services.

3. Submitting a Blue Cross Blue Shield Global Core Claim

When a Member pays for Covered Services outside the BlueCard service area, the Member must submit a claim to obtain reimbursement. For institutional and professional claims, the Member should complete a Blue Cross Blue Shield Global Core International claim form and send the claim form with the health care provider's itemized bill(s) to the Blue Cross Blue Shield Global Core Service Center address on the form to initiate claims processing. The claim form is available from BCBSND, the Blue Cross Blue Shield Global Core Service Center or online at www.bcbsglobalcore.com.

6. RETROSPECTIVE DISCOUNT PAYMENT/PHARMACEUTICAL MANUFACTURER ADMINISTRATIVE FEES

Regarding prescription medications or drugs purchased by Members under the terms of the Plan, the Company will pay the amount due to the pharmacy (or other prescription drug retailer) under the terms of the pharmacy provider participating agreement. The amount due to the pharmacy under the terms of the pharmacy provider participating agreement is that which is due at the time the prescription medication or drug is purchased by the Member. The amount due to the pharmacy under the pharmacy provider participating agreement is calculated without regard to any subsequent, retrospective manufacturer discount that may apply to the cost of the prescription medication or drug. The Plan Administrator acknowledges and agrees that, in some cases but not all, drug manufacturers may offer retrospective discounts to the Company on prescription medications and drugs purchased under the terms of the Plan. If a drug manufacturer makes a retrospective discount payment available, the Plan Administrator acknowledges and agrees that a portion of any such retrospective discount may be retained by an entity that performs manufacturer discount program services on behalf of the Company under the terms of this Agreement. The Plan Administrator further acknowledges and agrees that, when made available by the drug manufacturer, another portion of the retrospective discount payment is retained by the Company. The pharmaceutical manufacturer administrative fees are any amount paid by a pharmaceutical manufacturer for the administration of the formulary rebate program. In its sole discretion, the Company may periodically refund to the Plan all or part of any rebate payments or pharmaceutical manufacturer administrative fees received. The calculation of any refund rests in the sole discretion of the Company.

7. TERMINATION

- 7.1 This Agreement will automatically terminate without notice on the last day of the month in which the grace period expires if premiums are not paid within the grace period. In the event of termination for nonpayment of premiums, reinstatement of this Agreement will be at the sole discretion of and subject to conditions established by the Company. The Plan Administrator assumes any obligation to provide notice to all Subscribers regarding termination of this Agreement due to nonpayment of premiums.
- 7.2 This Agreement may be terminated by the Plan Administrator providing the Company with written notice of termination at least 31 days in advance of the requested date of termination. Termination will be effective on the last day of the month. If the requested date of termination is other than the last day of the month, termination will be effective the last day of the month of the requested date of termination.
- 7.3 In the event of a breach by either party, other than for nonpayment of premium, the other party may terminate this Agreement by written notice to the breaching party. The breaching party has 31 days to fully cure the breach. If the breach is not cured within 31 days after written notice, this Agreement will immediately terminate.
- 7.4 The Plan Administrator will have the right to terminate this Agreement if the Company has engaged in a pattern of activity or practice that constitutes a material breach or violation of the Company's obligations regarding PHI under this Agreement and, on notice of such material breach or violation from the Plan Administrator, fails to take reasonable steps to cure the breach or end the violation.

If the Company fails to cure the material breach or end the violation after the Plan Administrator's notice, the Plan Administrator may terminate this Agreement by providing the Company written notice of termination setting forth the uncured material breach or violation serving as the basis for the termination and specifying the effective date of the termination.

- 7.5 The Company may decide to discontinue offering the Benefit Plan that is the subject of this Agreement, or all of its group health benefit plans including the Benefit Plan that is the subject of this Agreement, at any time. If the Benefit Plan that is the subject of this Agreement is discontinued, the Company will provide the Plan Administrator and Subscribers with at least 90 days prior written notice of the decision to cancel coverage. This Agreement shall automatically terminate on the date of discontinuation identified in the written notice. The Plan Administrator will be given the option to purchase any other group health benefit plans currently offered by the Company in the market. If all group health benefit plans are discontinued including the Benefit Plan that is the subject of this Agreement, the Company will provide the Plan Administrator and Subscribers with at least 180 days prior written notice of the decision to cancel coverage. This Agreement shall automatically terminate on the date of discontinuation identified in the written notice.

8. GENERAL PROVISIONS

- 8.1 The Plan Administrator agrees to furnish the Company with any information required by the Company for the purpose of enrollment. Any change affecting a Member's eligibility must be provided to the Company immediately, but in any event the Plan Administrator will notify the Company of any changes in a Member's eligibility within 31 days of the change. The Plan Administrator acknowledges and agrees that in the event there are premium payments made to the Company by the Plan Administrator based upon a failure by the Plan Administrator to notify the Company of any changes in enrollment or eligibility within 31 days of the change, the Company may retain any and all premium payments made by the Plan Administrator as consideration for the Company's administrative costs and burden incurred by said failure to notify the Company of the change.

- 8.2 The Plan Administrator acknowledges that the administration of the Benefit Plan that is the subject of this Agreement may be subject to regulation under federal and/or state law. The Plan Administrator agrees to furnish the Company with any and all information necessary to comply with any applicable federal and/or state laws and to certify that this information is accurate. If there are any changes in the employer contribution rate for benefits and services available under this Agreement, the Plan Administrator agrees that it is its obligation to provide information related to the change in contribution rates immediately to the Company.
- 8.3 The Plan Administrator agrees to abide by all underwriting requirements established by the Company as these underwriting requirements relate to, including but not limited to, rating factors, the minimum participation of eligible Members, minimum employer contributions, reporting employer contribution rates and provider network restrictions, as permitted and restricted under federal and/or state laws.
- 8.4 The Company will provide formal policy and procedure guidelines to the Plan Administrator for the conduct of external audits or reviews commissioned by the Plan Administrator. The Company shall cooperate with all external audit or review teams.

The Plan Administrator shall provide the Company with the scope and requirements of any audit or review prior to the commencement of the audit or review. If a sample of claims is required, the Company will provide the Plan Administrator with a statistically valid computerized sample of claims.

All audit or review findings shall be discussed with the Company upon discovery to allow further investigation or implementation of corrective action.

Subject to any other requirements related to the sharing of data and information as set forth in this Agreement, all Member records shall be kept confidential and considered proprietary. Such records shall be available for audit or review only after disclosure statements have been signed by the external audit or review team to ensure the information remains confidential and is utilized for the stated purpose only. If any records are removed from the Company's office for purposes of the audit or review, approval must be granted. All records will be subject to the minimum necessary requirements.

- 8.5 No change in this Agreement is valid unless approved by the President and Chief Executive Officer of BCBSND and a designated representative of the Plan Administrator.
- 8.6 Where federal law is not applicable, this Agreement shall be governed by and construed according to the laws of the state of North Dakota.
- 8.7 Any notice required under this Agreement shall be in writing and shall be effective when delivered in person or sent by certified mail to a party at its respective address.
- 8.8 The Plan Administrator hereby expressly acknowledges and understands that BCBSND is an independent corporation operating under a license with the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the "Association"), permitting BCBSND to use the Blue Cross and Blue Shield Service Marks in the state of North Dakota, and that BCBSND is not contracting as an agent of the Association. The Plan Administrator further acknowledges and agrees this legal agreement was not entered into based upon representations by any person or entity other than BCBSND and that no person, entity, or organization other than BCBSND shall be held accountable or liable to the Plan Administrator for any of BCBSND's obligations to the Plan Administrator created under this agreement. This paragraph shall not create any additional obligations whatsoever on the part of BCBSND other than those obligations created under other provisions of this agreement.

- 8.9 It shall be the sole responsibility of the Plan Administrator to distribute Certificates of Insurance to Subscribers of the Plan and to advise Members of their rights under ERISA, including, but not limited to claims appeals procedures. In the event a claim is paid due to the Certificate of Insurance not being distributed to the Subscriber, the Plan Administrator shall be liable for all such claims. The Certificate of Insurance is not the Summary Plan Description but contains some of the information that the Plan Administrator may deem essential for inclusion in the Summary Plan Description. The Plan Administrator has the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules, and regulations, including the creation and distribution of a Summary Plan Description.
- 8.10 If the Plan Administrator has a digital or online version of the Certificate of Insurance available to its employees, the Plan Administrator agrees that it will not alter, modify or change the language of the Certificate of Insurance, and further agrees the Certificate of Insurance, attached as Exhibit A, will be the controlling document in the event of any conflict or liability that might arise as the result of any alterations, modifications or changes made by the Plan Administrator. In the event a claim is paid based on the Plan Administrator's digital or online Certificate of Insurance, the Plan Administrator is liable for all such claims. The Plan Administrator further agrees that no waiver of this agreement is valid unless in writing and approved by the Company.
- 8.11 The Company will prepare Summaries of Benefits and Coverage for distribution to applicants and Members by the Plan Administrator so that the Company, the Plan and the Plan Administrator may all satisfy related disclosure obligations under federal law. It shall be the sole responsibility of the Plan Administrator to distribute the Summaries of Benefits and Coverage in accordance with federal law, and the Plan Administrator acknowledges and agrees that the Company will rely upon the Plan Administrator for compliance with the requirements for distribution of the Summaries of Benefits and Coverage to applicants and Members.
- 8.12 Upon the effective date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of health information or other aspects of the Health Insurance Portability and Accountability Act of 1996 applicable to this Agreement, this Agreement will automatically amend such that the obligations imposed on the Plan Sponsor, the Plan Administrator and the Company remain in compliance with such regulations, unless the Company elects to terminate this Agreement by providing the Plan Sponsor and the Plan Administrator notice of termination in accordance with this Agreement at least thirty-one (31) days before the effective date of such final regulation or amendment to final regulations.
- 8.13 When coverage under this Agreement is terminated, BCBSND will, within a reasonable period of time, issue a notification of termination of coverage to the Subscriber. Upon notification by the Subscriber of the ineligibility of a dependent, a notification of termination of coverage will be issued to the affected Member within a reasonable period of time. Termination notices may also be obtained from BCBSND upon request within 24 months after coverage is terminated.
- 8.14 The parties agree that nothing in this Agreement shall be construed as restricting the Plan Administrator or the Company from providing Health Care Provider specific cost or quality of care information or data through a consumer engagement tool or any other means, to referring Health Care Providers, a Plan Sponsor, Subscribers or Members, or individuals eligible to become Subscribers or Members of any Group Health Plan; electronically accessing deidentified claims and encounter information or data for each Subscriber or Member in a Group Health Plan or that has coverage through the Company, upon request and consistent with all applicable state and federal privacy regulations or directing that such data be shared with business associates of the Group Health Plan or the Company consistent with applicable state and federal privacy regulations. Nothing in this provision shall be construed as: 1) preventing Health Care Providers from placing reasonable restrictions on the public disclosure of the information as described; 2) permitting any modification or elimination of existing privacy protections and standards under state and federal law, or 3) limiting access by the Group Health Plan or the Company to data as permitted under applicable state and federal privacy regulations.

8.15 The parties agree that the Group Health Plan and the Company are each required to annually submit a Gag Clause Prohibition Compliance Attestation on behalf of the Group Health Plan, however, the Company agrees to submit this attestation on behalf of the Group Health Plan, which will satisfy the attestation submission requirement for the Group Health Plan.

9. INDEMNIFICATION CLAUSE

Each party agrees to indemnify and hold harmless the other party for all causes of action, suits, claims, judgments, settlements, liabilities, damages of any kind, penalties, losses, expenses, court costs and attorneys' fees resulting from or arising out of any duty under this Agreement, if the liability was the consequence of the actions of the indemnifying party.

10. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11. INCORPORATION STATEMENT

The attached Certificate of Insurance is incorporated herein by reference.

**CITY OF FARGO
GROUP HEALTH PLAN (PLAN ADMINISTRATOR)**
225 4th Street North
Fargo, ND 58102

BLUE CROSS BLUE SHIELD OF NORTH DAKOTA*
4510 13th Avenue South
Fargo, North Dakota 58121

By: _____



Title: _____

Its President and CEO

Date: _____

January 2, 2024

**CITY OF FARGO
(PLAN SPONSOR)**
225 4th Street North
Fargo, ND 58102

By: _____

Title: _____

Date: _____

Benefit Plan Agreement
01/01/2024 – 12/31/2024
253973

*An Independent Licensee of the Blue Cross Blue Shield Association.

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FARGO POLICE DEPARTMENT

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

OFFICE OF THE CHIEF

Memorandum

To: Fargo City Commission

From: Chief David B. Zibolski *DZ*

Date: February 15, 2024

RE: Cass Clay Threat Assessment Threat Management Team MOU

COPY

Dear Commissioners,

Attached is the Memorandum of Understanding for all participating agencies to participate in the Cass and Clay County Threat Assessment Threat Management Team. The focus of this additional team is to expand upon our inner agency information sharing relative to particular active threats or other related information that may have a criminal nexus. The MOU and team concept not only involves a partnership with our local FBI, but is modeled after an existing team in the Twin Cities. I believe our participation in this team will enhance public safety in our region. The Fargo Intelligence and Analysis Unit will be largely involved in this effort. The MOU has been reviewed by our City Attorney and all suggested edits have been made. I am happy to answer any additional questions as well.

Recommended Motion:

Approve the Memorandum of Understanding between the Fargo Police Department and other participating agencies as part of the Cass Clay Threat Assessment Threat Management Team.

Respectfully,

David B. Zibolski
Chief of Police

CASS CLAY THREAT ASSESSMENT THREAT MANAGEMENT TEAM MEMORANDUM OF UNDERSTANDING- PARTICIPATING AGENCIES

Mission Statement: The Cass Clay Threat Assessment Threat Management Team (“CCTATMT”) is a multi-disciplinary team dedicated to the prevention of targeted acts of violence. Through the cooperative sharing of information, resources, and the knowledge gained through training with leading experts in the field of threat assessment, the team endeavors to identify, assess, and manage situations where the risk of violence is imminent and/or anticipated.

Team Composition: The team comprises staff from each participating agency/entity. Participating agencies/individuals are:

- Cass County Sheriff’s Office
- Clay County Sheriff’s Office
- Fargo Police Department
- West Fargo Police Department
- Moorhead Police Department
- North Dakota State University Police
- North Dakota Bureau of Criminal Investigation, Including North Dakota SLIC
- Minnesota Bureau of Criminal Apprehension
- Cass County States Attorney’s Office
- Clay County Attorney’s Office
- Federal Bureau of Investigation

Roles and Responsibilities: The primary purpose of the CCTATMT is to provide timely and extensive threat assessment threat management support to the impacted participating agency dealing with an evolving or imminent targeted violence threat. Each participating agency will assign a designee member as a representative/liaison to the CCTATMT. Each participating agency will ensure regular participation in scheduled meetings which will occur on as needed basis. Two agencies will volunteer to co-lead the management of the CCTATMT on an annual basis (See Supervision, Support and Investigations below).

Which Cases will be Assessed: Any of the participating agency representatives serving as team members may bring a threat case before the team to be assessed.

Any member bringing a case to the team is encouraged to bring whatever sources of information the member feels would benefit the team in either assessing or managing the case. Those sources of information might include (but are not limited to) reports, documents, recordings, and persons such as probation officers, school resource officers, co-responders or victim advocates.

Information Sharing: Nothing in this agreement waives or alters member agencies data practices obligations as proscribed by state or federal law. Law enforcement and other member agencies should follow the existing or any updated agreements or memorandums of understanding regarding information sharing agreements with State or local agencies that are in place, as mandated by Minnesota State Statute(s), or North Dakota State Statutes.

Case Management: The CCTATMT does not manage or lead investigations. It is the responsibility of the impacted/originating agency to lead and maintain ownership of their investigations, including documentation of any CCTATMT involvement in their respective investigation. Transfer of case ownership may occur between CCTATMT members upon agreement by both agencies and within the scope of their agency's legal authorities, policies, and procedures.

Case Files: The confidentiality and custody of all case files are the responsibility of the member who brought the case to the team. No records or data will be separately maintained by the CCTATMT. No records or documents shall be further disseminated by the CCTATMT without the express permission of the originating agency.

Confidentiality: Any member bringing a guest to a team meeting is responsible for ensuring the guest has signed a "CCTATMT Threat Assessment Threat Management, Visitor Confidentiality Agreement" prior to the meeting. (See attached). The hosting member is also responsible for maintaining the signed copy of the agreement.

Members must coordinate with the case owner agency if they need/want to share information to others outside meeting attendees.

The Parties acknowledge that the information involved in this MOU may identify U.S. persons, whose information is protected by the Privacy Act of 1974 and/or Executive Order 12,333 (or any successor executive order). All such information will be handled lawfully pursuant to the provisions thereof.

Team Membership: The administrative authority of each participating agency has sole authority for selection of which individual(s) will serve as the agency's representative(s) to the team.

Continuing Education: CCTATMT will be committed to continued training and education in the area of targeted violence threat assessment and management. The CCTATMT should consult the assistance of the FBI to identify additional trainings in the area of targeted violence threat assessment and management. Members may also recommend and share information on trainings to the group.

Supervision and Support: The Cass County Sheriff's Office, along with the FBI, will facilitate the management of the CCTATMT. This leadership role is intended to manage

the CCTATMT only and does not provide any authority over investigations that are presented to the CCTATMT from outside their respective agencies. The management of the CCTATMT includes scheduling meetings, including emergency meetings due to potential imminent threats, maintaining member rosters, setting and disseminating the agenda, as well as other administrative activities.

The FBI will provide threat assessment and threat management consultation and operational support through the FBI's Behavioral Threat Assessment Center (BTAC) on a case-by-case basis, as requested by CCTATMT and coordinated by FBI members.

Liability: The Parties acknowledge that this MOU does not alter the applicable law governing civil liability, if any, arising from or relating to the conduct of personnel participating in the CCTATMT.

This MOU does not constitute an agreement for any party to assume and/or waive any liability or claim under any applicable law.

Each party agrees to notify the other in the event of receipt of a civil claim arising from the Parties participation in the CCTATMT. The Parties agree to cooperate fully with one another in the event of any investigation arising from alleged negligence or misconduct arising from acts or omissions related to the CCTATMT. Nothing in this paragraph prevents any party from conducting an independent administrative review of any incident giving rise to a claim.

All parties signing the MOU remain bound by the laws and policies that govern their respective agencies and will comply with all federal and state laws relating to matters of information reporting, sharing, and confidentiality.

Governmental Immunity: No term, condition, or representation made herein shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of Minnesota State Law, specifically Minnesota Statutes 3.732 et seq., (immunity for state entities); or sections 466 et seq., (municipal entities).

Agreement Terms: Any participating agency may withdraw from the CCTATMT at any time with thirty (30) days written notification. This MOU may be modified at any time with the written consent of all involved agencies.

This is an annual agreement with automatic renewal up to four times.

Non-Appropriation: It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation between participating member organizations and, therefore, notwithstanding anything in this Agreement to the contrary, any payment obligations of the Governmental Units are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the current fiscal

period. Notwithstanding any other provision of this Agreement concerning termination, upon the Governmental Unit's failure to appropriate such funds, this Agreement shall automatically terminate.

Counterparts and Signatures: This MOU may be executed in multiple counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same MOU.

Acknowledgment and Concurrence of Administrative Authority:

By signing, on behalf of myself and the agency I represent, I understand and agree with the structure and operational direction outlined in this document for the CCTATMT Group.

Commission/Council Chair, Agency Head, or Designee Signatures :

Name of Agency

Agency Head or Designee Name (Printed)

Agency Head or Designee Name (Signature)

Date

Commission/Council/Representative If Applicable (Signature)

Date

Name of Agency

Agency Head or Designee Name (Printed)

Agency Head or Designee Name (Signature)

Date

Commission/Council/Representative If Applicable (Signature)

Date

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Date

Name of Agency

Agency Head or Designee Name (Printed)

Agency Head or Designee Name (Signature)

Date

Commission/Council/Representative If Applicable (Signature)

Date



**PUBLIC
WORKS**

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**FLEET MANAGEMENT, FORESTRY
STREETS & SEWERS
WATERMAINS & HYDRANTS**
402 23rd Street North
Fargo, ND 58102
Phone: 701.241.1453 | Fax: 701.241.8100
FargoND.gov

February 13, 2024

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

RE: Public Works South Side Fuel Station (ITB24028) – Contract for Construction with Gast Construction Inc.

Commissioners:

Beginning on November 3, 2023, Fargo Public Works published an advertisement requesting bids (ITB24028) for general construction, mechanical, and electrical of a new fueling station to be located at 3949 40th Avenue South. Bids were received December 20, 2023, and on January 8, 2024, Commission authorized the award to Gast Construction Company Inc. at a cost of \$1,159,700.00.

At the time of award, the Construction Contracts were still being assembled and final proofing was taking place. Enclosed please find the finalized Construction Contracts for the fueling station.

RECOMMENDED MOTION: I/we hereby move to authorize the execution of the Construction Contracts for the South Side Fuel Station (ITB24028).

Please return two signed originals.

Respectfully submitted,

Ben Dow
Public Works Director

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Fargo (“Owner”) and
Gast Construction Company, Inc. (“Contractor”).
Owner and Contractor hereby agree as follows:

ARTICLE 1 – THE WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
- A. Fuel tanks fuel tanks, fuel pumps, water filling station, concrete pavement, curb and gutter, storm sewer, water service, sanitary sewer service, electrical service and other incidentals. Contractor shall be responsible for installation and warranties associated with fuel tanks, pump station, and water filling station.
- 1.02 The Project for, of which the Work under the Contract Documents is a part, is generally described as follows:
- A. South Side Fueling Station

ARTICLE 2 – ENGINEER

- 2.01 The part of the Project that pertains to the Work has been designed by KLJ Engineering LLC and their consultants.
- 2.02 The Owner has retained KLJ Engineering LLC (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 3 – CONTRACT TIMES

- 3.01 *Time of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 3.02 *Contract Times: Dates*
- A. The Work will be substantially completed on or before September 30, 2024 and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before October 14, 2024.
- 3.03 *Milestones – Not Used*
- 3.04 *Liquidated Damages*
- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 3.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 3.02 above, plus any

extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$1,600 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 3.02 above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$480 for each day that expires after such time until the Work is completed and ready for final payment. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

3.05 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 3.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 3.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 4 – CONTRACT PRICE

4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work other than Unit Price Work, a lump sum of: \$1,159,700.00.
All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
- B. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 5 – PAYMENT PROCEDURES

5.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the first day of each month during performance of the Work as provided in Paragraph 5.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
1. Owner may retain five percent (5%) of the amount due Contractor until the completion of the entire Contract work. In no case will the Owner make payment to a contractor who is in default under the terms of the Contract unless expressly authorized by the Board of City Commissioners.
 2. The retained amounts will be according to the following table:

Percentage of Completion	Percent Retained
0-90%	5%
91-100%	1-5%*
* Reduction of retainage is at the discretion of the Engineer based on the progress of the contract	

5.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 6 – INTEREST

6.01 All amounts not paid when due shall bear interest at the rate of 1.5 percent per annum.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

- 7.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has had ample opportunity to visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 7, inclusive).
 - 2. Performance bond (pages 1 to 4, inclusive).
 - 3. Payment bond (pages 1 to 4, inclusive).
 - 4. Other bonds.
 - a. Not applicable.
 - 5. General Conditions (pages 1 to 72, inclusive).
 - 6. Supplementary Conditions (pages 1 to 16, inclusive).
 - 7. Specifications as listed in the table of contents of the Project Manual.
 - 8. Drawings (not attached but incorporated by reference) consisting of 20 sheets with each sheet bearing the following general title: South Side Fueling Station.

9. Addenda (numbers 1 to 7, inclusive).
 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 5, inclusive).
 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 8.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 8.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 9 – MISCELLANEOUS

9.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

9.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents 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.

9.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 9.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

9.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on January 8, 2024 (which is the Effective Date of the Contract).

OWNER: City of Fargo

CONTRACTOR: Gast Construction Company, Inc.

Signature

Signature

By: Timothy Mahoney

By: Jim Gast

Title: Mayor

Title: President

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Signature

Signature

By: _____

By: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

City of Fargo

Gast Construction Company, Inc

225 4th Street North

3410 39th Street South

Fargo, ND 58102

Fargo, ND 58104

License No.: 961

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

(28)

REPORT OF ACTION

UTILITY COMMITTEE

Project No. Task Order 24-1 Type: – Engineering Task Order

Location: Solid Waste Division – Landfill Date of Hearing: 2/7/2024

<u>Routing</u>	<u>Date</u>
City Commission	2/20/24
Project File	Task Order 24-01 - 2024 General Engineering Services

Scott Olson, Solid Waste Utility Director, presented the attached Task Order with Stantec for 2024 General Engineering Services. The services of the engineer are separated into seventeen phases as shown below:

Phase	Category	Function	Yearly Cost	Basis
100.01	Leachate	NDDEQ Monitoring and Sampling- Pumping Systems	\$1,200.00	Hourly
100.02	Landfill Gas	EPA reporting - Emmission - Odors - Gas System Operations	\$22,650.00	Hourly
100.03	Waste Control	Waste Diversion	\$1,400.00	Hourly
100.04	Planning	Short Term and Long Term Planning - Meetings	\$23,025.00	Hourly
100.05	Closure Construction	Covers Costs for Closure Design and QC/QA	\$19,245.00	Hourly
100.06	Cell Construction	Covers Costs for General Cell Issues - QC/QA	\$16,860.00	Hourly
100.07	General Construction	Design - QC/QA for Capital Improvements	\$10,065.00	Hourly
100.08	Surface Water	Surface Water Management - EPA/NDDEQ Monitoring	\$2,360.00	Hourly
100.09	Operations	Survey Duties - General Operation Assistance	\$14,270.00	Hourly
100.10	Hydrogeologic	Monitoring Well Managment - Reporting - Sampling	\$53,380.00	Hourly
100.11	Waste Transfer Facility	All Assistance Requested for Citizen Drop Off Building	\$5,175.00	Hourly
100.12	Old Landfill	Tasks Related to Unreclaimed Landfill Area - Air Monitoring	\$1,410.00	Hourly
100.13	Air Quality	Semi-annual and Annual Emissions Calculations	\$14,765.00	Hourly
100.14	Financial Assurance	Year Financial Assurance - Closure and Post Closure Costs	\$6,905.00	Hourly
100.15	Permit	Permit Related Items as they Arise	\$1,705.00	Hourly
100.16	Electric Generation	Corrective Issues and Coordination related to Electric Gen.	\$1,405.00	Hourly
100.17	East Landfill Improvements	East Landfill Facility Improvements	\$17,080.00	Hourly
Total Estimated Compensation not to Exceed			\$212,900.00	

Costs for engineering services are budgeted for in the 2024 Landfill Division for Engineering Services.

MOTION:

On a motion by Scott Liudahl, seconded by Troy Hall, the Utility Committee voted to approve Task Order 24-1 to Stantec for 2024 General Engineering Services in the amount not to exceed \$212,900.

COMMITTEE:	Present	Yes	No	Unanimous
Denise Kolpack, City Commissioner	X	X		X
Thomas Knakmuhs, City Engineer	X	X		
Susan Thompson, City Finance Director	X	X		(Jamie Bullock)
Bruce Grubb, City Administration	X	X		
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Wastewater Plant Supt.				
Scott Liudahl, City Forester	X	X		
James Hausauer, Wastewater Util. Director	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director				
Scott Olson, Solid Waste Utility Director	X	X		
Daniel Portlock, Water Utility Engineer	X	X		

ATTEST:



 Scott Olson, PE
 Solid Waste Utility Director

C: Tim Mahoney, Mayor
 Commissioner Preston
 Commissioner Piepkom
 Commissioner Strand



Division of Solid Waste

2301 8th Avenue North
 Fargo, North Dakota 58102
 Phone: 701-241-1449
 Fax: 701-241-8109

To: Utility Committee
From: Scott Olson, Solid Waste Utility Director *SO*
Date: January 23, 2024
Subject: Stantec Task Order 24-1 – 2024 General Engineering Services

Attached for your reference is a proposed Task Order from Stantec for 2024 General Engineering Services. Work under this task order typically involves items related to planning, operations and reporting requirements for the Solid Waste Division.

The services of the engineer are separated into seventeen phases as shown below:

Phase	Category	Function	Yearly Cost	Basls
100.01	Leachate	NDDEQ Monitoring and Sampling- Pumping Systems	\$1,200.00	Hourly
100.02	Landfill Gas	EPA reporting - Emmission - Odors - Gas System Operations	\$22,650.00	Hourly
100.03	Waste Control	Waste Diversion	\$1,400.00	Hourly
100.04	Planning	Short Term and Long Term Planning - Meetings	\$23,025.00	Hourly
100.05	Closure Construction	Covers Costs for Closure Design and QC/QA	\$19,245.00	Hourly
100.06	Cell Construction	Covers Costs for General Cell Issues - QC/QA	\$16,860.00	Hourly
100.07	General Construction	Deslgn - QC/QA for Capital Improvements	\$10,065.00	Hourly
100.08	Surface Water	Surface Water Management - EPA/NDDEQ Monitoring	\$2,360.00	Hourly
100.09	Operations	Survey Duties - General Operation Assistance	\$14,270.00	Hourly
100.10	Hydrogeologic	Monitoring Well Managment - Reporting - Sampling	\$53,380.00	Hourly
100.11	Waste Transfer Facility	All Assistance Requested for Citizen Drop Off Building	\$5,175.00	Hourly
100.12	Old Landfill	Tasks Related to Unreclaimed Landfill Area - Air Monitoring	\$1,410.00	Hourly
100.13	Air Quality	Semi-annual and Annual Emmissions Calculations	\$14,765.00	Hourly
100.14	Financial Assurance	Year Financial Assurance - Closure and Post Closure Costs	\$6,905.00	Hourly
100.15	Permit	Permit Related Items as they Arise	\$1,705.00	Hourly
100.16	Electric Generation	Corrective Issues and Coordination related to Electric Gen.	\$1,405.00	Hourly
100.17	East Landfill Improvements	East Landfill Facility Improvements	\$17,080.00	Hourly
Total Estimated Compensation not to Exceed			\$212,900.00	

The major tasks required under the General Engineering Services are related to monthly, semi-annual and annual monitoring as required by governing bodies ranging from the North Dakota Department of Environmental Quality (NDDEQ) and the Environmental Protection Agency (EPA). The City of Fargo Landfill is also the only landfill in the State of North Dakota managing and operating a renewable energies program, regulated by the NDDEQ and EPA.

It is important to note the costs as shown above are estimates based on working hours that could be expended for engineering services. On average, the Solid Waste Division has spent approximately \$173,000 on similar services and the department expects 2024 to be similar.

Costs for engineering services are budgeted for in the 2024 Landfill Division for Engineering Services

Recommendation

Approve the attached Task Order from Stantec for 2024 General Engineering Services in the amount not to exceed \$212,900.00.

TASK ORDER 24-1
2024 General Engineering Services

This is Task Order No. TBD
consisting of 6 pages.

Task Order General Engineering Services

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated **January 1, 2021** ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order: January 16, 2024
- b. Owner: City of Fargo – Division of Solid Waste
- c. Engineer: Stantec
- d. Specific Project (title): 2024 General Engineering Services
- e. Specific Project (description): Stantec will complete general engineering services for the City as requested. Work under this task order will typically involve items related to planning, operations, and reporting requirements for the Division of Solid Waste related to solid waste management. See a breakdown of phases below.

2. Services of Engineer

A breakdown of the phase and general scope as follows:

Phase 100.01 – Leachate

Stantec will provide engineering assistance for leachate related functions. This may include sampling and laboratory analysis, odor monitoring and control measures, and assistance with pumping systems.

Phase 100.02 –Landfill Gas

Stantec will provide engineering assistance for landfill gas related items. Based on historical assistance, this is anticipated to include collection system operations, monitoring assistance, landfill gas control plan, EPA reporting and emission calculations, and landfill gas end use related items.

Phase 100.03 – Waste Control

Stantec will provide engineering assistance to the Division for items concerning waste control.

Phase 100.04 – Planning

Stantec will provide assistance to the City as requested, and is anticipated to include both short-term and long-term planning related to solid waste items. This task also includes attending monthly capital improvement planning meetings.

Phase 100.05 –Closure Construction

Stantec will provide engineering assistance for items pertaining to construction of closure projects at the facility. This would typically be used for construction projects that the City is self-performing and could include both the MSW and inert waste disposal areas. Typical work would include design, CQA services (onsite observation, soil testing, etc.) and documentation of construction activity.

Phase 100.06 – Cell Construction

Stantec will provide engineering assistance for items pertaining to construction of cell projects at the facility. This would typically include inert waste disposal cells constructed by the City and could include design, CQA services (onsite observation, soil testing, etc.) and documentation of construction activity as needed.

Phase 100.07 –General Construction

Stantec will provide engineering assistance for items pertaining to general construction projects at the facility. This would typically include projects outside of cell or closure projects and could include planning, design, bidding, CQA services and documentation of construction activity as needed.

Phase 100.08 – Surface Water

Stantec will provide assistance for items pertaining to surface water management at the facility. This would typically include sampling assistance, laboratory analysis coordination, updating sampling plan when needed, providing training to City staff as needed and assisting with reporting as needed.

Phase 100.09 – Operations

Stantec will provide assistance for items pertaining to operations at the facility. Based on prior work this is anticipated to include survey grade staking, assistance with GPS controlled equipment user files, completion of onsite survey work as needed, and setting aerial control targets for the annual aerial survey.

Phase 100.10 – Hydrogeologic

Stantec will perform field sampling of the existing monitoring wells on a semiannual basis that includes a semiannual and annual report submittal, coordination of third-party analysis, updating ground water monitoring plan as needed, assist with removal and/or replacement of monitoring system components as site activities dictate.

Phase 100.11 – Waste Transfer Facility

Stantec will perform tasks as needed relating to the waste transfer facility, currently used for a citizen drop-off area.

Phase 100.12 – Old Landfill

Stantec will perform tasks as directed and related to the old landfill.

Phase 100.13 – Air Quality

Stantec will assist with annual testing and reporting requirements for the Airburner and/or wood grinder, will complete semiannual and annual monitoring reporting, complete annual emission calculations, complete air quality permit renewals and/or modifications as needed and other tasks requested by the City.

Phase 100.14 – Financial Assurance

Stantec will prepare the annual financial assurance updates and calculations for submittal to NDDEQ, including updating of financial assurance, closure, post closure plan when necessary and requested by the City.

Phase 100.15 – Permit

Stantec will assist with permit related items as they arise.

Phase 100.16 – Electrical Generation

Stantec will assist with issues, corrective actions, operational items as needed and requested by the City as it relates to electrical generation at the site.

Phase 100.17 – East Landfill Improvements

Stantec will assist with items pertaining to improvements made to the east landfill, as requested by the City.

- A. Designing to a Construction Cost Limit

“Does not apply”

- B. Other Services

Engineer shall also provide the following services:

None

- C. All of the services included above comprise Basic Services for purposes of Engineer’s compensation under this Task Order.

3. Additional Services

- A. Additional Services that may be authorized or necessary under this Task Order are:
None

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following:

None noted

5. Task Order Schedule

In addition to any schedule provisions provided elsewhere, the parties shall meet the schedule as discussed and mutually agreed upon for each item as assistance is identified and requested of Stantec.

6. Payments to Engineer

- A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Estimated Annual Amount	Basis of Compensation
1. Basic Services		
100.01 – Leachate Collection	\$ 1,200	Hourly
100.02 – Landfill Gas	\$ 22,650	Hourly
100.03 – Waste Control	\$ 1,400	Hourly

100.04 - Planning	\$ 23,025	Hourly
100.05 –Closure Construction	\$19,245	Hourly
100.06 –Cell Construction	\$ 16,860	Hourly
100.07 –General Construction	\$ 10,065	Hourly
100.08 – Surface Water	\$ 2,360	Hourly
100.09 - Operations	\$ 14,270	Hourly
100.10 - Hydrogeologic	\$ 53,380	Hourly
100.11 – Waste Transfer Facility	\$ 5,175	Hourly
100.12 – Old Landfill	\$ 1,410	Hourly
100.13 – Air Quality	\$ 14,765	Hourly
100.14 – Financial Assurance	\$ 6,905	Hourly
100.15 - Permit	\$ 1,705	Hourly
100.16 – Electrical Generation	\$ 1,405	Hourly
100.17 – East Landfill Improvements	\$ 17,080	Hourly
TOTAL ESTIMATED COMPENSATION	\$ 212,900	

The above costs are estimates, invoicing will be on actual time spent and annual fees for this task order will not exceed \$212,900 without prior written approval.

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer’s labor, overhead, profit, reimbursable expenses (if any), and Consultants’ charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order

8. Other Modifications to Agreement and Exhibits:

None

9. Attachments:

Table 1 – Hourly rate table

10. Other Documents Incorporated by Reference:

None

11. Terms and Conditions

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

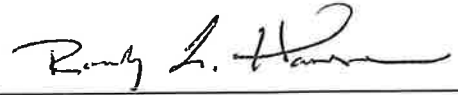
The Effective Date of this Task Order is January 16, 2024.

OWNER:

ENGINEER:

By:

By:



Print Name: Scott Olson

Print Name: Randy L. Hanson

Title: Solid Waste Utility Director

Title: Principal

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Scott Olson

Name: Randy L. Hanson

Title: Solid Waste Utility Director

Title: Principal

Address: 2301 8th Avenue N, Fargo ND 58102

Address: 3303 Fiechtner Drive, Fargo ND 58103

E-Mail Address: solson@fargond.gov

E-Mail Address: Randy.hanson@stantec.com

Phone: 701-241-1552

Phone: 701-297-9600



ATTACHMENT –RATE TABLE

BC2277_2024-0 – City of Fargo

HOURLY RATES

Stantec Billing Level	2024 Hourly Rate*
3	\$103
4	\$109
5	\$121
6	\$125
7	\$133
8	\$140
9	\$149
10	\$156
11	\$165
12	\$169
13	\$181
14	\$192
15	\$212
16	\$236
17	\$249
18 - 21	\$254

*Rates subject to annual increase.

Interns to be billed at \$82/hour.

Field technicians to be billed at \$90 to \$110/hour based on experience

OTHER EXPENSES / MATERIALS

Stantec's mark-up on expenses is 15%. Unless prescribed differently within the proposal or other contract paperwork, this mark-up is used in all areas as indicated below:

- **Sub-Consultants**
- **Subcontracted Commodity Services**
e.g., analytical laboratory services, drilling contractors, etc.
- **Meals**
May be billed at cost or daily per diem.
- **Lodging**
- **Mileage**
Stantec uses the U.S. Internal Revenue Service standard mileage rate.
- **External Equipment and Supplies.**
e.g., delivery charges, outside copying/reproduction, leased/rented field equipment, etc.

A Technology/Communication fee of 5% will be added to each invoice, applied as a percent- age of total Labor costs for a given invoicing period. The fee covers CAD computer usage, cell communications, copies, and postage.

Company-owned equipment will be billed on unit rate basis (e.g., daily; weekly); the expense markup does not apply to these rates. A separate Stantec Equipment Rate Schedule* is available upon request. If applicable, per diem rates will be those set by the U.S. General Services Administration (<https://www.gsa.gov>), unless prescribed differently in the proposal or contract terms and conditions.

REPORT OF ACTION
UTILITY COMMITTEE

29

Project No. Task Order No 5 Type: Engineering Task Order
 Location: Solid Waste Division – Landfill
 Date of Hearing: 02/07/24

<u>Routing</u>	<u>Date</u>
City Commission	02/20/2024
Project File	Revenue Adequacy Model – AE2S Task Order 5

Scott Olson, Solid Waste Utility Director, presented the attached Task Order #5 with AE2S for professional engineering services related to updates to the existing Solid Waste Revenue Adequacy Model which would place the model under the “AE2S OPTX” platform.

In 2021 AE2S developed the initial Solid Waste Revenue Adequacy Model to analyze and map out the cost of service components, future rate structuring and evaluate revenue projects for the Solid Waste Utility. Similar models have been created and placed under the AE2S OPTX platform for the Water and Water Reclamation utilities.

The cost associated for this work is as follows:

<i>Phase</i>	<i>Task Number and Task Name</i>	<i>Payment Method</i>	<i>Estimated Hours</i>	<i>Amount</i>
120	Financial Services	Method B		
	01 Financial Modeling Updates		80	\$15,000
Total			80	\$15,000

Making this change would allow for Solid Waste to join the other two enterprise utilities in having their respective financial models incorporated to a single tool, the OPTX platform.

MOTION:

On a motion by Thomas Knaukmuhs, seconded by Daniel Portlock, the Utility Committee voted to approve Task Order #5 with AE2S to complete updates to the Solid Waste financial model and place into the OPTX platform.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Denise Kolpack, City Commissioner	X	X		X
Thomas Knaukmuhs, City Engineer	X	X		
Susan Thompson, Interim City Finance Director	X	X		(Jamie Bullock)
Bruce Grubb, City Administration	X	X		
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Wastewater Plant Supt.				
Scott Liudahl, City Forester	X	X		
James Hausauer, Wastewater Util. Director	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director				
Scott Olson, Solid Waste Utility Director	X	X		
Daniel Portlock, Water Utility Engineer	X	X		

ATTEST:



 Scott Olson, PE
 Solid Waste Utility Director

C: Tim Mahoney, Mayor
 Commissioner Preston
 Commissioner Piepkorn
 Commissioner Strand



Division of Solid Waste

2301 8th Avenue North
Fargo, North Dakota 58102
Phone: 701-241-1449
Fax: 701-241-8109

To: Utility Committee
From: Scott Olson, Solid Waste Utility Director 30
Date: February 7, 2024
Subject: AE2S Task Order No 5. Fargo Solid Waste Utility Financial Modeling Updates

Attached for your reference is a proposed Task Order from Advanced Engineering and Environmental Services (AE2S) for professional engineering services related to updates to the existing Solid Waste Revenue Adequacy (RA) Model which would place the model under the "AE2S OPTX" platform.

In 2021 AE2S developed the initial Solid Waste Revenue Adequacy Model to analyze and map out the cost of service components, future rate structuring and evaluate revenue projects for the Solid Waste Utility. Similar models have been created and placed under the AE2S OPTX platform for the Water and Water Reclamation utilities.

The cost associated for this work is as follows:

<i>Phase</i>	<i>Task Number and Task Name</i>	<i>Payment Method</i>	<i>Estimated Hours</i>	<i>Amount</i>
120	Financial Services	Method B		
	01 Financial Modeling Updates		80	\$15,000
Total			80	\$15,000

Given that the Water and Water Reclamation Utilities have previously moved their respective RA models to the OPTX platform, Solid Waste staff would recommend approval of Task Order #5 so all three Enterprise Utilities will have the financial modeling tools incorporated into a single model.

Your attention in this matter is certainly appreciated.

Recommendation

Approve the attached Task Order for professional engineering services to AE2S in the amount not to exceed \$15,000.

This is Solid Waste Consulting
Task Order No. 5,
consisting of 3 pages.

Solid Waste Consulting Task Order No. 5

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated January 1, 2021 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- A. Effective Task Order Date: February 20, 2024
- B. Owner: City of Fargo (Solid Waste Utility)
- C. Engineer: Advanced Engineering and Environmental Services, LLC (AE2S)
- D. Engineer Project No.: P00803-2023-012
- E. Specific Project (title): Fargo Solid Waste Utility Financial Modeling Updates
- F. Specific Project (description):

The City of Fargo's Water and Water Reclamation Utilities recently performed comprehensive updates to their existing revenue adequacy models and upgraded them from a spreadsheet-based financial model to a combined, web-based financial model under the AE2S OPTX platform. The purpose of this project is to perform updates to the City's Solid Waste Utility financial modeling tools, including revenue adequacy, cost of service, and capital improvements planning. Furthermore, this project includes integrating the financial modeling tools into AE2S OPTX. Upon completion of this project, the City will have the financial modeling tools for all three Enterprise Utilities (Water, Water Reclamation, and Solid Waste) incorporated into a single model.

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are detailed in Attachment 1 and include the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference:
 - Financial Services (Exhibit A, Paragraph A1.08)
- B. Resident Project Representative (RPR) Services: None.
- C. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2, Exhibit B of the Agreement.

4. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following approximate schedule:

- Task Order approval – *February 20, 2024*
- Project Kickoff – *March 2024*
- Project Completion – *May 2024*

5. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

<i>Phase</i>	<i>Task Number and Task Name</i>	<i>Payment Method</i>	<i>Estimated Hours</i>	<i>Amount</i>
120	Financial Services	<i>Method B</i>		
	<i>01 Financial Modeling Updates</i>		<i>80</i>	<i>\$15,000</i>
Total			80	\$15,000

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer’s labor, overhead, profit, reimbursable expenses (if any), and Consultants’ charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C, where Method A is a Lump Sum payment and Method B is payment for Standard Hourly Rates.

6. Consultants retained as of the Effective Date of the Task Order: None.

7. Other Modifications to Agreement and Exhibits: None.

8. Attachments:

Attachment 1 – Scope of Services for Task Order No. 5

9. Other Documents Incorporated by Reference: None.

10. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement 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 February 20, 2024.

OWNER: City of Fargo (Solid Waste Utility)

ENGINEER: Advanced Engineering and Environmental Services, LLC (AE2S)

By: _____

By: _____

Name: Scott Olson, PE

Name: Ryan Grubb, PE

Title: Solid Waste Utility Director

Title: Operations Manager

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Scott Olson, PE

Name: Tyler Akerman, CPA

Title: Solid Waste Utility Director

Title: Senior Consultant

Address: 2301 8th Avenue North
Fargo, ND 58102

Address: 4170 28th Avenue South
Fargo, ND 58104

E-Mail Address: SOlson@FargoND.gov

E-Mail Address: Tyler.Akerman@AE2S.com

Phone: (701) 476-4087

Phone: (701) 364-9111

This is Attachment 1 to Solid Waste Consulting Task Order No. 5 consisting of 2 page(s).

Attachment 1 to Solid Waste Consulting Task Order No. 5

Fargo Solid Waste Utility Financial Modeling Updates

February 20, 2024

Scope of Services

The purpose of this project is to update the City's Solid Waste Utility financial modeling tools by integrating the City's financial modeling tools in AE2S OPTX. This Scope of Services provides for Study and Report phase services to update the Solid Waste Utility's financial modeling tools. The following is a detailed breakdown of this Scope of Services to Solid Waste Consulting Task Order No. 5.

Phase 120 – Financial Services

In accordance with Paragraph A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following Financial services under Solid Waste Consulting Task Order No. 5:

Task 01 – Financial Modeling Updates

ENGINEER shall provide the following services associated with updating the City's Solid Waste Utility financial modeling tools:

- Work with the OWNER to update the Solid Waste Utility capital improvements plan.
- Integrate the updated capital improvements plan projects, estimated project costs, funding sources, timing, and other applicable information into AE2S OPTX.
- Develop an updated revenue adequacy spreadsheet model to be used in conjunction with AE2S OPTX. The spreadsheet model shall allow for user friendly importing and exporting of data.

ENGINEER shall attend and facilitate the following meetings with OWNER representatives and key stakeholders during the Project:

- Two (2) meetings to review and update baseline assumptions, operating expenses and capital improvements plan; and
- One (1) final review meeting to review the end results of the AE2S OPTX model and to discuss next steps for implementation.

Presentation of findings to the City Commission and/or other City stakeholder groups is outside of this Scope of Services. If authorized in writing by the OWNER, ENGINEER will provide these services on an hourly basis.

REPORT OF ACTION
UTILITY COMMITTEE

30

Project No. SW 23-04

Type: Change Order

Location: Solid Waste Division – Landfill

Date of Hearing: 02/07/24

<u>Routing</u>	<u>Date</u>
City Commission	02/20/2024
Project File	SW 23-04 Cell 21 Waste Excavation and Construction

Scott Olson, Solid Waste Utility Director, presented the attached Change Order related to repair made to the damaged area on the west slope of the recently completed Cell 20 at the Landfill.

On October 2, 2023, the Commission approved the award of the Cell 21 Waste Excavation and Construction Project SW 23-04 to Excavating Inc. in the amount of **\$6,165,624.20** with an original completion date of October 31, 2024. This project is funded utilizing North Dakota Clean Water State Revolving Funds (CWSRF) loan #380715-11.

Current contract bid price, change orders and adjusted contract price are as follows:

Contractor	Approved Contract Original	Current Change Orders	New Substantial Completion Date	Adjusted Contract Price
Excavating Inc.	\$6,165,624.20			
West Slope Repair on Cell 20		\$569,910.72	Nov. 30, 2024	
		\$569,910.72		\$6,735,534.92

A detailed summary of each change order has been included in the memorandum to the Utility Committee for your review.

MOTION:

On a motion by James Hausauer, seconded by Troy Hall, the Utility Committee voted to approve the contract change order with Excavating Inc for project SW 23-04 in the amount of \$569,910.72 for the emergency slope repair as described in the attached memo.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Denise Kolpack, City Commissioner	X	X		X
Thomas Knaukmuh, City Engineer	X	X		
Susan Thompson, Interim City Finance Director	X	X		(Jamie Bullock)
Bruce Grubb, City Administration	X	X		
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Wastewater Plant Supt.				
Scott Liudahl, City Forester	X	X		
James Hausauer, Wastewater Util. Director	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director				
Scott Olson, Solid Waste Utility Director	X	X		
Daniel Portlock, Water Utility Engineer	X	X		

ATTEST:



Scott Olson, PE
Solid Waste Utility Director

C: Tim Mahoney, Mayor
Commissioner Preston
Commissioner Piepkorn
Commissioner Strand

To: Utility Committee
From: Scott Olson, Solid Waste Utility Director *SO*
Date: January 22, 2024
Subject: Project SW 23-04 – Cell 21 Waste Excavation and Construction Change Order 1

On October 2, 2023, the Commission approved the award of the Cell 21 Waste Excavation and Construction Project SW 23-04 to Excavating Inc. in the amount of \$6,165,624.20.

Project	Contractor	Substantial Completion Date	Bid Amount
Cell 21 Waste Exc. & Construction	Excavating Inc.	October 31, 2024	\$6,165,624.20

The following table shows the cost for the proposed change orders and associated change in the substantial completion date during this approval period (monthly):

Change Order	Description	Change in Sub. Completion Date	Change Order Amount
Change Order #1	Cell 20 West Slope Repair	30 Days	\$569,910.72
		Total	\$569,910.72

With Change Order approval, the updated contract amounts and completion dates would be:

Contract	Contractor	New Substantial Completion Date	New Contract Amount
Cell 21 Waste Exc. & Construction	Excavating Inc.	November 30, 2024	\$6,735,534.92

Detailed Summary of Change Orders

The project cost and time impacts to the proposed changes are as follows:

Change Order #1 – Cell 20 West Slope Repair

Cell 20 is located immediately east of the Cell 21 project at the East Landfill Campus. Winter conditions in late 2022 did not allow for immediate placement of the granular drainage within the cell thus leaving liner and various slopes exposed to elements until spring of 2023. Upon completion of the drainage layer the site sat unused for approximately 3 months while the documentation report was reviewed by the North Dakota Department of Environmental Quality. Approval to begin placing waste in Cell 20 occurred in July of 2023.

In August of 2023 staff noticed an area on the west slope with a very large washout approximately halfway up the slope. Upon inspection it was discovered that with the washout the geosynthetic base liner was torn. Also, the underlying clay liner beneath was well saturated and had shifted, indicating a possible slope "slip failure".

In October of 2023 it was requested to the Utility Committee that the department be allowed to move forward with repair, with funding through either the department's Capital Improvements budget or the Clean Water State Revolving Fund (CWSRF), which is how the Cell 20 project is financed. The motion from the Utility Committee was to issue a Work Change Directive to the Contractor to complete the work, as it was imperative the work be completed prior to harsh winter conditions.

Following discussions with the Cell 20 Contractor it was determined they would not be able to complete the work in a timely manner. However project SW 23-04, Cell 21 Waste Excavation and Construction was awarded to Excavating Inc. on October 2, 2023 and they planned to begin excavation that same month. The Cell 21 project is also financed through the CWSRF program (#380715-11) and upon discussions with the funding agency it was determined that the slope repair could be financed under the Cell 21 project, thus a WCD was issued to Excavating Inc to complete the work. The repair was completed in December of 2023 with final quantities as follows:

Date: 01/10/24

Item	Final Quantity		Unit Price	Extended Price
1 Mobilization and Demobilization	1	LS	\$ 20,000.00	\$ 20,000.00
2 Remove Existing Granular Drainage Layer and Liner (includes replacing granular drainage layer)	4,867	SY	\$ 30.00	\$ 146,010.00
3 Excavating of unsuitable Soils and Stockpiling in Landfill East of 45th Street	4,040	CY	\$ 30.52	\$ 123,300.80
4 Exposing of Existing Liner Tie-In	551	LF	\$ 24.00	\$ 13,224.00
5 Controlled Fill	4,040	CY	\$ 20.00	\$ 80,800.00
6 Clay Subliner	4,867	SY	\$ 9.50	\$ 46,236.50
7 60 Mil HDPE Liner	4,867	SY	\$ 12.26	\$ 59,669.42
8 12-Inch Granular Drainage Layer	5,378	SY	\$ 15.00	\$ 80,670.00
TOTAL				\$569,910.72

Cost: \$569,910.72

Added Contract Time: 31 Days

Reason: City Requested Emergency Repair

If approved, change orders to date will total 8.46% of total construction costs.

Process for Amending the Contract Documents; Changes in the Work

As provided in the specifications, and to avoid substantial construction schedule delays, Work Change Directives (WCD) were issued for the additional work described above. Acceptance of WCD's by Solid Waste (City) staff are provided after review and negotiation following Contractor proposal requests and submittal. WCD's are incorporated in subsequent Change Orders through formal Utility Committee and City Commission approval on this project.

SUGGESTED MOTION:

Approve the contract Change Order with Excavating, Inc. for project SW 23-04 in the amount of \$569,910.72 for the emergency slope repair as described above.

Attachment

cc: Steve Sprague, City Auditor
 Randy Hanson, Stantec
 Scott Anderson, Landfill Supervisor

Date of Issuance: 01/10/24
 Owner: City of Fargo Division of Solid Waste
 Contractor: Excavating, Inc.
 Engineer: Stantec, Inc.
 Project: Cell 21 Waste Excavation and Construction

Effective Date: 01/10/24
 Owner's Contract No.: SW 23-04
 Contractor's Project No.:
 Engineer's Project No.: 227705930
 Contract Name: Cell 21 Waste
 Excavation and Construction

The Contract is modified as follows upon execution of this Change Order:

Description: Cell 20 West Slope Repair

Attachments: See the attached "Cell 20 West Slope Repair Final Quantities"

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: <u>\$ 6,165,624.20</u>	Original Contract Times: Substantial Completion: <u>October 31, 2024</u> Ready for Final Payment: <u>November 30, 2024</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. <u>N/A</u> to No. <u>N/A</u> : <u>\$ 0</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>N/A</u> to No. <u>N/A</u> : Substantial Completion: <u>0</u> Ready for Final Payment: <u>0</u> days
Contract Price prior to this Change Order: <u>\$ 6,165,624.20</u>	Contract Times prior to this Change Order: Substantial Completion: <u>October 31, 2024</u> Ready for Final Payment: <u>November 30, 2024</u> days or dates
Increase of this Change Order: <u>\$ 569,910.72</u>	Increase of this Change Order: Substantial Completion: <u>30</u> Ready for Final Payment: <u>31</u> days or dates
Contract Price incorporating this Change Order: <u>\$ 6,735,534.92</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>November 30, 2024</u> Ready for Final Payment: <u>December 31, 2024</u> days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u>Samuel March</u>	By: _____	By: <u>[Signature]</u>
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: <u>Project Manger</u>	Title _____	Title <u>Estimator/Project Manager</u>
Date: <u>01/10/24</u>	Date _____	Date <u>January 10, 2024</u>

Approved by Funding Agency (if applicable)

By: _____ Date: _____
 Title: _____

CITY OF FARGO
 DIVISION OF SOLID WASTE
 Cell 20 West Slope Repair Final Quantities
 PROJECT SW 23-04

Date: 01/10/24

Item	Final Quantity		Unit Price	Extended Price
1 Mobilization and Demobilization	1	LS	\$ 20,000.00	\$ 20,000.00
2 Remove Existing Granular Drainage Layer and Liner (includes replacing granular drainage layer)	4,867	SY	\$ 30.00	\$ 146,010.00
3 Excavating of unsuitable Soils and Stockpiling In Landfill East of 45th Street	4,040	CY	\$ 30.52	\$ 123,300.80
4 Exposing of Existing Liner Tie-in	551	LF	\$ 24.00	\$ 13,224.00
5 Controlled Fill	4,040	CY	\$ 20.00	\$ 80,800.00
6 Clay Subliner	4,867	SY	\$ 9.50	\$ 46,236.50
7 60 Mil HDPE Liner	4,867	SY	\$ 12.26	\$ 59,669.42
8 12-Inch Granular Drainage Layer	5,378	SY	\$ 15.00	\$ 80,670.00
			TOTAL	\$569,910.72

REPORT OF ACTION

UTILITY COMMITTEE

Project No. SW 22-01

Type: Cell 20 Construction
West Slope Repair

Location: Solid Waste Division – Landfill

Date of Hearing: 10/04/23

Routing	Date
City Commission	10/16/2023
Project File	SW 22-01 Cell 20 Construction

Scott Olson, Solid Waste Utility Director, presented the attached memo describing damage encountered on the west slope of the recently completed Cell 20 at the Landfill.

On May 31, 2022, the Commission approved the award of the Cell 20 Construction Project SW 22-01 to Burski Excavating, Inc. (Burski) in the amount of \$3,422,822.90. The project was substantially complete on December 23, 2022. With previous Change Order approvals and extensions the current contract and completion dates are:

Contract	Contractor	Substantial Completion Date	New Contract Amount
Cell 20 Construction	Burski Excavating, Inc.	December 23, 2022	\$3,446,663.90

In August staff noticed an area on the west slope with a very large washout approximately halfway up the slope. Upon inspection it was discovered that with the washout the geosynthetic base liner was torn. Also, the underlying clay liner beneath was well saturated and had shifted, indicating a possible slope “slip failure”. Work necessary to complete the repair is included in the attached memo.

This project is funded utilizing the North Dakota Clean Water State Revolving Funds (CWSRF) loan #380715-09. The cost to complete the repair is currently unknown but is estimated to be in the range of \$150,000 to \$400,000 depending on the extent of the damage. Once the extent is known and a change order issued funding for the repair will either be included in the CWSRF loan or paid using the Landfill Capital Improvements 2023 budget.

MOTION:

On a motion by Ben Dow, seconded by Daniel Portlock, the Utility Committee voted to approve the Solid Waste Department to issue a Work Change Directive (WCD) to Burski to complete the repair work under the current SW 22-01 contract. A change order for the work will be issued and appropriate funding mechanisms will be determined.

COMMITTEE:	Present	Yes	No	Unanimous
Denise Kolpack, City Commissioner	X	X		X
Thomas Knaukmuhs, City Engineer	X	X		
Susan Thompson, Interim City Finance Director				
Bruce Grubb, City Administration	X	X		
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Wastewater Plant Supt.	X	X		
Scott Liudahl, City Forester	X	X		
James Hausauer, Wastewater Util. Director	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director	X	X		
Scott Olson, Solid Waste Utility Director	X	X		
Daniel Portlock, Water Utility Engineer	X	X		

ATTEST:

Scott Olson, PE
Solid Waste Utility Director

C: Tim Mahoney, Mayor
Commissioner Preston
Commissioner Piepkorn
Commissioner Strand



Division of Solid Waste

2301 8th Avenue North
Fargo, North Dakota 58102
Phone: 701-241-1449
Fax: 701-241-8109

To: Utility Committee
From: Scott Olson, Solid Waste Utility Director *SO*
Date: September 29, 2023
Subject: SW 22-01 Cell 20 Construction - West Slope Repair

On May 31, 2022, the Commission approved the award of the Cell 20 Construction Project SW 22-01 to Burski Excavating, Inc. in the amount of **\$3,422,822.90**.

The project was substantially complete on December 23, 2022. With previous Change Order approvals and extensions the current contract completion dates and times are:

Contract	Contractor	Substantial Completion Date	New Contract Amount
Cell 20 Construction	Burski Excavating, Inc.	December 23, 2022	\$3,446,663.90

The North Dakota Department of Environmental Quality (NDDEQ) gave approval to begin placing waste in Cell 20 in July of 2023. It's common following cell completion that areas of the granular drainage layer will have "washouts" following spring melt if not covered with waste. Given the timing between completion and approval staff noticed various areas of washouts that were to be addressed once normal activities (waste placement) approached those areas for staff to access.

In August staff noticed an area on the west slope with a very large washout approximately halfway up the slope. Upon inspection it was discovered that with the washout the geosynthetic base liner was torn. Also, the underlying clay liner beneath was well saturated and had shifted, indicating a possible slope "slip failure".



It is imperative that the slope be repaired prior to harsh winter conditions setting so operations can continue unhindered into winter and to preserve the integrity of the remaining liner system in place. The repair work would entail:

- Remove existing granular drainage material and 60 Mil HDPE liner from repair area. We are anticipating the liner will not be salvageable but removed to allow reuse of the existing granular drainage layer material.
- Remove unsuitable soil material.
- Place controlled fill to obtain base liner elevations. Third party testing will be completed to ensure the fill meets original project requirements (6-inch max compacted thickness, 95% density (standard proctor), 2 to 5% wet of optimum. Controlled Fill specification will be shared with contractor.
- Clay liner area disturbed to be disked to a depth of 12-inches and recompacted meeting requirements of Clay Subliner specifications which will be provided to contractor.
- Clean off edges of existing 60 mil HDPE liner to allow new liner material to be welded to the existing liner
- Replace removed 60 mil HDPE liner with new textured 60 mil HDPE. High Density Polyethylene Geomembrane specification will be shared with contractor.
- Replace granular drainage layer material to completely cover the work area with a minimum of 12-inches of material. Granular Drainage Layer specification will be shared with contractor.

It is still unknown as of now whether the failure is a result of poor installation at time of construction or naturally occurring given in place water movement along soil slip planes. This will be determined after removal of drainage layer to full extents of the failure zone.

Funding Repair

CWSRF: The project is funded using Clean Water State Revolving Funds (CWSRF) and included in Loan 1 authorized in 2021. If the failure is to be completed by the Contractor under contract for Cell 20 and determined to be construction related a change order will be requested and issued and funds included in Loan 1.

Capital Improvement Budget Funds: Should the City need to repair the slope outside of the Cell 20 construction contract funds are available in the Landfill Capital Improvements budget for major items related to infrastructure. In 2023 Solid Waste has begun or completed three larger projects using Solid Waste staff rather than contracting out. Completing this work ourselves has saved the department an estimated \$600,000 in the Capital Improvements budgets. These projects include:

- Construction of Inert Cell 3 (complete) = \$125,000
- Construction of Inert Cell 4 (in progress) = \$125,000
- 7-acre Final Closure (in progress) = \$350,000

Along with Stantec we have estimated the cost to repair the slope will be between \$150,000 to \$400,000 depending on the extent of the failure.

Recommendation

Allow the Solid Waste Department to begin exploring the extent of the failure and complete the repair using either CWSRF funds if a change order is justified or Capital Improvement Funds from the 2023 budget.

Attachment

cc: Randy Hanson, Stantec



Water Treatment Plant
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

MEMORANDUM

September 29th, 2023

To: Utility Committee
From: Enterprise Utility Directors
Re: Utility Committee Meeting Agenda

SL
Br. Dow
MM
TK
BO
DIC
P
Brian
SO
JH
TH

The Utility Committee will meet at the following time and place:

1:30 PM, Wednesday, October 4th, 2023
WATER TREATMENT PLANT CONFERENCE ROOM

Consent Agenda Attachment

- A. Receive WTP Monthly Report for August 2023. X
- B. Receive Report on Drought Status as of August 2023. X
- C. Receive Gage Height Graphs & Stream Flow Graphs for Red and Sheyenne Rivers for August 2023. X
- D. Receive Water Service to West Fargo Report for August 2023. X
- E. Receive Cass Rural Water Report for August 2023. X
- F. Receive RWRF Monthly Report for August 2023. X
- G. Receive RWRF ERF and Leachate Revenue Report for August 2023. X

Regular Agenda

- 1. SW 22-01 Cell 20 Construction – West Slope Repair (Olson). X *Ben Dan*
Motion to approve a Work Change Directive and sub. Change order.
- 2. Second Amendment to Agreement – City of Fargo and Fargo Park District (Hausauer). X *SL TK*
- 3. AE2S Task Order #28 – Secondary Softening Basin Rehab Design & Bidding (Hall). X *MM JH*
- 4. Advanced Metering Infrastructure RFP (Hall), (Presentation Slides Only)
- 5. Park District Water Fee Waiver at Broadway Square Water Spout (Dow & Hall). X
- 6. *Remove from agenda* SRF Loan Resolution – Lead Service Line Replacement (Hall). (Presentation Slides Only)
- 7. Downtown Water Tower Construction Update (Hall & Portlock). (Presentation Slides Only)
- 8. Sales Tax Extension (Grubb). (Discussion Only)

CELL 20 WEST SLOPE REPAIR



Repairs Needed

- Remove/Replace Drainage Layer
- Remove/Replace Torn HDPE Liner
- Remove and Condition Underlying Clay Liner to Spec

Estimated Cost

- \$150,000 to \$400,000 Pending Extent of Damage

Payment Plan

- Change Order to Project and Utilize CWSRF Loan Funds
- Capital Improvements Budget if Necessary*

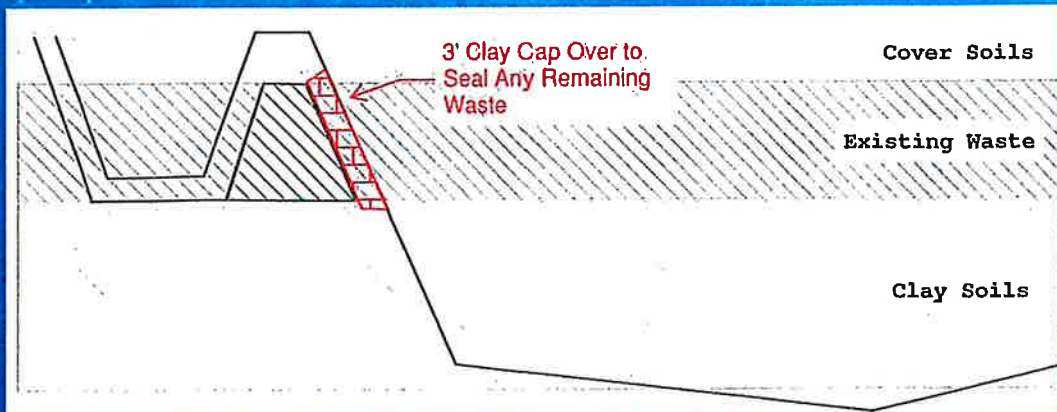
*Saved funds in 2023 by completed projects in house

1

Pre/Post Construction and Design

Cell was substantially complete on December 23, 2022

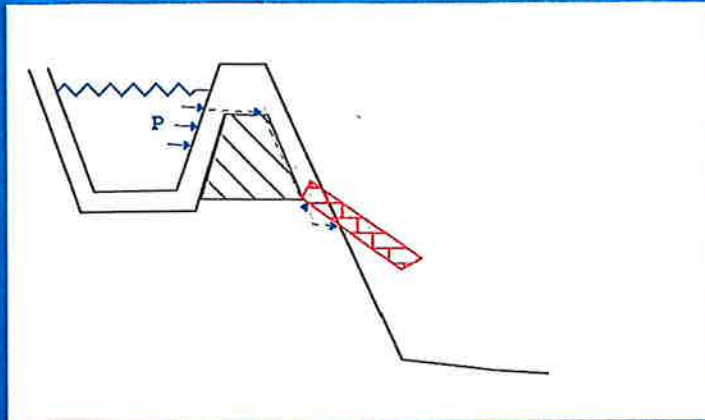
NDDEQ Approved City to begin using cell in July of 2023



2

Possible Reason for Failure

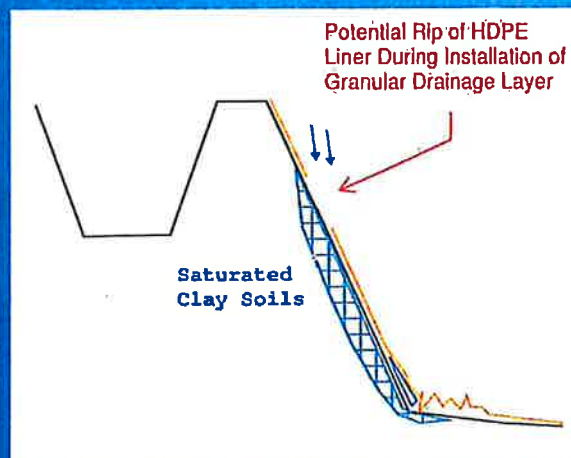
Slope Failure due to lack of waste in cell during times when stormwater ponds were full following spring melt and rains



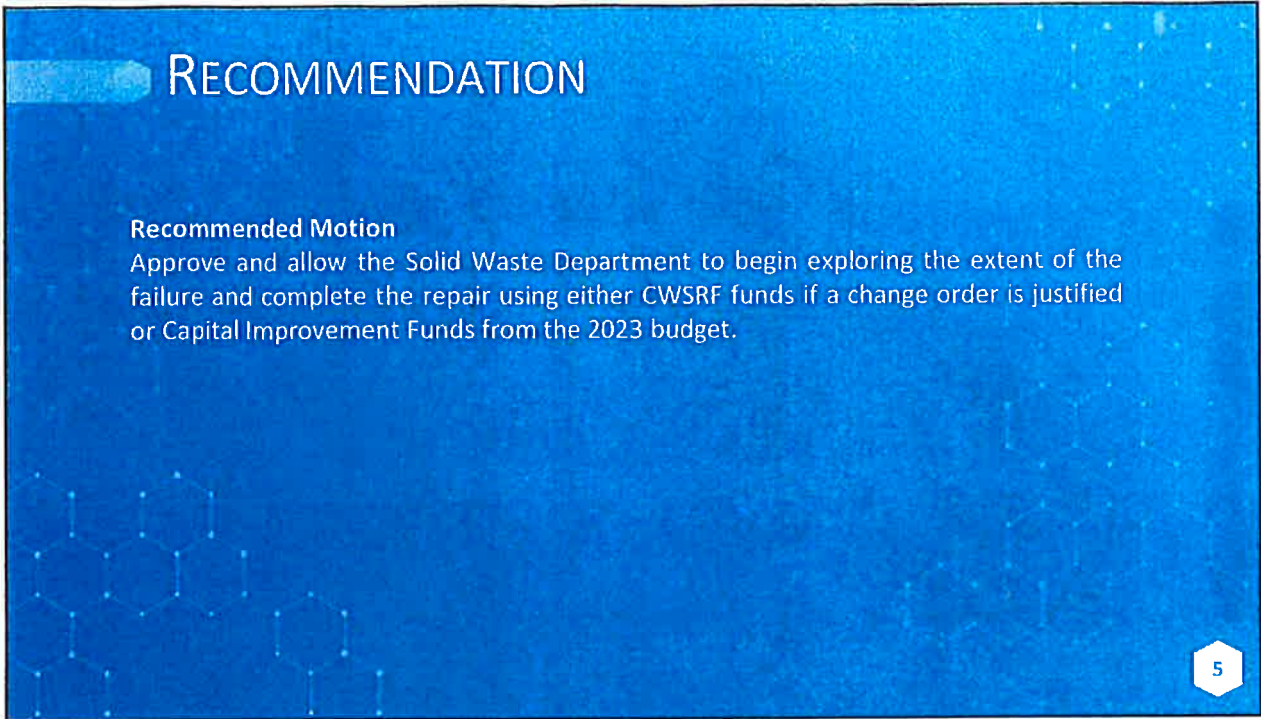
3

Possible Reason for Failure

HDPE Liner Failure if compromised allowing water to saturate clay liner and washout soils.



4



RECOMMENDATION

Recommended Motion
Approve and allow the Solid Waste Department to begin exploring the extent of the failure and complete the repair using either CWSRF funds if a change order is justified or Capital Improvement Funds from the 2023 budget.

5

(31)

February 20, 2024

The Honorable Board of City Commissioners
City of Fargo
225 Fourth Street North
Fargo, North Dakota 58102

RE: Public Transportation Agency Safety Plan Annual Update

Commissioners,

Our safety plan requires an annual update and approval by the City Commission. This is our second annual update to the Safety Plan.

The safety committee reviewed the plan and approved the plan on August 30th, 2023 at our bi-monthly committee meeting. Major changes incorporated into this annual update include:

- Updated Safety Targets for 2023

RECOMMENDED MOTION: I/we move to approve the attached Public Transportation Agency Safety Plan.

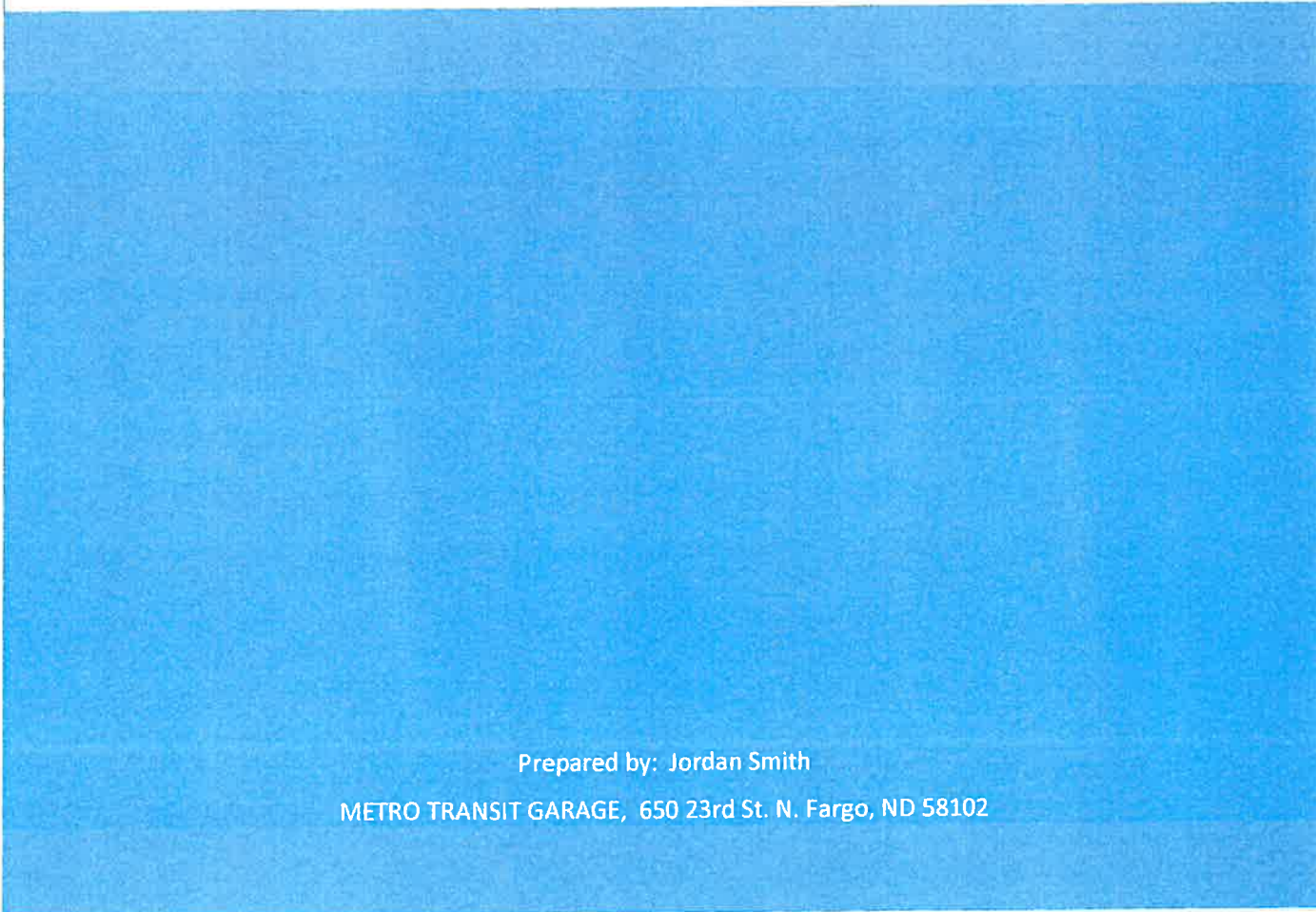
Respectfully Submitted,



Jordan Smith
Assistant Transit Director – Fleet and Facilities



PUBLIC TRANSPORTATION
AGENCY SAFETY PLAN (PTASP)
FOR THE CITIES OF
FARGO, ND
MOORHEAD, MN



Prepared by: Jordan Smith

METRO TRANSIT GARAGE, 650 23rd St. N. Fargo, ND 58102

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TRANSIT AGENCY INFORMATION

Transit Agency Name	City of Fargo / City of Moorhead (jointly operating as MATBUS)
Transit Agency Address	Metro Transit Garage, 650 23 rd St N Fargo, ND 58102
Name and Title of Accountable Executive	Julie Bommelman, Fargo Transit Director / Dan Mahli, Moorhead City Manager
Name of Chief Safety Officer(s) or SMS Executives	Jordan Smith, Fargo Assistant Transit Director - Fleet and Facilities / Lori Van Beek, Moorhead Transit Manager
Mode(s) of Service Covered by This Plan	Fixed Route; Paratransit
List of All FTA Funding Types	5307, 5310, 5339
Mode(s) of Service Provided by the Transit Agency (Directly operated or contracted service)	Modes: Fixed Route and Paratransit. The Cities of Fargo, ND and Moorhead, MN use contracted labor to operate the revenue vehicles for both modes.
Does the agency provide transit service on behalf of another transit agency?	The City of Fargo and City of Moorhead have a Joint Powers Agreement (JPA) for the operation of public transit in the metropolitan area. Under that agreement, the City of Fargo provides staff for building maintenance, vehicle maintenance, Fixed Route dispatch, mobility management, and Paratransit Reservationists, with the City of Moorhead paying a portion based on cost-sharing formulas in the JPA. The City of Fargo and the City of Moorhead jointly own the Metro Transit Garage where vehicles are stored, fueled and maintained and where administrative offices are located for City and contract staff. Fargo and Moorhead together select a contracted operator, but have separate contracts with the operator. Fixed Route vehicles are owned by the individual cities. Paratransit vehicles are owned by the individual cities; however, Moorhead leases their vehicles to Fargo for operation of the metro Paratransit system. The City of Fargo owns and operates the Ground Transportation Center (GTC) which acts as the main transfer facility for several routes from Fargo and Moorhead; there are also staff members located at the GTC. Moorhead cost shares in the GTC Operations.

ORGANIZATION STRUCTURE AND SYSTEM SAFETY RESPONSIBILITIES

<p>CITY OF FARGO Accountable Executive Julie Bommelman</p> <p>CITY OF MOORHEAD Accountable Executive Dan Mahli</p>	<p>The Transit Director serves as the City of Fargo Transit Accountable Executive and the City Manager serves as the City of Moorhead Accountable Executive with the following authorities, accountabilities, and responsibilities under this plan:</p> <ul style="list-style-type: none"> Controls and directs human and capital resources needed to develop and maintain the PTASP and SMS.
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	<ul style="list-style-type: none"> • Designates an adequately trained Chief Safety Officer who is a direct report. • Ensures that City of Fargo SMS is effectively implemented. • Ensures action is taken to address substandard performance in SMS. • Assumes ultimate responsibility for carrying out City of Fargo and City of Moorhead PTASP and SMS. • Maintains responsibility for carrying out the agency's Transit Asset Management Plan.
<p>CITY OF FARGO Chief Safety Officer Jordan Smith</p> <p>CITY OF MOORHEAD Chief Safety Officer Lori Van Beek</p>	<p>The Fargo Accountable Executive designates the Assistant Transit Director - Fleet and Facilities as the Chief Safety Officer. The Moorhead Accountable Executive designates the Moorhead Transit Manager as the Chief Safety Officer. The Chief Safety Officer has the following authorities, accountabilities, and responsibilities under this plan:</p> <ul style="list-style-type: none"> • Develops the PTASP and SMS policies and procedures • Ensures and oversees day-to-day implementation and operation of the SMS. • Chairs the Safety Committee. <ul style="list-style-type: none"> - Coordinates the activities of the committee - Establishes and maintains the Safety Event Log to monitor and analyze trends in hazards, occurrences, incidents, and accidents - Maintains and distributes minutes of committee meetings • Advises the Accountable Executive on SMS progress and status. • Identifies substandard performance in the SMS and develops action plans for approval by the Accountable Executive. • Ensures policies are consistent with safety objectives • Provides Safety Risk Management expertise and supports other personnel who conduct and oversee Safety Assurance activities.
<p>Agency Leadership and Management</p>	<p>Agency Leadership and Management also have authorities and responsibilities for day-to-day SMS implementation and operation of the SMS under this plan. Agency Leadership and Management include:</p> <ul style="list-style-type: none"> • Fargo Assistant Transit Director • Moorhead Transit Manager • Driver Services General Manager (Contracted) • Driver Services Operations Manager (Contracted) • Driver Services Safety Manager (Contracted) • Operations managers and supervisors <p>Leadership and Management personnel have the following authorities, accountabilities, and responsibilities:</p> <ul style="list-style-type: none"> • Participate as members of the Safety Committee (operations managers and supervisors will be rotated through the Safety Committee on a two-year term and other positions are permanent members) • Complete training on SMS and PTASP elements. • Oversee day-to-day operations of the SMS in their departments. • Modify policies in their departments consistent with implementation of the SMS, as necessary • Provide subject matter expertise to support implementation of the SMS as requested by the Accountable Executive or the Chief Safety Officer, including SRM activities, investigation of safety events, development of safety risk mitigation, and monitoring of mitigation effectiveness.

<p>Key Staff and Activities</p>	<p>City of Fargo and City of Moorhead Transit use the Safety Committee, as well as the monthly Drivers' Meeting and weekly Team Meeting, to support its SMS and safety programs:</p> <ul style="list-style-type: none"> - Safety Committee: Any safety hazard reported will be jointly evaluated by the Safety Committee and the Chief Safety Officer during the Safety Committee Meeting. The Safety Committee is made up of the following members: - Fargo and Moorhead Chief Safety Officers (Permanent Members) - City of Fargo Assistant Transit Director - Operations - City of Fargo Operations Supervisor (Permanent Member) - Driver Services Safety Manager (Permanent Member) - Valley Senior Services Transportation Manager (Permanent Member) - City of Fargo Dispatcher (Two-Year Term) - Maintenance Shop Supervisor (Two-Year Term) - Maintenance Shop Building Supervisor (Two-Year Term) - Bus Operator (Two-Year Term) <p>Safety Committee will meet bimonthly to review issues and make recommendations to improve safety.</p> <ul style="list-style-type: none"> - Drivers' Meetings: A permanent agenda item in all monthly Drivers' Meetings is dedicated to safety. Safety issues are discussed and documented. - All Staff Team Meetings: Hazard reports and mitigations will be shared, safety topics will be brought up for open discussion, further feedback solicited, and hazard self-reporting further encouraged. Information discussed in these meetings will be documented.
<p>Contracted Agencies Covered under this Plan</p>	<p>Valley Senior Services (Metro Senior Ride)</p> <ul style="list-style-type: none"> • Valley Senior Services operates a transportation service call Metro Senior Ride. These services are designed for people age 60 and older. The City of Moorhead leases vehicles to Valley Senior Services to assist them in providing rides for the elderly.

PLAN DEVELOPMENT, APPROVAL AND UPDATES

<p>Name of Person Who Drafted This Plan</p>	<p>Jordan Smith, Assistant Transit Director - Fleet and Facilities</p>		
<p>CITY OF FARGO Signature by the Accountable Executive</p>	<p>Signature</p>	<p>Title</p>	<p>Date</p>
		<p>Transit Director</p>	
	<p>Relevant Documentation (title and location)</p>		

		City Manager	
CITY OF MOORHEAD Approval by Proper Authority	Signature	Title	Date
	Relevant Documentation (title and location)		

Safety Committee Approval Date	8/30/2023
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SAFETY POLICIES AND PROCEDURES

1.1 COMMITMENT TO SAFETY

We are committed to Safety Management as a systematic and comprehensive approach to identify safety hazards and risks associated with transit system operations and related maintenance activities. We have adopted a Safety Management System (SMS) framework as an explicit element of the agency's responsibility by establishing safety policy; identifying hazards and controlling risks; goal setting, planning and measuring performance. We have adopted SMS as means by which to foster agency-wide support for transit safety by establishing a culture where management is held accountable for safety and everyone in the organization takes an active role in securing transit safety.

To ensure transit safety and in order to comply with Federal Transit Administration (FTA) requirements, we have developed and adopted this Public Transit Agency Safety Plan (PTASP) to comply with FTA regulations established by section 5329(d) of the Moving Ahead for Progress in the 21st Century (MAP-21) Act.

The Fargo Transit Director, Moorhead City Manager, Metropolitan Council of Governments and City of Fargo Commission/City of Moorhead Council, in cooperation with the North Dakota Department of Transportation and Minnesota Department of Transportation, have reviewed the PTASP and assures that the content has met the requirements of Section 5329 (d) of MAP-21 through the establishment of a comprehensive Safety Management System (SMS) framework. Fundamental safety beliefs guiding our approach include:

- Safety is a core business value
- Safety excellence is a key component of our mission
- Safety is a source of our competitive advantage; our business will be strengthened by making safety excellence an integral part of all our public transportation activities; and
- Accidents and serious incidents are preventable; they are often preceded by precursors (events, behavior, and conditions) that can be identified, assessed and mitigated.

Basic elements of our safety approach include:

- Top Management Commitment to Safe Operations
- Responsibility and Accountability of all Employees
- Clearly Communicate Safety Goals
- Safety Assurance and Performance Measurement for Improvement

1.2 ANNUAL PTASP REVIEW AND UPDATE

Our Fargo-Moorhead management will review the PTASP annually, update the document as necessary and implement the changes within a timeframe that will allow the agency to timely submit the annual self-certification of compliance to the Federal Transit Administration (FTA). Annual self-certification will consist of the Fargo Transit Director and Moorhead City Manager signing and dating this document and submitting to FTA for review and approval. The annual review of the PTASP will be conducted by the agency as part of the PTASP review to be conducted no later than **June 30th** of each calendar year. Necessary updates outside the annual update window will be handled as PTASP addendums which will be incorporated in the body of the PTASP. Reviews of the PTASP by the local agency, any subsequent updates and addendums, adoption and distribution activities will be documented in the PTASP Document Activity Log.

1.3 SAFETY PROMOTION, CULTURE AND TRAINING

We believe safety promotion is critical to the success of SMS by ensuring that the entire organization fully understands and trusts the SMS policies, procedures and structure. It involves establishing a culture that recognizes safety as a core value, training employees in safety principles and allowing open communications of safety issues.

1.4 SAFETY CULTURE

Positive safety culture must be generated from the top-down. The actions, attitudes and decisions at the policy-making level must demonstrate a genuine commitment to safety. Safety must be recognized as the responsibility each employee with the ultimate responsibility for safety resting with the Fargo Transit Director and Moorhead City Manager. Employees must trust that they will have management support for decisions made in the interest of safety while recognizing that intentional breaches of safety will not be tolerated.

The primary goal of safety promotion is to develop a positive safety culture that allows SMS to succeed. A positive safety culture is defined as one which is:

- **An Informed Culture**
 - Employees understand the hazards and risks involved in their areas of operation
 - Employees are provided with the necessary knowledge, training, and resources
 - Employees work continuously to identify and overcome threats to safety
- **A Just Culture**
 - Employees know and agree on what is acceptable and unacceptable behavior
 - Human errors must be understood but negligence and willful violations cannot be tolerated
- **A Reporting Culture**
 - Employees are encouraged to voice safety concerns and to share critical safety information without the threat of punitive action
 - When safety concerns are reported they are analyzed, and appropriate action is taken
- **A Learning Culture**
 - Learning is valued as a lifetime process beyond basic skills training
 - Employees are encouraged to develop and apply their own skills and knowledge to enhance safety
 - Employees are updated on safety issues by management and safety reports are fed back to staff so that everyone learns the pertinent lessons

1.5 TRAINING

During the initial implementation of the SMS, specific training will be required for all employees, including contract staff, to explain the agency's safety culture and describe how SMS works. The Safety Officer is the resource person for providing a corporate perspective on our approach to safety management. Once

the SMS is implemented, safety training needs will depend on the safety responsibilities of the individual staff members and the nature of tasks performed.

- **Level One Training**
 - **Initial Safety Training for All Staff**
 - Basic Principles of safety management including the integrated nature of SMS, risk management, safety culture, etc.
 - Corporate safety philosophy, safety goals and objectives, safety policy and safety standards
 - Importance of complying with the safety policy and SMS procedures, and the approach to disciplinary actions for different safety issues
 - Organizational structure, roles, and responsibilities of staff in relation to safety
 - Current safety record, including areas of weakness
 - Reporting accidents, incidents, and perceived hazards
 - Feedback and communication methods for the dissemination of safety information
 - Safety promotion and information dissemination

- **Level Two Training**
 - **Safety Training for Operations Personnel – In Addition to Level One Training**
 - Unique hazards facing operational personnel
 - Seasonal safety hazards and procedures
 - Procedures for hazard reporting
 - Procedures for reporting accidents and incidents
 - Emergency procedures

- **Level Three Training**
 - **Safety training program for all employees and contractors directly responsible for safety.**
 - Bus vehicle operators (Driver Training Performed by Driver Services Contractor)
 - Dispatchers
 - Maintenance technicians
 - Managers and supervisors
 - Leadership and Executive Management
 - Chief Safety Officers

Resources will be dedicated to conduct a comprehensive safety training program, as well as training on SMS roles and responsibilities. The scope of the safety training, including annual refresher training, is appropriate to each employee's individual safety-related job responsibilities and their role in the SMS.

Operations safety-related skill training may include the following:

The following training is performed by the Driver Services Contractor. Reference Exhibit A

- New-hire bus vehicle operator classroom and hands-on skill training
- Bus operator refresher training
- Bus operator retraining (recertification or return to work)
- Classroom and on-the-job training for operations supervisors and managers
- Accident investigation training for operations supervisors and managers

Vehicle maintenance safety-related skill training includes the following:

The following training is performed by the City of Fargo

- Ongoing vehicle maintenance technician skill training
- Ongoing skill training for vehicle maintenance supervisors
- Accident investigation training for vehicle maintenance supervisors
- Ongoing hazardous material training for vehicle maintenance technicians and supervisors
- Training provided by vendors.

1.6 INFECTIOUS DISEASE MITIGATION

Minimizing the spread of an infectious disease is a priority of the Safety Plan. To minimize the spread of infectious diseases, we will rely on physical barriers, air and surface purification systems, hand sanitizing stations and routine cleanings. All vehicles operated in revenue service will be equipped with an air and surface purification system and have a minimum of one hand sanitation station on board. Vehicles operated on the fixed-route system will be equipped with physical operator barriers that create a separation between the operators and the riding public. Deep cleanings will be performed on all revenue vehicles on a routine basis. We will follow any Federal, State or local guidance on mitigating an infectious disease.

SAFETY RISK MANAGEMENT

2.1 HAZARD IDENTIFICATION

Establishing effective hazard identification programs is fundamental to safety management. Hazard identification can be reactive or proactive in nature. Occurrence reporting, incident investigation and trend monitoring are essentially reactive. Other hazard identification methods actively seek feedback by observing and analyzing day-to-day operations. Common hazard identification activities include:

- Safety assessments
- Trend monitoring
- Hazard and incident reporting
- Safety surveys
- Safety audits
- Evaluation of customer suggestions and complaints

The number of near-miss incidents, known as precursors, is significantly greater than the number of accidents for comparable types of events. The practice of reporting and learning from accident precursors is a valuable complement to other hazard identification practices. To be successful, hazard identification must take place within a non-punitive and just safety culture. We will employ systematic safety improvements by discovering and learning of potential weaknesses in the system's safety. We will utilize the FTA's Resource Library to help identify potential sources of hazard information.

The Chief Safety Officer(s) or their designee is responsible for the risk assessment. The Chief Safety Officers may conduct further analyses of hazards and consequences to collect information and identify additional consequences and to inform which hazards should be prioritized for safety risk assessment.

Safety risks are recorded and tracked in SharePoint. This will allow for any recorded safety risks to be searched and reports to be generated when necessary.

2.1 NON-PUNITIVE REPORTING POLICY

We are committed to the safest transit operating standards possible. To achieve this, it is imperative that we have uninhibited reporting of all incidents and occurrences which may compromise the safe conduct of our operations. To this end, every employee is responsible for the communication of any information that may affect the integrity of transit safety. Such communication must be completely free of any form of reprisal.

We will not take disciplinary action against any employee who discloses an incident or occurrence involving transit safety. This policy shall not apply to information we receive from a source other than the employee, or which involves an illegal act, or deliberate or willful disregard of safety regulations or procedures.

The primary responsibility for transit safety rests with the Transit Operator and Safety Officers, however transit safety is everyone's concern.

Our method of collection, recording and disseminating information from transit safety reports, has been developed to protect the identity of any employee who provides transit safety information. We urge all staff to practice the SMS transit safety procedures outlined in the PTASP to help us become a leader in providing transit riders and employees with the highest level of transit safety.

2.2 RISK ASSESSMENT

Once hazards have been identified, we will conduct an assessment to determine their potential consequences. Factors to be considered are the likelihood of the occurrence, the severity of the consequences should there be an occurrence and the level of exposure to the hazard. We will assess risks subjectively by experiences personnel using a Risk Assessment Matrix (RAM). We will use the RAM to measure the level of safety risk in terms of severity and likelihood. This will allow us to combine the assessment of severity and likelihood to determine the overall risk rating of the potential consequence of the hazard.

Results of the risk assessment process will help determine whether the risk is being appropriately managed or controlled. If the risks are acceptable, the hazard will simply need monitoring. If the risks are unacceptable, steps will be taken to lower the risk to an acceptable or tolerable level, or to remove or avoid the hazard.

2.3 RISK MITIGATION

The assessment process may indicate that certain hazards have an acceptable level of risk, while others require mitigation to an acceptable or tolerable level. The level of risk can be lowered by reducing the severity of the potential consequences, by reducing the likelihood of occurrence and/or by reducing the exposure to that risk. In general, we will take the following safety actions to mitigate risk. These actions can be categorized into three broad categories, including:

- **Physical Defense**
 - These include objects and technologies that are engineered to discourage, or warn against, or prevent inappropriate action or mitigate the consequences of events. (e.g. traffic control devices, fences, safety restraining systems)
- **Administrative Defenses**
 - These include procedures and practices that mitigate the likelihood of an accident or incident. (e.g. safety regulations, standard operating procedures, supervision inspection, training)
- **Behavioral Defenses**
 - These include behavioral interventions through education and public awareness campaigns aimed at reducing risky and reckless behavior of motorists, passengers and pedestrians; factors outside the control of our agency.

2.4 PRIORITIZE SAFETY RISKS

Once hazards have been identified and risk levels assessed, we will prioritize safety risks. A Prioritized Safety Risk Log will be used to organize the system safety risks. The Prioritized Safety Risk Log will identify the priority level for safety risks, a description of the risk, planned mitigation strategies to address the risk, the outcome of the planned mitigation strategies, responsible staff, timeline of the planned mitigation strategies and the status of the prioritized safety risk. We will update the Prioritized Safety Risk Log to ensure continual progress towards risk reduction.

2.5 SAFETY ASSURANCE

Safety Assurance provides the necessary feedback to ensure that the SMS is functioning, and we are meeting or exceeding its safety objectives. Safety assurance requires a clear understanding of how safety performance will be evaluated and what metrics will be used to assess system safety and determine if the safety management system is working properly. Having decided on the metrics by which success will be measured; safety management requires embedding these metrics in the organizational culture and encouraging their use for ongoing performance improvement.

SAFETY PERFORMANCE MONITORING AND MEASUREMENT

3.1 MONITORING THE SYSTEM FOR COMPLIANCE WITH PROCEDURES FOR OPERATIONS AND MAINTENANCE

We have many processes in place to monitor our entire transit system for compliance with operations and maintenance procedures including:

- Safety audits,
- Informal inspections,
- Regular review of onboard camera footage to assess drivers and specific incidents,
- Investigation of safety occurrences,
- Safety review prior to the launch or modification of any facet of service,
- Daily data gathering and monitoring of data related to the delivery of service, and
- Regular vehicle inspections and preventative maintenance.

Results from the above processes are compared against recent performance trends periodically by the Chief Safety Officers to determine where action needs to be taken. The Chief Safety Officers enter any identified non-compliant or ineffective activities, including mitigations, into the tracking system in SharePoint for reevaluation by the Safety Committee.

3.2 MONITORING OPERATIONS TO IDENTIFY ANY SAFETY RISK MITIGATIONS THAT MAY BE INEFFECTIVE, INAPPROPRIATE, OR WERE NOT IMPLEMENTED AS INTENDED

We monitor safety risk mitigations to determine if they have been implemented and are effective, appropriate, and working as intended. The Chief Safety Officers maintain a list of safety risk mitigations. The mechanism for monitoring safety risk mitigations varies depending on the mitigation

The Chief Safety Officers establish one or more mechanisms for monitoring safety risk mitigations as part of the mitigation implementation process and assigns monitoring activities to the appropriate

director, manager, or supervisor. These monitoring mechanisms may include tracking a specific metric on daily, weekly, or monthly logs or reports; conducting job performance observations; or other activities. The Chief Safety Officer will endeavor to make use of existing processes and activities before assigning new information collection activities.

The Chief Safety Officers and Safety Committee review the performance of individual safety risk mitigations during periodic Safety Committee meetings, based on the reporting schedule determined for each mitigation, and determine if a specific safety risk mitigation is not implemented or performing as intended. If the mitigation is not implemented or performing as intended, the Safety Committee will propose a course of action to modify the mitigation or take other action to manage the safety risk. The Chief Safety Officers will approve or modify this proposed course of action and oversee its execution.

The Chief Safety Officers and Safety Committee also monitor operations on a large scale to identify mitigations that may be ineffective, inappropriate, or not implemented as intended by:

- Reviewing results from accident, incident, and occurrence investigations;
- Monitoring employee safety reporting;
- Reviewing results of internal safety audits and inspections; and
- Analyzing operational and safety data to identify emerging safety concerns. The Chief Safety Officers work with the Safety Committee and Accountable Executive to carry out and document all monitoring activities.

3.3 INVESTIGATIONS OF SAFETY EVENTS TO IDENTIFY CAUSAL FACTORS

We maintain documented procedures for conducting safety investigations of events (accidents, incidents, and occurrences, as defined by FTA) to find causal and contributing factors and review the existing mitigations in place at the time of the event. These procedures also reflect all traffic safety reporting and investigation requirements established by the state of North Dakota and Minnesota Department of Motor Vehicles.

The Chief Safety Officers maintain all documentation of investigation policies, processes, forms, checklists, activities, and results. An investigation report is prepared and sent to the Safety Committee for integration into their analysis of the event.

- The accident was preventable or non-preventable;
- Personnel require discipline or retraining;
- The causal factor(s) indicate(s) that a safety hazard contributed to or was present during the event; and
- The accident appears to involve underlying organizational causal factors beyond just individual employee behavior.

3.4 MONITORING INFORMATION REPORTED THROUGH THE INTERNAL SAFETY REPORTING PROGRAM

The Chief Safety Officers and Safety Committee routinely review safety data captured in employee safety reports, safety meeting minutes, customer complaints, and other safety communication channels.

When necessary, the Chief Safety Officers and Safety Committee ensure that the concerns are investigated or analyzed through the Safety Risk Mitigation (SRM) process.

The Chief Safety Officers and Safety Committee also review internal and external reviews, including audits and assessments, with findings concerning safety performance, compliance with operations and maintenance procedures, or the effectiveness of safety risk mitigations.

3.5 SAFETY COMMUNICATION

The Chief Safety Officers coordinate the safety communication activities for the SMS. Activities focus on the three categories of communication activity established in 49 CFR Part 673 (Part 673):

- Communicating safety and safety performance information throughout the agency: Communicates information on safety and safety performance monthly during all regular Team Meetings and contractor Driver Safety Meetings. A permanent agenda item in all monthly Driver Safety Meetings dedicated to safety. Information typically conveyed during these meetings includes safety performance statistics, lessons learned from recent occurrences, upcoming events that may impact service or safety performance, and updates regarding SMS implementation. Information is requested from drivers during these meetings, which is recorded in meeting minutes. Finally, the Safety Officer posts safety bulletins and flyers on the bulletin boards located in all bus operator and maintenance technician break rooms, advertising safety messages and promoting awareness of safety issues.
- Communicating information on hazards and safety risks relevant to employees' roles and responsibilities throughout the agency: As part of new-hire training, safety policies and procedures are distributed to all employees. Training on these policies and procedures and discusses them during safety talks between supervisors and bus operators and vehicle technicians. For newly emerging issues or safety events at the agency, the Chief Safety Officers issue bulletins or messages to employees that are reinforced by supervisors in one-on-one or group discussions with employees.
- Informing employees of safety actions taken in response to reports submitted through the ESRP: Provides targeted communications to inform employees of safety actions taken in response to reports submitted through the ESRP, including handouts and flyers, safety talks, updates to bulletin boards, and one-on-one discussions between employees and supervisors, including contract operator employees and supervisors.

DEFINING SAFETY GOALS AND OBJECTIVES/OUTCOMES

Setting safety goals and objectives is part of strategic planning and establishing safety policy. Clearly defining safety goals is the first part in creating a safety performance measurement system. Safety goals are general descriptions of a desirable long-term impact. Whereas safety objectives or outcomes are more specific statements that define measurable results.

The safety objectives and outcomes will be measured by defining specific performance metrics, including baseline and targets that we will determine as reasonable.

4.1 DEFINING SAFETY PERFORMANCE MEASURES

We will utilize these basic principles of performance measurement:

- Stakeholder involvement and acceptance
- Focus on agency goals and activities
- Clarity and precision
- Credibility
- Forward-looking measures
- Integration into agency decision-making
- Timely reporting
- Realism of goals and targets

4.2 METRICS

Defining safety performance measures includes the use of safety related metrics. There are some general safety related metrics that can be used to measure transit safety performance. The following is a list of performance target areas and metrics that we will use.

Injuries	<ul style="list-style-type: none"> • Number of Injuries (Fixed Route) • Number of Injuries (On Demand) • Number of Injuries per 100,000 vehicle revenue miles (Fixed Route) • Number of Injuries per 100,000 vehicle revenue miles (On Demand)
Fatalities	<ul style="list-style-type: none"> • Number of Fatalities (Fixed Route) • Number of Fatalities (On Demand) • Number of Fatalities per 100,000 vehicle revenue miles (Fixed Route) • Number of Fatalities per 100,000 vehicle revenue miles (On Demand) • Work-related fatalities per specific time period
Safety Events	<ul style="list-style-type: none"> • Total Number of Safety Events (Fixed Route) • Total Number of Safety Events (On Demand) • Number of Safety Events per 100,000 vehicle revenue miles (Fixed Route) • Number of Safety Events per 100,000 Vehicle revenue miles (On Demand)
System Reliability	<ul style="list-style-type: none"> • Mean distance between major mechanical failure (Fixed Route) • Mean distance between major mechanical failure (On Demand) • Percent of preventative maintenance inspections completed within 10% of scheduled mileage

4.3 TARGETS

Measuring safety performance metrics includes targets or goal we strive to accomplish. The following lists are the targets we will set for our agency. The Cities of Fargo, ND and Moorhead, MN will officially transmit its targets to the States of North Dakota and Minnesota by July 31 of each year. The following targets are based on a five year rolling average of NTD reportable safety events.

Mode of Service	Injuries (Total)		Injuries (per 100k VRM)	
	Fargo	Moorhead	Fargo	Moorhead
Fixed Route Bus	1.17	.6	.13	.13

On Demand/ADA Paratransit	0	0
Valley Senior Services	0	0

Mode of Service	Fatalities (Total)	Fatalities (per 100k VRM)	Work-related employee fatalities
Fixed Route Bus	0	0	0
On Demand/ADA Paratransit	0	0	0

Mode of Service	Safety Event (Total)		Safety Event (per 100k VRM)	
	Fargo	Moorhead	Fargo	Moorhead
Fixed Route Bus	2	1.4	.24	.29
On Demand/ADA Paratransit	.2		.06	
Valley Senior Services	0		0	

Mean distance between major mechanical failures (Fixed Route)	Mean distance between major mechanical failures (On Demand)	Percentage of PM completed within 10% of scheduled mileage
9000	12000	90

Safety Performance Target Coordination		
The Accountable Executive shares our PTASP, including safety performance targets, with the ND DOT and MN DOT in our service area each year after its formal adoption by the City of Fargo Commission and the City of Moorhead City Council. Personnel are available to coordinate with ND DOT and MN DOT and the MPO in the selection of ND DOT and MN DOT and MPO safety performance targets upon request.		
Targets Transmitted to the State	ND DOT	Date Targets Transmitted
Targets Transmitted to the State	MN DOT	Date Targets Transmitted
		9/13/2023

4.4 INTEGRATING RESULTS INTO AGENCY DECISION-MAKING PROCESS

We are committed to using the data collected and information learned to inform decision making and instill positive change. The main objective is the continuous improvement of transit system safety. When performance goals are not met, we will identify why such goals were not met and what actions can be taken to minimize the gap in achieving defined goals. However, when goals are easily achieved, action will be taken to exceed expectations and re-establish a reasonable baseline.

Uses of Performance Results include:

- Focus attention on performance gaps and trigger in-depth investigations of what performance problems exists
- Help make informed resource allocation decisions
- Identify needs for staff training or technical assistance
- Help motivate employees to continue making program improvements
- Support strategic planning efforts by providing baseline information for tracking purposes
- Identify best practices through benchmarking
- Respond to elected officials and the public's demand for accountability

4.5 SUSTAINING A SAFETY MANAGEMENT SYSTEM

In order to sustain a safety management system, we will ensure that particular processes are employed to instill an organizational foundation. Examples of actions taken to sustain SMS include:

- **Create measurement-friendly culture**
 - All staff, including management, should be actively engaged in creating measurement-friendly culture by promoting performance measurement as a means of continuous improvement. Management will also lead by example and utilize performance metrics in decision making processes
- **Build organization capacity**
 - Investment in developing skilled human resources capacity is essential to sustaining an SMS. Both technical and managerial skills will be needed for data collection and analysis, and goal setting. We are committed to providing the financial resources required for organizational capacity and maintaining an SMS on a continuous basis.
- **Reliability and transparency of performance results**
 - The SMS will be able to produce and report results, both good and bad. Performance information should be transparent and made available to all stakeholders. Messengers should be protected to preserve the integrity of the measurement system. The focus should be on opportunities for improvement rather than allocating blame.
- **Demonstrate continuous commitment to measurement**
 - Visible commitment to using metrics is a long-term initiative. We will demonstrate a commitment to performance measurement by establishing a formal process of reporting performance results, such as including Transit Safety and Performance measurement as a standing agenda item at Transit Board, City Commission and City Council meetings.

SUPPORTING DOCUMENTATION

We will maintain documentation related to the implementation of its SMS; the programs, policies, and procedures used to carry out this PTASP; and the results from its SMS processes and activities for three years after creation. Documentation will be maintained in SharePoint and will be available to the FTA or other Federal or oversight entity upon request.

5.1 DEFINITIONS OF TERMS USED IN THE SAFETY PLAN

We incorporate all of FTA's definitions that are in 49 CFR § 673.5 of the Public Transportation Agency Safety Plan regulation.

- Accident means an Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision of public transportation vehicles; an evacuation for life safety reasons.

- Accountable Executive means a single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan, in accordance with 49 U.S.C. 5326.
- Equivalent Authority means an entity that carries out duties similar to that of a Board of Directors for a recipient or subrecipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.
- Event means any Accident, Incident, or Occurrence.
- Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.
- Incident means an event that involves any of the following: a personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.
- Investigation means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.
- National Public Transportation Safety Plan means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.
- Occurrence means an Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a transit agency.
- Operator of a public transportation system means a provider of public transportation as defined under 49 U.S.C. 5302.
- Performance measure means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.
- Performance target means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the FTA.
- Public Transportation Agency Safety Plan (PTASP or Agency Safety Plan) means the documented comprehensive Agency Safety Plan for a transit agency that is required by 49 U.S.C. 5329 and Part 673.
- Risk means the composite of predicted severity and likelihood of the potential effect of a hazard.
- Risk mitigation means a method or methods to eliminate or reduce the effects of hazards.

- Safety Assurance means processes within a transit agency's Safety Management System that function to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.
- Safety Management Policy means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.
- Safety Management System (SMS) means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing risks and hazards.
- Safety performance target means a performance target related to safety management activities.
- Safety Promotion means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.
- Safety risk Assessment means the formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risks.
- Safety Risk Management (SRM) means a process within a transit agency's Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.
- Serious injury means any injury which: (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date when the injury was received; (2) Results in a fracture of any bone (except simple fractures of fingers, toes, or noses); (3) Causes severe hemorrhages, nerve, muscle, or tendon damage; (4) Involves any internal organ; or (5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.
- Transit agency means an operator of a public transportation system.
- Transit Asset Management Plan (TAMP) means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR Part 625

5.2 COMMONLY USED ACRONYMS

Acronym	Word or Phrase
ADA	American's with Disabilities Act of 1990

ASP	Agency Safety Plan (also referred to as a PTASP in part 673)
CFR	Code of Federal Regulations
ESRP	Employee Safety Reporting Program
FTA	Federal Transit Administration
MATBUS	Fargo-Moorhead Metropolitan Area Transit Public Bus System
MNDOT	Minnesota Department of Transportation
MPO	Metropolitan Planning Organization
NDDOT	North Dakota Department of Transportation
Part 673	49 CFR Part 673 (Public Transportation Agency Safety Plan)
PTASP	Public Transportation Agency Safety Plan
RAM	Risk Assessment Matrix
SMS	Safety Management System
SRM	Safety Risk Management
TAMP	Transit Asset Management Plan
U.S.C.	United States Code
VRM	Vehicle Revenue Miles

5.3 EXHIBIT A – ACTIVITY LOG

City of Fargo and City of Moorhead Transit Safety Plan

Date	Activity (Review/Update/Addendum/ Adoption/Distribution)	Person Making Changes	Remarks
11/18/2020	MAT Coordinating Board – Review and Recommend Adoption of Safety Plan to Fargo City Commission and Moorhead City Council		
11/30/2020	Fargo City Commission - Adoption of Plan		
12/10/2020	Metropolitan Council of Governments (MPO) Transportation Technical Committee - Review and Recommend Approval of Safety Plan to Policy Board		
12/14/2020	Moorhead City Council - Adoption of Plan		Resolution #2020-1214-P
12/17/2020	Metropolitan Council of Government (MPO) Policy Board - Approval of Plan		
3/01/2021	Revision	Jordan Smith	<p>Removed Assistant Transit Director, Contractor GM and Road Supervisor from Safety Committee. Added Valley Senior Services Transportation Manager.</p> <p>Add Valley Senior Services as Contracted Agencies Covered Under this Plan</p>
2/8/22	Revision	Jordan Smith	Added City of Fargo Assistant Transit Director to safety committee.

6/8/2022	Revision	Jordan Smith	<p>Add Infectious Disease Mitigation</p> <p>Add Safety Committee Approval Date</p> <p>Remove Safety Culture targets as they are not a required element of the plan</p> <p>Removed work days lost target as it is not a required element of the plan</p> <p>Updated Safety Targets</p> <p>Move audit log to be an Exhibit to the plan</p>
7/13/2022	MAT Coordinating Board – Review and Recommend Adoption of 2022 Updated Safety Plan to Fargo City Commission and Moorhead City Council		
7/25/2022	Fargo City Commission – Adoption of 2022 Updated Safety Plan		
7/25/2022	Moorhead City Council – Adoption of 2022 Updated Safety Plan		Resolution 2022-0725-F
8/30/2023	Revision	Jordan Smith	Update Targets. Annual Review

5.4 EXHIBIT B – RISK ASSESSMENT MATRIX

Risk Assessment Matrix

Identified Risk: _____

Severity	Impact of Risk						Probability of Risk				
	Cost (Thousands)	People	Asset	Environment	Quality	< 1% Very Low (1)	1% - 10% Low (2)	10% - 50% Medium (3)	50% - 90% High (4)	> 90% Very High (5)	
Very High 5	>50	Multiple Fatalities	Major Damage, multiple units	Massive Effect	Complete discontinuation of service	5	10	15	20	25	
High 4	25-50	Permanent total disability or one fatality	Major Damage, unit level	Major Effect	Substantial disruption of service	4	8	12	16	20	
Medium 3	10-25	Serious injury, hospitalization	Moderate Damage	Moderate Effect	Slight disruption of service	3	6	9	12	16	
Low 2	1-10	Slight injury, medical treatment	Minor Damage	Minor Effect	Minimal disruption of service	2	4	6	8	10	
Very Low 1	<1	First aid or no injury	No/Slight Damage	No/Slight Effect	No disruption of service	1	2	3	4	5	
Risk Value											

Assessed Risk Value: _____

Instructions

1. Estimate potential consequences and severity (thought of as what could happen if hazard actually occurred)
2. Estimate likelihood of such consequences occurring (using historical evidence, data and experiences)
3. Multiply the severity for each consequence by the likelihood of that consequence occurring. This is the risk value.
4. Sum the risk values for a total assessed risk. (out of 125)

5.5 EXHIBIT C – PRIORITIZED SAFETY RISK LOG

Prioritized Safety Risk Log

This Prioritized Safety Risk Log is used to organize identified safety risks facing the MATBUS system. The log should be updated frequently to demonstrate continual progress towards risk reduction through mitigation strategies. A timeline is used to highlight projected completion dates.

Completed by: _____ Last Updated: _____

Priority	Risk Description	Planned Mitigation Strategies	Outcomes of Planned Mitigation Strategies	Responsible Staff	Timeline	Status
1						
2						
3						
4						
5						
6						
7						

5.5 EXHIBIT D – SAFETY REPORTING FORM



Safety Event Reporting Form

Name (optional) _____

Date of Event _____

Event Time _____

Event Information

Location _____

City _____ State _____

Specific Area of Location (if applicable) _____

Event Description

Name/Contact of Witnesses

1. _____

2. _____

3. _____

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February 20, 2024

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

Dear Commissioners:

On October 1, 2023 the Federal Transit Administration (FTA) reclassified the urbanized area which includes the Fargo of City, from a Small Urban to a Large Urban. The change is based on the population of the urbanized area exceeding 200,000. One of the new requirements from FTA is an updated Resolution Authorizing Filing of Application with the Federal Transit Administration (see attached).

The resolution was developed by the City of Fargo City Attorney and authorizes the filing of applications with the Federal Transit Administration by the Transit Director.

The requested motion is to approve the attached Resolution Authorizing Filing of Applications with the Federal Transit Administration.

Thank you.



Julie Bommelman
Transit Director
City of Fargo
701.476.6737

/attachment

COMMISSIONER _____ introduced the following resolution and moved its adoption:

RESOLUTION AUTHORIZING FILING OF APPLICATIONS WITH THE FEDERAL TRANSIT ADMINISTRATION

Resolution authorizing the filing of applications with the Federal Transit Administration, an operating administration of the United States Department of Transportation, for federal transportation assistance authorized by 49 U.S.C. Chapter 53; title 23, United States Code, or other federal statutes administered by the Federal Transit Administration.

WHEREAS, the Federal Transit Administrator has been delegated authority to award federal financial assistance for a transportation project(s);

WHEREAS, the grant or cooperative agreement for federal financial assistance will impose certain obligations upon the city of Fargo, and may require the city of Fargo to provide the local share of the project(s) cost;

WHEREAS, the city of Fargo has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project(s);

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS:

1. That the Transit Director of the city of Fargo is authorized to execute and file an application for federal assistance on behalf of the city of Fargo with the Federal Transit Administration for federal assistance authorized by 49 U.S.C. Chapter 53, title 23, United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration. The city of Fargo is the designated recipient as defined by 49 U.S.C. 5307(a)(2).
2. That the Transit Director of the city of Fargo is authorized to execute and file with its applications the annual certifications and assurances and other documents the Federal Transportation Administration requires before awarding a federal assistance grant or cooperative agreement.
3. That the Transit Director of the city of Fargo is authorized to execute grant and cooperative agreements with the Federal Transit Administration on behalf of the city of Fargo.

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

Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, City Auditor

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February 20, 2024

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

Dear Commissioners:

The Transit Department is requesting City Commission approval to increase the Connect Card Replacement Fee from \$5 to \$10 effective April 1, 2024. The MATBUS Connect system is part of the farebox system implemented May 4, 2022.

The Connect Smartcard enables fare payment by riders, who then utilize their Connect Card, Connect Mobile App and Connect Portal features to load money to their account from anywhere, pay on the bus with a smart phone and protect their funds if the card is lost or stolen. The initial Connect Card will remain free of charge, which enables riders to obtain their first card for the farebox system without incurring additional costs. The replacement of the Smartcard that is lost or stolen is currently \$5, which covers the cost of card, printing on the card and administrative costs to record replacement and discontinue the previous card. We are recommending raising the fee to \$10 for replacement cards.

The initial purchase of cards was incorporated into the procurement of the new farebox system. Unfortunately, the supply of available cards substantially decreased following COVID-19 and rider's frequent request for replacement cards. The result was the supply of existing card inventory depleting faster than budgeted and a lead time to receive new Smartcards taking a minimum 12 weeks.

Customer Care and Marketing will encourage obtaining mobile tickets purchased on smart phones where there is no fee charged.

The proposed increase for the card was approved by the Metro Area Transit Coordinating Board November 15, 2023.

Recommended Action: The requested motion is to recommend approval of the increase in the card replacement fee from \$5 to \$10 effective April 1, 2024.

Thank you.



Julie Bommelman
Transit Director
City of Fargo
701.476.6737

February 20, 2024

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City of Fargo Commissioners
225 N 4th Street
Fargo, ND 58102

Dear Commissioners:

On November 27, 2023, the City Commission approved extending the agreement between the City of Fargo and TransDev to December 31, 2024. Negotiations with TransDev are complete and the attached Amendment #2 to the original agreement has been approved by the City of Fargo Legal Department. The MAT Coordinating Board approved the terms of the agreement at their meeting of November 15, 2023.

The following strategies have been implemented to recruit and retain drivers: 1) increased starting wage to be the preferred employer; 2) added a pay differential for evening and weekend shifts; and 3) hired a full-time classroom trainer.

All the incentives or bonuses will continue to be billed to the City of Fargo and City of Moorhead as a pass-through cost based on actual payments made to employees. The new operator sign-on bonus and referral bonus are only implemented if pre-approved by both the City of Fargo and City of Moorhead based on the current need for recruitment, such as lack of qualified driver applications. Implementation of bonuses are part of the contract and the Transit Director evaluates the justification for the bonuses before remitting payment. TransDev may implement a sign-on bonus at their discretion and cost within the contract prices.

The cost to Fargo for 2024 contract changes was anticipated and is included in the CY2024 Transit budget.

RECOMMENDED MOTION: Approve the attached Amendment #2 to the Contract with TransDev to extend the contract for one year through December 31, 2024.

Sincerely,



Julie Bommelman
City of Fargo Transit Director
476-6737

/attachment

MINIMUM WAGES AND BENEFITS
Fixed Route and Paratransit Drivers

Probationary Period:

The Cities of Fargo and Moorhead require a one-year probationary period for all employees hired under this contract. Performance reviews shall be given to each employee at 90-days, at the end of the probation period and no less than annually thereafter.

Seniority:

Existing seniority will be honored in length of service and wages. The employee hire date shall be the first day the employee drives a vehicle in revenue service after completion of training. Employees will be paid, according to the step progression scale listed below, based on years of service from their original hire date.

Wages and Benefits:

Bus operators working at least 35 hours per week, per CBA, shall be guaranteed, at a minimum, the wages and benefits listed below during the term of this contract.

*In future or option years, the minimum wages for each year shall be no less than the previous year's wages plus the "Consumer Price Index (CPI) All Urban Consumers for Midwest Region Size Class B/C Services" for the percent change for the previous twelve months. If the CPI is less than zero, the minimum wages shall be the previous year's wages unless the Contractor and/or City demonstrate there are circumstances requiring a wage increase above the CPI, the Contractor or City may negotiate the rate.

MINIMUM WAGES IN CONTRACTOR'S PROPOSAL:

	1/1/2023		1/1/2024		1/1/2025
Step 1	\$21.90	↘	\$23.00	↘	\$23.25
Step 2	\$22.65	↘	\$23.80	↘	\$24.00
Step 3	\$23.50	↘	\$24.65	↘	\$24.95
Step 4	\$24.30	↘	\$25.50	↘	\$25.80
Step 5	\$25.15	↘	\$26.35	↘	\$26.70
Step 6	\$26.00	↘	\$27.25	↘	\$27.60
Step 7	\$26.75	↘	\$28.00	↘	\$28.40
Step 8	\$27.55	↘	\$28.85	↘	\$29.25
Step 9	\$28.40	↘	\$29.65	↘	\$30.15
Step 10	\$29.15	↘	\$30.45	↘	\$30.90
Step 11	\$30.00	→	\$31.35	→	\$31.85

Effective January 1, 2024, Drivers performing any weekday shift ending after 7 P.M. or performing any Saturday and Sunday shift will be paid \$2.00 per hour pay differential in addition to their base rate. Step 1 is the starting rate per hour for Drivers. Annually, thereafter, the driver's rate will increase to the next step in the compensation table. Senior Drivers at Step 11 remain on Step 11 and progress to the next year's rate.

Paid time off (PTO): (Vacation and Sick Time)

All PTO will be earned on an annual basis as described herein.

Regular PTO:

After the first complete year of employment, upon the employee completing their 90 Day probationary period, the employee shall start to accrue 7 days regular PTO or 0.58 days per month. Regular PTO will be the employee's main PTO and will be used any time the employee needs time off regardless if the time off is sick time or vacation time. All regular PTO hours must be used within 12 months of the employee's annual personal anniversary date, or the hours will be forfeited. Upon separation of employment from the contractor during the first year of employment, no payout of regular PTO will be made. Thereafter, upon separation of employment from the contractor, the employee will be paid out for the remaining regular PTO balance.

Banked PTO (Sick Leave):

Banked PTO is an additional PTO benefit an employee receives. An employee will begin accruing banked PTO at .42 days per month beginning upon the employee's personal anniversary hire date. The employee shall have access to their accrued banked PTO (accrued at .42 days per month) after the employee has completed

90 days of employment. Banked PTO can only be used once the employee has exhausted all their regular PTO hours. Banked PTO hours (up to 40 hours per year (5 days)), may be carried over from year to year up to a maximum total of 120 hours (15 days). Upon separation of employment from the contractor, the employee will **not** be paid out for any of the banked PTO hours balance.

Chart of hours and days are listed below.

Years of Service	Regular PTO (Hours)	BANKED PTO (Hours)	Regular PTO (Days)	BANKED PTO (Days)
0 – Complete 90 Day Probationary Period	0	0	0	0
Complete 90 Day Probationary Period but < 2 YRS	56	40	7	5
>2 YRS but <5 YRS	80	40	10	5
>5 YRS but < 12YRS	120	40	15	5
>12 YRS	160	40	20	5

PTO can only be taken in 4-hour (1/2 Day) or 8-hour (Full Day) increments.

Health / Welfare:

A group health-insurance plan shall be offered to employees working at least 32 hours per week. Health insurance is required to be provided to employees after completion of 90 days of employment. The contractor shall pay a minimum of 75% of a single premium under this plan or, if the employee chooses not to enroll in the health insurance plan, the company shall pay the employee a stipend to spend elsewhere valued at 30% of the single premium base plan.

Paid Holidays: Employees shall be eligible for holiday pay immediately upon employment. Paid holidays are to include: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

401(k):

The contractor is to offer a 401K retirement plan to full time employees, with a company match.

Short-term Disability Insurance:

Contractor shall pay for a short-term disability insurance policy for full time employees and shall pay 100% of the premium.

SRC Hospital Indemnity:

Contractor employees have the option to enroll in First Transit’s SRC Hospital Indemnity insurance program. This program offers single to family enrollment options in addition to the medical insurance plans. This program provides our employees’ reassurance of financial stability in the event the employee or family members are hospitalized.

Health Savings Account (HSA):

The Contractor health insurance allows for employees to contribute to an HSA account. The amount contributed to the account is determined by the employee, up to the maximum amount allowed by law, and may be used for out-of-pocket health care costs.

IRS Section 125 Plan:

During the term of this agreement the Contractor shall, if applicable and allowable by law, allow employees to participate in the IRS Section 125 plan, thus providing pre-tax cost savings to our employees.

Bereavement Leave:

Contractor employees are eligible for bereavement leave the day before, the day of, and the day after an immediate family member's funeral. Immediate family members include, spouse, mother or father, brother or sister, mother-in-law or father-in-law, grandparents of employee or spouse, children of the employees, stepfather, stepmother, stepsister, stepbrother, and stepchildren.

Safety Meetings:

Attendance at monthly safety meetings is required. Contractor employees will be paid for time at monthly safety meetings.

Dental Coverage Plans:

Full time Contractor employees may enroll in the Contractor's Dental Coverage plan during the enrollment period. The Contractor will cover 50% of the single coverage cost for each employee who chooses to enroll in dental coverage.

Life and AD&D Insurance / Voluntary Life and Voluntary AD&D Insurance:

Contractor employees receive ten thousand dollars (\$10,000) in life and AD&D insurance fully paid by the Contractor. The employee through voluntary plans may purchase additional life and accidental death and disability insurance.

Vision Insurance:

Contractor employees have the option to enroll in the Contractor's vision insurance program. This program offers single to family enrollment options to help ensure vision care is affordable to all Contractor employees.

Safety and Customer Service Incentives:

The following Contractor employee incentive programs proposed by the Contractor are targeted to increase driver retention, minimize safety infractions, minimize absenteeism, improve driver reliability, and enhance service quality.

All the incentives or bonuses outlined below and paid to employees will be billed to the City of Fargo and City of Moorhead as a pass-through cost based on actual payments made and included on each City's regular monthly invoices.

The new operator sign-on bonus and referral bonus will only be implemented if pre-approved by both the City of Fargo and City of Moorhead based on the current need for recruitment, such as lack of qualified driver applications.

New Operator Sign-On Bonus:

The minimum bonus of \$500 can be increased up to \$2,500 based on the demands of the recruitment needs.

- Bonus payout will be split into 3 periods:
- Entering into Revenue Service
- At 60 Days
- At 180 Days

Employee Referral Bonus:

The bonus is paid to the current employee and their referrals at:

- 60 days = \$500
- 180 days = \$500

Safety Bonus:

An employee who performs their job exhibiting superior safety habits and behaviors will be rewarded! The monthly payment for each employee who achieves safety goal is \$50.00 for full time employees and \$25.00 for part time employees. Employees who receive this bonus for the entire quarter (3 months) will be given an additional bonus of \$100.00 for full time employees and \$50.00 for part time employees. Part-Time employees must work at least 40 hours per month in order to receive this bonus.

Eligibility requirements:

- The employee must complete a pre/post trip inspection each day they work
- The employee must have no preventable collisions or passenger injuries
- The employee has no preventable safety incidents resulting in any personal/passenger injury, damage, or other safety related issues
- The employee must have no traffic violations in company or personal vehicles
- Attend Monthly Safety Meeting
- Fewer than three (3) coachable DriveCam clips monthly

Incentive Bonus:

The Incentive Bonus program will reward employees that provide excellent customer service, have perfect attendance, and exhibit superior performance and behavior when performing all job functions. Contractor employees have the opportunity to earn an additional \$1,000.00 per year. This bonus will be paid out at \$50.00 per month for full time employees who achieve the requirements listed below. Any full-time employee who has achieved this bonus for the entire quarter (3 months) will be given an additional \$100.00 at the end of the quarter. Part-time employees are not eligible for this bonus.

Eligibility requirements:

- No substantiated passenger complaints or incidents
- Monthly Average OTP above 90% for fixed drivers and 95% for para drivers, unless there is a reasonable explanation, such as weather events, traffic delays, and construction detours, passenger related delays, event traffic, dispatch issues, routing issues or other circumstances outside of the Bus Operator's control.
- Have a perfect attendance record
 - Zero attendance points for current month (Late, absent, etc.)

- Be in a full and clean uniform at all times (shirt, trousers, tie, and plain black shoes)
- Completing and turning in all paperwork with no missing information; including: Manifests, DVIR for Pre and Post trip inspections, Payroll exception forms
- No ADA Violations (i.e. P.A. Announcements, lowering ramp/kneeler)
- Attended the monthly safety meetings
- Having no other discipline incidents / actions

Quarterly payouts will be paid on the following scale.

Quarter	Start Month		End Month	Payout Month
1	January	-	March	April
2	April	-	June	July
3	July	-	September	October
4	October	-	December	January

DEBARMENT AND SUSPENSION CERTIFICATION

The proposer certifies to the best of its knowledge and belief, and that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not, within a three-year period preceding this proposal/contract, been convicted or had a civil judgment awarded against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public bribery, falsification or destruction of records, making false statement, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification;
4. Have not, within a three-year period preceding this application/proposal/contract, had one or more public transactions (Federal, State, Local) terminated for cause or default.

THE PARTICIPANT, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ ARE APPLICABLE THERETO.

NAME

DATE

**CERTIFICATION
OF
RESTRICTIONS ON LOBBYING**

I, _____, hereby certify on behalf of _____ that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If 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, and officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grant, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____.

By: _____

ATTACHMENT A

SECTION 1. LEFT INTENTIONALLY BLANK

SECTION 2. PROJECT DESCRIPTION

The Cities of Fargo and Moorhead have selected one, qualified vendor to provide all public mass transportation services for the F-M MATBUS system. Services to be provided include driver and dispatch operations and record keeping functions required by the Cities of Fargo and Moorhead, States of North Dakota and Minnesota, and the Federal Transit Administrations.

The Cities of Fargo and Moorhead provide vehicles, including maintenance, storage and fuel for transit services.

Contractor will provide service for the full system, but each City will execute a separate contract. The resulting contracts will require all drivers be cross trained and utilized in both Cities.

The Cities of Fargo and Moorhead currently supply 58 transit buses for this service: 32 Fargo Fixed Route, 11 Moorhead Fixed Route, 12 Fargo Paratransit and 4 Moorhead Paratransit. Ridership annually is approximately 1.7 Million passengers on the Fargo fixed route system and 482,000 passengers on the Moorhead fixed route system; and 54,000 on Paratransit (combined between Fargo, West Fargo, Moorhead and Dilworth).

The City of Fargo owns and operates a transfer terminal entitled the Ground Transportation Center (GTC), located at 502 NP Avenue, Fargo, North Dakota, which has furnished office space for the fixed route dispatchers, one (1) office and up to two (2) cubicles for the Contractor's supervisory staff, and one (1) conference room that can be used for meetings and training. The GTC serves as layover point for many of the fixed routes. The City of Moorhead shares in the operating costs of the Ground Transportation Center.

The Cities of Fargo and Moorhead share a combined storage and maintenance facility located at 650 23rd St N, Fargo, North Dakota, which has up to three (3) furnished office spaces for the Contractor. This facility houses the fleet of vehicles, the administrative staff, driver's break and locker rooms and maintenance staff.

SECTION 3. CONTRACTOR RESPONSIBILITIES - OPERATING REQUIREMENTS

Section 3 - Scope of Work and Work Areas

It shall be the responsibility of the Contractor to thoroughly investigate and understand the Fargo/Moorhead MATBUS fixed route transit system and organizational structure.

1. Fixed Route

a. Service Hours

- i. Monday – Friday 6:15am to 11:15pm
- ii. Saturday - 7:15am to 11:15pm

b. Fargo Fixed Route Hours – Appendix 13

c. Moorhead Fixed Route Hours – Appendix 13

d. Holiday Service Hours

- i. There is no service on the following holidays: New Year's Day, Memorial Day (observed), Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Easter Sunday (Paratransit). In addition, bus service on Christmas Eve ends at 5:15pm.

e. Fares

- i. Passengers are required to pay fares in one of the following manners:

1. Cash

- a. Current Fares, \$1.50 Adult / \$0.75 Discount
- b. Current Fare Media
- c. U-Pass College ID
- d. Other as directed by Client

- ii. Transfers between routes within the Fargo and Moorhead transit systems are free and accepted at any location along the route and at major transfer hubs. Transfers between Fargo and Moorhead transit systems are also free and accepted at the Ground Transportation Center. The driver issues a transfer ticket to a passenger upon request at time of boarding.

- iii. Contractor and its employees are prohibited from soliciting or accepting any tips or gifts of any kind.

f. Auto Vehicle Location (AVL) and Auto Voice Announcement (AVA) System

- i. The Contractor will be required to utilize the Cities' AVL/AVA system provided for daily operations for both fixed route and Paratransit operations. The Contractor will be required to work with the Cities in all aspects of programming, operating, training and troubleshooting of our AVA/AVL system. In the event the Cities elect to implement further technologies on-board its vehicles, the Contractor will be expected to support and utilize such innovations.

2. MAT Paratransit

a. Overview

- i. MAT Paratransit service is demand-response door through first door service for persons with disabilities who are ADA Paratransit eligible. Service is

provided within the city limits of Fargo and West Fargo, North Dakota, and Moorhead and Dilworth, Minnesota, utilizing vehicles provided by the Cities of Fargo and Moorhead. The estimated number of revenue hours to meet demand is provided in Appendix 13.

- ii. Each paratransit vehicle is equipped with a tablet, which interfaces directly with our software. Tablets will be utilized in the daily operation of Paratransit. The City of Fargo provides staff to create driver manifests. The contractor is required to follow, and ensure bus operators adhere to, the schedule produced. The contractor is to schedule bus operators to each run daily.

b. Service Hours

- i. Monday – Friday 6:15am to 11:15pm
- ii. Saturday - 7:15am to 11:15pm
- iii. Sunday – 7:00am to 5:00pm

c. Holiday Service Hours

- i. There is no service on the following holidays: New Year's Day, Memorial Day (observed), Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Easter Sunday (Paratransit).
- ii. Christmas Eve service ends at 5:15pm.

3. Ground Transportation Center (GTC)

a. Overview

- i. The City of Fargo owns and operates the Ground Transportation Center (GTC) transfer terminal located at 502 NP Avenue, Fargo, North Dakota. GTC Procedures and Policies have been developed by the Cities.
- ii. Smoking is not allowed inside or outside the GTC facility, all GTC grounds are smoke free.
 - 1. This policy is strictly enforced.
- iii. The City of Fargo supplies the Contractor with 1 office space and up to 2 cubicles for their staff. Office computers and equipment will be provided by the Cities for access to the MATBUS network and applicable software, including email access to our matbus.com domain..
- iv. The Cities contract with a security firm to provide patrols at the GTC, in addition, security personnel exchange large bills and transport deposits. The Fargo Police Department has assigned personnel to downtown Fargo available for supplementary security purposes.

4. Metro Transit Garage (MTG)

a. Overview

- i. The Cities of Fargo and Moorhead jointly own a combined storage and maintenance facility called the Metro Transit Garage (MTG) located at 650 23rd St N, Fargo, North Dakota. This facility houses the fleet of vehicles, the administrative staff, driver break and locker rooms, furnished offices for the Contractor, and City staff.

- ii. The MTG facility has both a break and locker room shared with City staff. Smoking is not allowed inside or outside the MTG building.
- iii. The Contractor's management/supervisory personnel shall be located at the MTG and/or GTC. The Cities supply up to three (3) furnished offices for the Contractor at the MTG, including office computer equipment, phones, software, and email access to our matbus.com domain. The Contractor must supply any other furniture or equipment necessary for the management/supervisory use. Contractor's management/supervisory staff is required to have access to a cellular phone with texting capabilities and email for communication with the Cities.

5. Increase or Reduction in Service Hours

- a. The Cities of Fargo and Moorhead may, for any reason, request an increase or reduction in route hours to be provided by the Contractor for fixed route, MAT Paratransit, or other required service hours. Said increases or decreases shall not result in renegotiation of the cost per revenue hour for driver services.
- b. Management fees will be a separate line item in this proposal and the resulting contract. With the exception of a change in the number of Contractor's management staff as pre-approved by the Cities, there will not be renegotiation of the management fees in the increase or reduction of service hours.
- c. When there is a change of more than $\pm 15\%$ of revenue hours annually, there will be redistribution between the Cities of Fargo and Moorhead of the set management fee and bonuses based upon percentage of total revenue hours.

6. Contract Hours

- a. Projected annual revenue hours for each year of the two-year contract period are shown in Appendix 13.

7. Fare/Revenue Collection

- a. The Cities shall collect and retain all revenues generated by the fixed route, deviated fixed route, and paratransit transit systems. Bus operators will properly operate the existing, and any subsequent, fareboxes and ensure that the fare policies are followed. All fares collected for the system are to be retained by the Cities.

Section 4 - Personnel

1. Overview

- a. The Contractor shall be solely responsible for the provision of and satisfactory work performance of all employees as described by this Request for Proposal or any reasonable performance standard established by the Cities of Fargo and Moorhead, and shall be solely responsible for payment of all employees' wages and benefits. Without any additional expense to the Cities of Fargo and Moorhead, the Contractor shall comply with the requirements of employee liability, worker's compensation, employment insurance and social security. The Cities of Fargo and Moorhead shall have the right to demand removal of any personnel from the Contractor's local team for just cause (as determined by the Cities). The Contractor

shall not, absent prior written notice of 60 days to, and consent by the Cities, remove or re-assign any key management personnel identified in its proposal (e.g. Project Manager) at any time prior to or after execution of the contract.

- b. The City requires the current Contractor to provide the following positions:
 - i. 1-Project/General Manager
 - ii. 1- Operations Manager
 - iii. 1- Safety Manager
 - iv. 1 - Classroom Trainer
 - v. 1- Office Clerk
 - vi. 3 - Road Supervisors
- c. Sufficient bus operators for fixed route, deviated fixed route, and Paratransit services.
- d. For purposes of this contract, full-time work for managers/supervisors equates to a minimum of forty (40) hours per week.

2. Organizational Structure

- a. Contractor must demonstrate the organizational structure of the company and personnel resources that are available to accommodate employee turnover, vacations and other absences without disrupting MATBUS operations, as well as demonstrate that a sufficient number of qualified personnel will be dedicated to properly operate and maintain the transit system.
- b. Company personnel are subject to any and all rules and regulations, including the most current Drug & Alcohol regulations that are placed on the Cities of Fargo/Moorhead as a condition of receiving necessary local, state or federal funding.

3. Project/General Manager

- a. The Contractor shall designate a Project/General Manager who shall oversee successful operation of the services.
- b. At a minimum, the Project/General Manager must have three (3) or more years' experience managing all aspects of a municipal mass transit and complimentary paratransit operations, or a combination of higher education and transportation experience in a management/supervisory position totaling five or more years.
- c. The Project/General Manager must be computer-proficient and have a working knowledge of the Microsoft Office Suite. The Cities operate in a Windows-based operating system environment. The Project/General Manager will be required to become proficient with software programs required by the Cities (ex. AVL/AVA System, Farebox System, Video Software, Sharepoint, and etc.).
- d. The Project/General Manager must be able to perform his or her tasks within the working environments of an office, transit facility, maintenance facility, transit vehicles and bus stops.
- e. The following is not intended to be an all-inclusive list of the essential functions of the Project/General Manager position, but rather a general description of some of the requirements necessary to carry out the duties and responsibilities of this position.

- f. Communicate clearly and effectively, both orally and in writing, using the English language.
 - g. Meet with the Cities, vendors or others on a regular basis.
 - h. Work extended hours, including weekends, when necessary.
 - i. Demonstrate regular and consistent attendance and punctuality.
 - j. Assimilate information quickly and accurately in order to make effective day-to-day operational decisions. Additionally, provide operational reports as requested by the Cities in the timeframe denoted and to provide recommendations to improve service delivery.
 - k. Prioritize tasks and manage time effectively.
 - l. Ensure contract compliance.
 - m. Supervisory experience with hourly employees and knowledge of Human Resources regulations is required.
 - n. Create a positive work environment by providing all employees with fair and equitable supervision and encouraging professional and personal growth.
 - o. Recruit, screen, and hire quality employees to ensure full effective staffing of the operation.
 - p. Document employee performance, provide necessary training, and apply appropriate discipline.
 - q. Ensure the safety of the operations as it relates to the service delivered, the passengers utilizing the service, and the employees providing the service.
 - r. Address groups periodically to present information (City Commission/Council, civic groups, driver meetings).
 - s. This position will require an individual who can effectively interact with all levels of employees, from bus drivers to senior management, and with the general public.
 - t. Must be available to confer with the Cities' regarding weather-related cancellations or closures.
 - u. Additional duties as assigned.
4. Additional Management Team Duties
- a. The Contractor shall provide sufficient personnel to monitor drivers on the road to ensure compliance with policies and procedures. The Cities require a supervisor to be on-site during morning "roll-out" Monday through Saturday.
 - b. The following is not intended to be an all-inclusive list of the essential functions of the additional management team, but rather a general description of some of the requirements necessary to carry out the duties and responsibilities of these positions.
 - c. Monitoring of pre- and post-trip vehicle inspections.
 - d. Driver retraining after accidents, incidents, complaints, as applicable.
 - e. Video surveillance review in response to accidents, complaints, incidents or requests from the Cities, insurance companies or emergency personnel.
 - f. Training of bus operators of on-board promotions and changes in the system, or any other pertinent information the bus operators are required to know.
 - g. Regular on-site monitoring of operations at remote transfer hubs.

- h. Written evaluation of bus operators annually.
 - i. Each and every fixed route bus operator will be observed via a ride-along at least once per quarter during all hours of operation, including early mornings, evenings and weekends. Ride-along observations can include video surveillance.
 - j. Each and every Paratransit driver shall be monitored with unannounced random spot checks at least once per month.
 - k. Consultations with newly-hired drivers must be completed within 90 days of hire, in addition to the annual evaluation (including practical demonstrations and on-site visits or ride-alongs).
 - l. Coordinate compliance with Federal, State, and local laws and assist with safety inspections and periodic audits by state or federal agencies.
 - m. Maintain or coordinate complete personnel recordkeeping (including license status, arrests, citations, traffic violations). Maintain substance abuse files.
 - n. Respond to emergencies and utilize the Vehicle Collision Procedures established by the Cities. This will also include the notification of police.
 - o. Ensures all safety regulations are being observed and all training methods are adequate and effective.
 - p. Conduct safety training and meetings. Review collision reports to reduce number and severity of collisions; maintain complete safety files, e.g., collision reports, pre/post trips paperwork, worker's compensation injuries, off-job injuries and document occurrences. Investigates complaints, collisions, and incidents.
 - q. Additional duties as assigned.
5. Any bus operators proposed for Paratransit must be interviewed/screened by the City prior to being placed in service to ensure compatibility and correct fit.
6. On-Call & Organizational Structure
- a. In addition to the Project/General Manager being on-call and reachable by a fully-functional cell phone or 2-way radio during all service hours, one additional member of the Contractor's Management Team will also always be required to be on-call during all operating hours (this second on-call duty may be rotated among the various members of the Team). In the absence of the Project/General Manager, he or she may elect to designate a member of the Management Team to function as the first point of contact for the Cities. To summarize, a total of two members of the Management Team are always expected to be on-call during operating hours.
7. Drivers and Training
- a. The Contractor shall supply a sufficient number of properly qualified personnel to operate the equipment and to provide the services required. The City of Fargo/City of Moorhead reserves the right to approve all personnel positions and require the removal of any personnel from operations of the City transit system.
 - b. Training shall be the responsibility of the Contractor. All training programs must be pre-approved by the Cities and upon completion, certification maintained in the employee's qualification files. All records shall be made available to the Cities upon request. Specific hours of training and areas of coverage are outlined below. There

will be a conference room available at the MTG facility, which may be scheduled for short periods of time (maximum of one full day) in advance for training, however, most training will take place in the Classroom Trainer's office.

i. Training Hours:

1. Classroom – 40 hours
2. Behind the Wheel – 40 hours for pre-licensed operators, 80 hours for any new operators who are newly licensed.
3. Cadet (in-service with trainer) – 40 hours

- c. Meetings shall be held no less than once monthly with mandatory attendance by the Contractor's bus operators. The meeting(s) are required to be video/audio recorded and any staff member absent from the meeting must watch/listen to the recording prior to the next meeting. Staff from the Cities may request items be added to the agenda and may also attend these meetings. Pre- and post-meeting handouts shall be prepared by the Contractor and provided to the City.
- d. The driving records of bus drivers are subject to review at any time deemed necessary by the Cities or Contractor. The Cities of Fargo and Moorhead will require the Contractor to provide a current, written record on drivers from the State Motor Vehicles Department prior to employment and once annually thereafter. The Contractor is also responsible for obtaining and paying for criminal record checks on all drivers through the Bureau of Criminal Apprehension as a pre-employment step, and on an annual basis thereafter. The Cities reserve the right to approve all personnel positions and review any and all Contractor employee files. The Contractor shall include within the personnel file a signed check list indicating that the new employee has received proper training prior to entering revenue service.

8. Marketing / Promotions

- a. Marketing promotions are an important element for increasing patronage. Failure of Contractor to participate in marketing promotions will constitute non-performance. (Measure: Lack of cooperation or bus operators lack of involvement in or resistance to, promoting a marketing campaign.)

9. Payment of Taxi Rides

- a. The Contractor is responsible for payment of taxi rides under the "Guidelines for Taxi Ride Authorization Fargo-Moorhead MATBUS"; shown in Appendix 14.

10. Policies / Procedures

- a. The Contractor will accept and incorporate all local system policies and procedures for their bus operators and staff. All MATBUS policies and procedures will be provided to the Contractor by the Cities at the start of the contract. Policies and procedures may be amended from time to time by the Cities' transit administration. The Contractor shall have up to 30 days to implement any new or amended policies or procedures provided, including training and must demonstrate that policies were disseminated and understood by Contractor's bus operators and staff.
- b. The Contractor shall adhere to and participate in our local safety plan. The Contractor's Safety Plan is included in Appendix 19 and shall be followed in coordination with our local safety plan. Both plans may be amended from time to

time administratively during this Contract period and any changes shall be documented.

Section 5 - Equipment

1. Vehicles

- a. Transit vehicles to be used for this contract are 35-foot and 40-foot motor buses, 25-foot cut-away buses and Ford Transit vehicle(s), and include the fareboxes, radios, security cameras, Auto Voice Announcement, and Auto Vehicle Location, etc. The City of Fargo provides all vehicle maintenance and facilities necessary to the performance of the project, including all parts, mechanic labor, equipment, service and cleaning, labor, maintenance supplies and supervision. The Cities will supply all consumables necessary to the performance of the project, including diesel fuel, gasoline, motor oil and other lubricants, anti-freeze, solvents, and cleaning. The buses are housed inside a climate-controlled area.

2. Radios

- a. All City-owned vehicles are equipped with two-way radios. Any air-time charges for the two-way radios will be paid by the applicable city. Handheld two-way radios may also be provided for the Contractor's use as needed.

3. Security Cameras

- a. Cameras are provided by the Cities in transit vehicles. The Cities also provide software for the Contractor's management team to view digital video recordings (DVR's). DVR's may be requested by the Contractor for use in monitoring/reviewing operator performance or investigating complaints, incidents and accidents.
- b. All vehicles contain a wireless download system, and Contractor's management staff can, through software, request the download of video for monitoring/reviewing operator performance or investigating complaints, incidents and accidents.

Section 6 - Record Keeping & Reporting

1. Overview

- a. The City of Fargo, City of Moorhead, North Dakota and Minnesota Departments of Transportation, and Federal Transit Administration or their designee(s) may perform audits at any time of the books, records and accounts of the Contractor. Contractor agrees to preserve, and to cause any subcontractor to preserve and make available for a period of six years after the completion of a contract, any and all financial, operations, and administrative records pertaining to this contract.
- b. The Contractor shall provide any and all reports required by the Cities.

2. Accounting / Record Keeping

- a. Accounting procedures utilized by the Contractor relative to said transit system shall be consistent with FTA National Transit Database requirements and regulations of the States of North Dakota and Minnesota Departments of Transportation.

3. Reports / National Transit Database (NTD) Sampling

- a. The Contractor shall submit required reports for all services, routes or special arrangements in a manner approved by and on forms supplied by the City.
- b. The Contractor will ensure bus operators are using the fareboxes properly to record accurate ridership data, which is used by the City.
- c. The Contractor will ensure bus operators or Contractor staff complete required forms during an NTD sampling year.
- d. The Contractor will provide any additional reports the City requires.

4. Vehicle Collision Reports

- a. The Contractor shall notify the Cities **immediately** of any vehicle collision involving a Fargo or Moorhead MATBUS vehicle or any incident which may potentially result in injury to a passenger, driver or others. The Contractor will provide further clarification or details to the Cities in writing within twenty-four (24) hours of the specifics of all vehicle collision using the forms provided by the Cities.

5. Feedback

- a. Upon receipt of any complaints, incidents, or compliments from passengers, citizens, or transit personnel, the Contractor or City staff shall enter the complaint into the Feedback system within one business day. The Feedback system will email specified staff a copy of the complaint, incident, or compliment, notifying staff to request the video download, if required, and also emails out the final complaint resolution to staff upon completion.
- b. The Contractor shall investigate, and respond in writing through Feedback, all complaints, incidents, or compliments involving bus operators. Investigation shall include meeting with any employee included in the feedback report, and watching relevant video. The final resolution to the complaint must be given to the Cities within ten business days of the complaint. Contractor Project Manager and/or Operations Manager will be required to answer to citizens or passengers regarding complaints.
- c. In the event of a discrimination complaint, the complaint must be marked as a discrimination complaint, the City provided discrimination complaint form completed and forwarded to the Mobility Manager for review and investigation.
 - i. Discrimination complaints include ADA or Title VI.

6. Meetings

- a. The Cities hold staff meetings weekly, either in person or virtually, for purposes of discussing problems and solutions and maintaining open and frequent communications with the Contractor. Occasionally additional meetings may be required, especially at the beginning of the contract. Unless otherwise notified, Contractor's Project/General Manager or other employee with decision making authority will be required to attend all meetings.

Section 7 – Penalties for Non-compliance

Service requirements outlined in this section will be closely monitored and enforced by the Cities. All penalties will be assessed in writing to the Contractor within fifteen (15) working days of awareness of the violation, with the exception of collisions as noted below. The

written notice will include recommendations and specific time constraints for the Contractor to remedy the situation.

1. Qualified Bus Operators / Sufficient Personnel

- a. The Cities will not pay for any hours of service provided by personnel who do not meet the minimum qualifications for bus operators
- b. The Cities will not pay for Contractor staff hours while the position is not filled or being provided.
 - i. Example 1: If the Operations Manager leaves employment and no one has filled the vacancy, the City will have their management fees reduced by the employee's hourly/salary wage for all hours not worked. The Operations Manager position can be temporarily filled by a designated person. If a vacant position is not filled or a qualified substitute person is not identified within 4 weeks of the vacancy, the management fee will be reduced by the value of that vacant position until filled. The intent is that Contractor ensures the timely replacement for any position is a priority.
 - ii. Example 2: If a Manager or Supervisor is scheduled in advance to drive a route, the City will have their management fees reduced by the employees hourly/salary wage for all hours not worked. There will be no penalty if Manager / Supervisor overtakes a route in an immediate need to ensure the continuity of service, with the understanding that the non-operator will be removed as soon as an operator is available.
- c. The Contractor is required to provide sufficient personnel to meet the required service hours.

2. On-Time Performance

The goal of MATBUS is to achieve 90% OTP for individual fixed routes and 95% OTP for paratransit runs. In order to ensure the reliability and continuous improvement of the MATBUS System, both parties will meet regularly to discuss specific routes and issues of timepoint and route structure which continually hinder the on-time performance of each route. Additionally, a revision of these time points will be considered prior to assessment of penalties to the contractor. The parties agree to develop an action plan to continuously improve the performance of the fixed routes and partner to improve system reliability.

a. Fixed Route

- i. The Contractor is required to maintain a monthly system-wide 90% on-time performance measure. In the event the Contractor does not meet system on-time performance measure of the 90% for the month, the City will deduct \$250.00.
- ii. A route is defined by all trips for a specific route on that day.
- iii. In the case a route fails to meet the OTP standard based on the willful

delay of an operator outside of the scope of scheduling or dispatch impact, a \$250.00 penalty will be assessed.

- iv. In the event the monthly OTP is affected by repetitive and consequential operator error, the city will notify the contractor and the contractor will address the issue immediately or as soon as the operator next scheduled shift. The Contractor will have 30 days to improve the performance of an identified Operator. If the Operators performance does not improve after 30 days, the City will deduct \$250 penalty.
- v. If the Contractor can provide a reasonable explanation such as due to unavoidable circumstances including, without limitation, weather events, traffic delays, and detours traffic, construction, passenger related delays, event traffic, dispatch issues, routing issues or other circumstances outside of the contractor's control, the City will not hold the Contractor liable.

b. Paratransit

The Contractor is required to maintain a monthly system-wide 95% on-time performance measure. In the event the Contractor does not meet system on-time performance measure of the 95% for the month, the City will deduct \$250.00.

- i. A run is defined by all trips within a bus operator's daily schedule
- ii. In the case a run fails to meet the OTP standard based on the willful delay of an operator outside of the scope of scheduling or dispatch impact, a \$250.00 penalty will be assessed.
- iii. In the event the monthly OTP is affected by repetitive and consequential operator error, the city will notify the contractor and the contractor will address the issue immediately or as soon as the operator next scheduled shift. The Contractor will have 30 days to improve the performance of an identified Operator. If the Operators performance does not improve after 30 days, the City will deduct \$250 penalty.
- iv. If the Contractor can provide a reasonable explanation such as due to unavoidable circumstances including, without limitation, weather events, traffic delays, and detours traffic, construction, passenger related delays, event traffic, dispatch issues, routing issues or other circumstances outside of the contractor's control, the City will not hold the Contractor liable.
- v. An early pickup prior to the window does count against on-time performance with some exceptions. There are three acceptable ways a passenger may be picked up early. (before their window opens) These would NOT count against on-time performance, because dispatch will update the pickup window to show the driver arrived on-time and within the window.

- 1) The passenger is waiting outside and indicates to the driver they are ready early. The driver is expected to notify dispatch if a passenger is ready before their pick-up window opens, so the pick-up window can be updated on the driver manifest to show the driver arrived on time and within the window.
- 2) The passenger calls the reservationists to say they are ready early. The reservationist will mark the passenger as 'ready early' and notify the driver. If the driver is able to accommodate an earlier pick-up for the passenger, the passenger window will be updated on the driver manifest to show the driver arrived on time and within the window.
- 3) If dispatch is not available, for example on Sunday, the driver may indicate on their driver log any passengers that were ready early that day. Dispatch will make any necessary updates during verification the next day.

3. Missed Trips

- a. A missed trip is defined as "a trip missed due to bus operator's error or deliberate delay by a bus operator". Missed trips are documented in our software. For every scheduled trip of a bus route that is a "missed trip", the Cities will deduct \$250 per trip from the payment to the Contractor for that month.
- b. Exceptions to a "missed trip" are: delays due to mechanical problems, inclement weather, construction, trains, loading persons with mobility devices, incidents, or accidents. If the Contractor can provide a reasonable explanation such as due to unavoidable circumstances including, without limitation, weather events, traffic delays, and detours traffic, construction, passenger related delays, event traffic, dispatch issues, routing issues or other circumstances outside of the contractor's control, the City will not hold the Contractor liable.
- c. The Cities will not pay for service which has been cancelled due to inclement weather - this includes driver's wages.

4. Traffic Violations

- a. Bus operators who ignore safety and choose to violate traffic rules (speed, run a red light, pass in a no-passing zone, etc.) will not be tolerated. A fine of \$500.00 will be assessed to the Contractor for each citation or infraction a bus operator receives while driving a City vehicle. Bus operators are financially liable for each citation or infraction they receive.

5. Vehicle Collisions / Passengers/Others Injuries

- a. In the event of a transit vehicle collision, the Contractor's representative shall immediately contact the Cities' representative. The mechanic on duty will

- determine if a replacement vehicle will be needed.
- b. In the event of a vehicle collision that will interrupt service for more than one run, the Contractor is required to immediately put a replacement bus operator on the affected route, dependent on vehicle availability.
 - c. In the event of a vehicle collision where a bus operator is involved in a chargeable/preventable collision or an incident with injuries or potential injuries that were caused by the actions of the bus operator, a Collision/Injury Review Committee consisting of City representatives (Fargo Transit Director, Fargo Fleet Services Manager and Moorhead Transit Manager or their designees), the Contractor's Project/General Manager, and one other Contractor Management Team Member, will determine if said vehicle collision or incident is deemed chargeable/preventable.
 - d. A chargeable/preventable collision is defined as: "A motor vehicle collision in which a bus operator fails to do everything reasonably possible to prevent the collision from occurring." Factors taken into consideration when determining preventability are: (1) the type of collision, (2) the degree of injury and/or how many injuries, (3) the degree of damages, (4) the pre-collision actions of the parties involved, and (5) incidents reviewed on video cameras. The contractor will adhere to the decisions(s) determined by the committee.
 - e. The penalty fee for all (including the first collision or incident by a bus operator) chargeable/preventable collision and/or incidents ranges from a minimum of \$500 to a maximum of \$5000. Penalties imposed will be based on the severity of the collision and will be determined by the Collision Review Committee. The fee is to be credited on the respective City's invoice based on the service (Paratransit or Fixed Route).
 - f. In the event the Collision Review Committee determines that the occurrence is a second, third or greater chargeable/preventable collision, caused by the action(s) of the same bus operator, that has occurred during the term of the contract or during the prior three (3) year period, whichever period is shorter, then the committee may determine that the Contractor should pay a higher penalty for the occurrence. The committee, in its sole discretion, shall determine the penalty payable for such occurrence, provided, however, that the penalty shall be a minimum of \$500 and a maximum of \$5,000 as indicated in section v. The committee, in establishing the penalty payable for such occurrence, may consider the extent of damage occurring, the extent to which the occurrence could have readily been prevented, the exposure to the City of liability caused by such occurrence, the harm to the reputation of the City and its transit system.

6. Collision/Injury Review Committee

- a. The Vehicle Collision/Injury Review Committee will meet monthly.
- b. The Vehicle Collision/Injury Review Committee will by majority vote agree on whether the collision is insignificant, preventable or unpreventable.

- c. Insignificant collisions will be determined by the committee. However, the following guidelines apply:
 - i. Damage is limited to a scratch or scuff to wheel flares
 - ii. Damage is limited to a scratch or scuff to tires
 - iii. Damage limited to a scratch or scuff to bumper
 - iv. Damage is limited to a tap, scratch or scuff to the mirror, including the mirror folding in, with no damage to the mirror
 - v. Damage is limited to yellow paint transfer from rubbing against a stanchion or bollard at the GTC or MTG.
 - vi. There was no damage to other property,
- d. The Collision/Injury Review Committee can table the review on a specific collision to the next scheduled monthly meeting if sufficient information is not yet available, such as a repair estimate or police report.
- e. The 15-day notification period for assessing a penalty will not apply to this section. Rather, the collision/injury will be reviewed at the monthly Vehicle Collision/Injury Review Committee meeting when all information needed to make a decision is available. Following the review and decision by the committee, the Project/General Manager will provide the Cities a credit on their monthly billing for any penalties imposed by the Committee.
- f. All preventable collisions/injury will be charged a penalty minimum of \$500 and maximum of \$5,000. The majority decision of the Committee will be used to determine approval of the penalty. The contractor will adhere to the decisions(s) determined by the committee. There will be no fine assessed for a collision determined by the Committee to be insignificant.
- g. A form shall be completed for each collision/injury outlining the review meeting and results for each collision/injury.
- h. Regarding charging of fines, if more than one fine is applicable to the accident, such as a missed trip, a citation and a preventable accident, only the accident fine will be assessed
- i. At the beginning of the calendar year and quarterly thereafter, each bus will be reviewed for damage, and a diagram completed to show existing damage. Said diagram will be laminated and maintained in the specific vehicle. If damage has been repaired, a new sheet will be created. Drivers only need to mark new damage on the DVIR, and can ignore the existing damage marked on the laminated diagram when completing their pre-trip and post-trip inspections and paperwork.

7. Uniforms

- a. In the event a Contractor employee is in non-compliance with set uniform dress code, a penalty of one hundred (\$100) will be assessed per infraction.
- b. The City will provide uniforms for all bus operators and road supervisors.
 - i. Refer to written uniform policy

8. Documentation

- a. In the event the Contractor fails to provide the Cities with documentation as

per contract, this will constitute non-performance and there will be a penalty of one hundred dollars (\$100) per infraction. This includes all documentation outlined within this agreement, including but not limited to road supervision and spot checks to monitor bus operator performance – detailed documentation must be maintained and submitted to the Cities as requested within 10 business days of request.

- b. Contractor will maintain a master file with all bus operator memos and safety meeting content.

9. Use of City Owned Equipment/Vehicles

- a. City owned equipment, including vehicles, is strictly for City business. In the event a Contractors' employee uses a City owned vehicle for any personal use, including taking the vehicle to their personal residence, there is a penalty of five hundred dollars (\$500) per infraction.

10. Public Address System

- a. Use of the Public Address System along fixed routes is required under federal law, specifically The Americans with Disabilities Act (ADA). If the Auto Voice Announcement system is not operating, the bus operator must make manual announcements for compliance with the ADA. For every infraction by a bus operator per route, where the Public Address System is not being utilized for major point announcements, there is a penalty of five hundred dollars (\$500).

Section 8 - Insurance

1. The City shall provide casualty insurance on the buses and equipment it deems necessary and Contractor shall have no responsibility to provide such coverage. City shall provide self-insurance or otherwise, liability insurance coverage, limited, however, to the minimum amount of \$2 Million per claim or the statutory amount or amounts established by the State of North Dakota/State of Minnesota laws governing municipal liability, whichever is greater. Any applicable insurance deductibles for City-provided insurance shall also be paid by the respective city. The City insurance shall be primary. The Contractor shall be listed as an insured on the City's casualty insurance for the buses and equipment. Coverage by the North Dakota Insurance Reserve Fund or Minnesota League of Cities Insurance Trust is deemed to satisfy this provision.
2. The Contractor shall be required to obtain and keep in force during the terms of operation covered by this proposal Employment Practices Liability Insurance, North Dakota and/or Minnesota Worker's Compensation and Employer Liability Insurance, applicable Unemployment Insurance, and the Performance Bond, all as provided more fully below. Certificates evidencing the required insurance will be furnished to the Cities prior to commencing any work under this contract. If the Contractor does not currently meet the requirements listed below, the Contractor shall submit a letter from a reputable insurance agent stating intent to provide insurance for the prescribed coverage.
3. The Contractor shall be required to obtain and keep in force during the terms of operation covered by this contract an Employment Practices Liability Insurance (EPLI) policy in the

minimum amount of \$2 Million per person and in the aggregate. EPLI is intended to cover liability for actions of the driver other than operating the vehicle, such as sexual harassment, discrimination, or other non-driving risks associated with employment. The Cities must be listed as additional insureds on the Contractor's EPLI policy. Contractor maintains a self-insurance program that includes coverage for such EPLI risks, which self-insurance program and the funding for such program, is hereby deemed to satisfy this coverage requirement.

4. North Dakota and/or Minnesota Worker's Compensation and Employer Liability Insurance shall be set at the limits established by the States of North Dakota and Minnesota.
5. Insurance deductibles are the responsibility of the party providing the insurance policy.
6. Each policy of insurance shall contain the following clauses: "It is agreed that these policies shall not be canceled, nor the coverage reduced until thirty (30) days after the City has received written notice of such cancellation or reduction by certified mail."
7. Contractor will provide the City documentation proving insurance coverage, in the form of a Certificate of Insurance, within 30 days of notice of contract award or 10 days before commencing transportation service, whichever occurs first.
8. Contractor shall provide a bond for 100% of the annual contract cost for the City, payable to the City. The bond will be renewed on an annual basis for the term of the contract. The cost for the bond amount will be reimbursed by the City annually upon receipt of the bond and copy of payment receipt.
9. The Cities of Fargo and Moorhead shall be named as additional insured on all liability policies of Contractor.

Section 9 - Drug and Alcohol Testing Program

1. The Contractor is responsible for compliance with all approved or pending Federal Transit Administration regulations with regard to drug and alcohol testing – 49 CFR Parts 40 and 655. The Contractor shall submit with the proposal any current drug/alcohol testing programs in place. Contractor shall also submit a list of proposed test sites, Medical Review Officer, and Substance Abuse Professionals with the proposal (refer to Appendix 1, Section 3) and annually thereafter along with the federally-required annual MIS report.

Section 10 - Contract Term

1. The term of any agreement arising from this RFP shall be for the two-year period January 1, 2021, through December 31, 2022. The base contract may be renewed for three additional one-year periods at a rate mutually agreed upon between the Cities of Fargo and Moorhead, and the Contractor. The negotiated rate for each additional extension period cannot exceed increases demonstrated by the Consumer Price Index (CPI) for All Urban Consumers for Midwest Region Size Class B/C Services for the percent change for the previous twelve months.
2. In the event the Contractor or City feels there are circumstances requiring a wage increase above the CPI, the Contractor or City may negotiate the rate.

Section 11 - Transfer / Supervisor Vehicles

1. The Cities will provide up to 7 vehicles to transport Fargo and Moorhead bus operators to their respective routes or for road supervisor duties. The vehicles are owned by Fargo and Moorhead, leased to and insured by Fargo. Any vehicle(s) necessary beyond the seven (7) provided by the Cities will be the sole responsibility of the Contractor. The transfer vehicles are not to be utilized in any other manner - i.e. personal use (see Non-Performance Penalties).

Section 12 - Compensation

1. The Cities will reimburse the Contractor for services provided under contract based upon the agreed upon hourly rate per bus revenue hour for fixed route and agreed upon rate per revenue hour for Paratransit, and a monthly fee for management. Bus revenue hours shall mean the hour's service is available to passengers as set forth in the schedules included in the Appendices. In all cases, bus revenue hours exclude the time in which the buses travel to/from the storage facility to the beginning/ending point of the fixed route service and exclude time traveled to the first pick-up and from the last drop-off for Paratransit service.
2. All payments made to the Contractor shall be made subsequent to the end of each month service is actually rendered and in accordance with Cities billing procedures. Payment in full shall be made within thirty (30) days upon submission by the Contractor to the Cities of an itemized per day accounting of revenue hours by service type for the reporting period.
3. Contractor should specify in the proposal the price per hour that is proposed for special bus arrangements requested by the Cities beyond those regularly scheduled hours of operation, including emergencies such as shuttles, floods, tornados, etc. This proposed rate will be all inclusive. The Special Rate will be all inclusive except for travel and lodging cost to bring in additional buses and personnel from other cities when necessary - such expenses would be negotiated based on event. The Special Rate specifically excludes the Project/General Manager or Management Team members driving for route timings, bus stop locations, route detour assistance, and other necessary operational functions, including promotional/marketing functions. With respect to marketing/promotional functions, Cities will pay the Special Rate, but has the exclusive right to choose whether a manager, supervisor, or driver will complete the service. Cities shall coordinate with Contractor with respect to selection of Contractor employee.
4. All billings submitted will be separated by the City of Fargo and the City of Moorhead in a prescribed format. In addition, only the City of Fargo will be billed for all Paratransit services.

Section 13 – Other Provisions in Contractor’s Proposal

1. In addition to all of the existing City of Fargo/Moorhead vehicles, the Contractor shall purchase and/or lease a new DriveCam system for all current and newly purchased vehicles throughout the life of the Agreement. At the end of this Agreement, the City of Fargo/Moorhead shall have the right to take over the existing DriveCam system lease to continue the service uninterrupted.

MINIMUM WAGES AND BENEFITS
Fixed Route and Paratransit Drivers

Probationary Period:

The Cities of Fargo and Moorhead require a one-year probationary period for all employees hired under this contract. Performance reviews shall be given to each employee at 90-days, at the end of the probation period and no less than annually thereafter.

Seniority:

Existing seniority will be honored in length of service and wages. The employee hire date shall be the first day the employee drives a vehicle in revenue service after completion of training. Employees will be paid, according to the step progression scale listed below, based on years of service from their original hire date.

Wages and Benefits:

Bus operators working at least 35 hours per week, per CBA, shall be guaranteed, **at a minimum**, the wages and benefits listed below during the term of this contract.

*In future or option years, the minimum wages for each year shall be no less than the previous year's wages plus the "Consumer Price Index (CPI) All Urban Consumers for Midwest Region Size Class B/C Services" for the percent change for the previous twelve months. If the CPI is less than zero, the minimum wages shall be the previous year's wages unless the Contractor and/or City demonstrate there are circumstances requiring a wage increase above the CPI, the Contractor or City may negotiate the rate.

MINIMUM WAGES IN CONTRACTOR’S PROPOSAL:

	1/1/2023		1/1/2024		1/1/2025
Step 1	\$21.90	↘	\$23.00	↘	\$23.25
Step 2	\$22.65	↘	\$23.80	↘	\$24.00
Step 3	\$23.50	↘	\$24.65	↘	\$24.95
Step 4	\$24.30	↘	\$25.50	↘	\$25.80
Step 5	\$25.15	↘	\$26.35	↘	\$26.70
Step 6	\$26.00	↘	\$27.25	↘	\$27.60
Step 7	\$26.75	↘	\$28.00	↘	\$28.40
Step 8	\$27.55	↘	\$28.85	↘	\$29.25
Step 9	\$28.40	↘	\$29.65	↘	\$30.15
Step 10	\$29.15	↘	\$30.45	↘	\$30.90
Step 11	\$30.00	→	\$31.35	→	\$31.85

Effective January 1, 2024, Drivers performing any weekday shift ending after 7 P.M. or performing any Saturday and Sunday shift will be paid \$2.00 per hour pay differential in addition to their base rate. Step 1 is the starting rate per hour for Drivers. Annually, thereafter, the driver’s rate will increase to the next step in the compensation table. Senior Drivers at Step 11 remain on Step 11 and progress to the next year’s rate.

Paid time off (PTO): (Vacation and Sick Time)

All PTO will be earned on an annual basis as described herein.

Regular PTO:

After the first complete year of employment, upon the employee completing their 90 Day probationary period, the employee shall start to accrue 7 days regular PTO or 0.58 days per month. Regular PTO will be the employee’s main PTO and will be used any time the employee needs time off regardless if the time off is sick time or vacation time. All regular PTO hours must be used within 12 months of the employee’s annual personal anniversary date, or the hours will be forfeited. Upon separation of employment from the contractor during the first year of employment, no payout of regular PTO will be made. Thereafter, upon separation of employment from the contractor, the employee will be paid out for the remaining regular PTO balance.

Banked PTO (Sick Leave):

Banked PTO is an additional PTO benefit an employee receives. An employee will begin accruing banked PTO at .42 days per month beginning upon the employee’s personal anniversary hire date. The employee shall have access to their accrued banked PTO (accrued at .42 days per month) after the employee has completed

90 days of employment. Banked PTO can only be used once the employee has exhausted all their regular PTO hours. Banked PTO hours (up to 40 hours per year (5 days)), may be carried over from year to year up to a maximum total of 120 hours (15 days). Upon separation of employment from the contractor, the employee will **not** be paid out for any of the banked PTO hours balance.

Chart of hours and days are listed below.

Years of Service	Regular PTO (Hours)	BANKED PTO (Hours)	Regular PTO (Days)	BANKED PTO (Days)
0 – Complete 90 Day Probationary Period	0	0	0	0
Complete 90 Day Probationary Period but < 2 YRS	56	40	7	5
>2 YRS but <5 YRS	80	40	10	5
>5 YRS but < 12YRS	120	40	15	5
>12 YRS	160	40	20	5

PTO can only be taken in 4-hour (1/2 Day) or 8-hour (Full Day) increments.

Health / Welfare:

A group health-insurance plan shall be offered to employees working at least 32 hours per week. Health insurance is required to be provided to employees after completion of 90 days of employment. The contractor shall pay a minimum of 75% of a single premium under this plan or, if the employee chooses not to enroll in the health insurance plan, the company shall pay the employee a stipend to spend elsewhere valued at 30% of the single premium base plan.

Paid Holidays: Employees shall be eligible for holiday pay immediately upon employment. Paid holidays are to include: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

401(k):

The contractor is to offer a 401K retirement plan to full time employees, with a company match.

Short-term Disability Insurance:

Contractor shall pay for a short-term disability insurance policy for full time employees and shall pay 100% of the premium.

SRC Hospital Indemnity:

Contractor employees have the option to enroll in First Transit’s SRC Hospital Indemnity insurance program. This program offers single to family enrollment options in addition to the medical insurance plans. This program provides our employees’ reassurance of financial stability in the event the employee or family members are hospitalized.

Health Savings Account (HSA):

The Contractor health insurance allows for employees to contribute to an HSA account. The amount contributed to the account is determined by the employee, up to the maximum amount allowed by law, and may be used for out-of-pocket health care costs.

IRS Section 125 Plan:

During the term of this agreement the Contractor shall, if applicable and allowable by law, allow employees to participate in the IRS Section 125 plan, thus providing pre-tax cost savings to our employees.

Bereavement Leave:

Contractor employees are eligible for bereavement leave the day before, the day of, and the day after an immediate family member's funeral. Immediate family members include, spouse, mother or father, brother or sister, mother-in-law or father-in-law, grandparents of employee or spouse, children of the employees, stepfather, stepmother, stepsister, stepbrother, and stepchildren.

Safety Meetings:

Attendance at monthly safety meetings is required. Contractor employees will be paid for time at monthly safety meetings.

Dental Coverage Plans:

Full time Contractor employees may enroll in the Contractor's Dental Coverage plan during the enrollment period. The Contractor will cover 50% of the single coverage cost for each employee who chooses to enroll in dental coverage.

Life and AD&D Insurance / Voluntary Life and Voluntary AD&D Insurance:

Contractor employees receive ten thousand dollars (\$10,000) in life and AD&D insurance fully paid by the Contractor. The employee through voluntary plans may purchase additional life and accidental death and disability insurance.

Vision Insurance:

Contractor employees have the option to enroll in the Contractor's vision insurance program. This program offers single to family enrollment options to help ensure vision care is affordable to all Contractor employees.

Safety and Customer Service Incentives:

The following Contractor employee incentive programs proposed by the Contractor are targeted to increase driver retention, minimize safety infractions, minimize absenteeism, improve driver reliability, and enhance service quality.

All the incentives or bonuses outlined below and paid to employees will be billed to the City of Fargo and City of Moorhead as a pass-through cost based on actual payments made and included on each City's regular monthly invoices.

The new operator sign-on bonus and referral bonus will only be implemented if pre-approved by both the City of Fargo and City of Moorhead based on the current need for recruitment, such as lack of qualified driver applications.

New Operator Sign-On Bonus:

The minimum bonus of \$500 can be increased up to \$2,500 based on the demands of the recruitment needs.

Bonus payout will be split into 3 periods:

Entering into Revenue Service

At 60 Days

At 180 Days

Employee Referral Bonus:

The bonus is paid to the current employee and their referrals at:

60 days = \$500

180 days = \$500

Safety Bonus:

An employee who performs their job exhibiting superior safety habits and behaviors will be rewarded! The monthly payment for each employee who achieves safety goal is \$50.00 for full time employees and \$25.00 for part time employees. Employees who receive this bonus for the entire quarter (3 months) will be given an additional bonus of \$100.00 for full time employees and \$50.00 for part time employees. Part-Time employees must work at least 40 hours per month in order to receive this bonus.

Eligibility requirements:

- The employee must complete a pre/post trip inspection each day they work
- The employee must have no preventable collisions or passenger injuries
- The employee has no preventable safety incidents resulting in any personal/passenger injury, damage, or other safety related issues
- The employee must have no traffic violations in company or personal vehicles
- Attend Monthly Safety Meeting
- Fewer than three (3) coachable DriveCam clips monthly

Incentive Bonus:

The Incentive Bonus program will reward employees that provide excellent customer service, have perfect attendance, and exhibit superior performance and behavior when performing all job functions. Contractor employees have the opportunity to earn an additional \$1,000.00 per year. This bonus will be paid out at \$50.00 per month for full time employees who achieve the requirements listed below. Any full-time employee who has achieved this bonus for the entire quarter (3 months) will be given an additional \$100.00 at the end of the quarter. Part-time employees are not eligible for this bonus.

Eligibility requirements:

- No substantiated passenger complaints or incidents
- Monthly Average OTP above 90% for fixed drivers and 95% for para drivers, unless there is a reasonable explanation, such as weather events, traffic delays, and construction detours, passenger related delays, event traffic, dispatch issues, routing issues or other circumstances outside of the Bus Operator's control.
- Have a perfect attendance record
 - Zero attendance points for current month (Late, absent, etc.)

- Be in a full and clean uniform at all times (shirt, trousers, tie, and plain black shoes)
- Completing and turning in all paperwork with no missing information; including: Manifests, DVIR for Pre and Post trip inspections, Payroll exception forms
- No ADA Violations (i.e. P.A. Announcements, lowering ramp/kneeler)
- Attended the monthly safety meetings
- Having no other discipline incidents / actions

Quarterly payouts will be paid on the following scale.

Quarter	Start Month		End Month	Payout Month
1	January	-	March	April
2	April	-	June	July
3	July	-	September	October
4	October	-	December	January

**AMENDMENT NO. 1
TO AGREEMENT BETWEEN CITY OF FARGO AND FIRST TRANSIT**

THIS AMENDMENT NO. 1, made this 11th of July, 2022, by and between the City of Fargo, hereinafter referred to as "CITY," and First Transit, hereinafter referred to as "CONTRACTOR."

WHEREAS, CITY and CONTRACTOR previously entered into an Agreement between the City of Fargo and First Transit (the "Agreement") to provide CITY with management, supervisory and operational services for its fixed route system (the Agreement is attached hereto as Exhibit A); and

WHEREAS, CITY AND CONTRACTOR agree that to recruit employees, fill vacancies, and increase retention the minimum wage scale for drivers needs to be increased; and

WHEREAS, CITY AND CONTRACTOR desire to revise Appendix 15 to the Agreement to increase the minimum wage rates effective January 24, 2022, and

WHEREAS, the Agreement provides for an option to extend the contract for three (3) one-year periods from January 1, 2023 to December 31, 2025, and

WHEREAS, CITY also desires to exercise its first one-year option with CONTRACTOR to extend the Agreement from January 1, 2023 to December 31, 2023; and make changes to the fees for Fixed Route service set out in the Agreement.

NOW, THEREFORE, the Agreement is hereby further amended as follows:

A. Pursuant to Article 11 of the Agreement, the parties hereby extend the Agreement for an additional one-year period beginning January 1, 2023, through and including December 31, 2023.

B. Paragraph 8.3.1 of the Agreement is hereby amended, effective January 24, 2022, as follows:

	Hourly Rate
January 24, 2022, through December 31, 2022:	\$ 36.81
January 1, 2023, through December 31, 2023:	\$ 38.70

C. Paragraph 8.3.2 of the Agreement is hereby amended, effective January 24, 2022, as follows:

	Hourly Rate
January 24, 2022, through December 31, 2022:	\$ 35.51
January 1, 2023, through December 31, 2023:	\$ 37.34

D. Paragraph 8.3.3 of the Agreement is hereby amended, effective as follows:

	Monthly
January 24, 2022, through December 31, 2022:	
Fixed Route	\$ 65,000.13
Paratransit	\$17,723.12

	Monthly
January 1, 2023, through December 31, 2023:	
Fixed Route	\$ 69,052.15
Paratransit	\$ 18,827.96

E. Paragraph 8.3.4 of the Agreement is hereby amended, effective January 1, 2023, as follows:

	Annual
January 1, 2023, through December 31, 2023:	\$ 37,763.23

The actual annual performance bond cost will be billed to the CITY on the January invoice of each year and include the original bond and proof of payment by CONTRACTOR.

The actual performance bond cost shall be shared between the City of Fargo and City of Moorhead based on each City's percentage of the Total Cost Summary provided by First Transit in the cost proposal spreadsheet as follows:

	<u>Year 2023</u>
Fargo Percentage	72.05%
Moorhead Percentage	<u>27.95%</u>
TOTAL	100.00%

F. Paragraph 8.3.5 of the Agreement is hereby amended, effective January 1, 2023 as outlined in Appendix 15 estimated as follows:

January 1, 2023 through December 31, 2023:	
Fixed route:	\$75,000.00

G. Paragraph 4.3 of the Agreement is hereby amended and replaced with the following language as follows:

Drivers must be paid at a minimum the wages and benefits as outlined in the revised Appendix 15, effective January 24, 2022. The employee compensation rates will not take effect until proof is provided by CONTRACTOR that the new wages are being paid to the drivers. Proof will consist of providing CITY a copy of the appropriate portion of the agreement between CONTRACTOR and the respective union.

G. Paragraph 13.9, Federal Clauses, are hereby amended as contained in Revised Attachment B.

H. Paragraph 13.10 is hereby added to the Agreement as follows:

The CONTRACTOR will provide access to CITY to technology or surveillance equipment provided by the Contractor and installed on a City-owned asset, e.g. DriveCam video used for driver safety training and GeoTab for vehicle performance data.

I. Appendix 3 and Appendix 4 are hereby signed and recertified by CONTRACTOR for the period January 1, 2023, through December 31, 2023.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to Agreement to be executed effective the day and year first above written.


CITY OF FARGO

FIRST TRANSIT


BY:


Dr. Timothy J. Mahoney, Mayor

BY:


Its: Brad Thomas, President, CEO

BY:


Steve Sprague, City Auditor

BY:

Its:

MINIMUM WAGES AND BENEFITS

Fixed Route and Paratransit Drivers

Probationary Period:

The Cities of Fargo and Moorhead require a one-year probationary period for all employees hired under this contract. Performance reviews shall be given to each employee at 90-days, at the end of the probation period and no less than annually thereafter. Performance reviews shall be given to each employee after initial hire within 90-days and annually thereafter.

Seniority:

Existing seniority will be honored in length of service and wages the employee hire date shall be the first day the employee drives a vehicle in revenue service after completion of training. Employees will be paid, according to the step progression scale listed below, based on years of service from their original hire date.

Change of employment status is anytime the employee switches from full-time to part-time or part-time to full-time, or anytime an employee changes from one department to another (i.e. Bus Operator to Dispatcher).

Wages and Benefits:

Bus operators working at least 35 hours per week, per CBA, shall be guaranteed, at a minimum, the wages and benefits listed below during the term of this contract.

*In future or option years, the minimum wages for each year shall be no less than the previous year's wages plus the "Consumer Price Index (CPI) All Urban Consumers for Midwest Region Size Class B/C Services" for the percent change for the previous twelve months. If the CPI is less than zero, the minimum wages shall be the previous year's wages unless the Contractor and/or City demonstrate there are circumstances requiring a wage increase above the CPI, the Contractor or City may negotiate the rate.

MINIMUM WAGES IN CONTRACTOR'S PROPOSAL:

	Jan 1, 2022		Jan 24, 2022		1/1/23		1/1/24		1/1/25
Step 1	\$19.30	→	\$21.25	↘	\$21.90	↘	\$22.55	↘	\$23.25
Step 2	\$19.66	→	\$22.00	↘	\$22.65	↘	\$23.35	↘	\$24.00
Step 3	\$20.03	→	\$22.80	↘	\$23.50	↘	\$24.20	↘	\$24.95
	\$20.40								
Step 4	\$20.91	→	\$23.60	↘	\$24.30	↘	\$25.05	↘	\$25.80
Step 5	\$21.50	→	\$24.40	↘	\$25.15	↘	\$25.90	↘	\$26.70
	\$21.57								
	\$22.02								
Step 6	\$22.31	→	\$25.20	↘	\$26.00	↘	\$26.80	↘	\$27.60
	\$22.48								
Step 7	\$23.07	→	\$25.95	↘	\$26.75	↘	\$27.55	↘	\$28.40
	\$23.39								
Step 8	\$23.66	→	\$26.75	↘	\$27.55	↘	\$28.40	↘	\$29.25
Step 9			\$27.55	↘	\$28.40	↘	\$29.20	↘	\$30.15
Step 10			\$28.30	↘	\$29.15	↘	\$30.00	↘	\$30.90
Step 11			\$29.10	→	\$30.00	→	\$30.90	→	\$31.85

Paid time off (PTO): (Vacation and Sick Time)

All PTO will be earned on an annual basis as described herein.

Regular PTO:

After the first complete year of employment, upon the employee completing their 90 Day probationary period, the employee shall start to accrue 7 days regular PTO or 0.58 days per month. Regular PTO will be the employee's main PTO and will be used any time the employee needs time off regardless if the time off is sick time or vacation time. All regular PTO hours must be used within 12 months of the employee's annual personal anniversary date, or the hours will be forfeited. Upon separation of employment from the contractor during the first year of employment, no payout of regular PTO will be made. Thereafter, upon separation of employment from the contractor, the employee will be paid out for the remaining regular PTO balance.

Banked PTO (Sick Leave):

Banked PTO is an additional PTO benefit an employee receives. An employee will begin accruing banked PTO at .42 days per month beginning upon the employee's personal anniversary hire date. The employee shall have access to their accrued banked PTO (accrued at .42 days per month) after the employee has completed 90 days of employment. Banked PTO can only be used once the employee has exhausted all their regular PTO hours. Banked PTO hours (up to 40 hours per year (5 days), may be carried over from year to year up to a maximum total of 120 hours, (15 days). Upon separation of employment from the contractor, the employee will not be paid out for any of the banked PTO hours balance.

Chart of hours and days are listed below.

Years of Service	Regular PTO (Hours)	BANKED PTO (Hours)	Regular PTO (Days)	BANKED PTO (Days)
0 – Complete 90 Day Probationary Period	0	0	0	0
Complete 90 Day Probationary Period but < 2 YRS	56	40	7	5
>2 YRS but <5 YRS	80	40	10	5
>5 YRS but < 12YRS	120	40	15	5
>12 YRS	160	40	20	5

PTO can only be taken in 4-hour (1/2 Day) or 8-hour (Full Day) increments.

Health / Welfare:

A group health-insurance plan shall be offered to employees working at least 32 hours per week. Health insurance is required to be provided to employees after completion of 90 days of employment. The contractor shall pay a minimum of 70% of a single premium under this plan or, if the employee chooses not to enroll in the health insurance plan, the company shall pay the employee a stipend to spend elsewhere valued at 30% of the single premium.

Effective January 1, 2023: The contractor shall pay a minimum of 75% of a single premium under this plan or, if the employee chooses not to enroll in the health insurance plan, the company shall pay the employee a stipend to spend elsewhere valued at 30% of the single premium base plan.

Paid Holidays: Employees shall be eligible for holiday pay immediately upon employment. Paid holidays are to include: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

401(k):

The contractor is to offer a 401K retirement plan, with a company match.

Short-term Disability Insurance:

Contractor shall pay for a short-term disability insurance policy for all employees and shall pay 100% of the premium.

SRC Hospital Indemnity:

Contractor employees have the option to enroll in First Transit’s SRC Hospital Indemnity insurance program. This program offers single to family enrollment options in addition to the medical insurance plans. This program provides our employees’ reassurance of financial stability in the event the employee or family members are hospitalized.

Health Savings Account (HSA):

The Contractor health insurance allows for employees to contribute an HSA account. The amount contributed to the account is determined by the employee and may be used for out-of-pocket health care costs.

IRS Section 125 Plan:

During the term of this agreement the Contractor shall, if applicable and allowable by law, allow employees to participate in the IRS Section 125 plan, thus providing pre-tax cost savings to our employees.

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Contractor employees are eligible for bereavement leave the day before, the day of, and the day after an immediate family member's funeral. Immediate family members include, spouse, mother or father, brother or sister, mother-in-law or father-in-law, grandparents of employee or spouse, children of the employees, stepfather, stepmother, stepsister, stepbrother, and stepchildren

Safety Meetings:

Attendance at monthly safety meetings is required. Contractor employees will be paid for time at monthly safety meetings.

Dental Coverage Plans:

Full time Contractor employees may enroll in the contractor's Dental Coverage plan during the enrollment period. The contractor will cover 50% of the single coverage cost for each employee who chooses to enroll in dental coverage.

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All the incentives or bonuses outlined below and paid to employees will be billed to the City of Fargo and City of Moorhead as a pass-through cost based on actual payments made and included on each City's regular monthly invoices.

The new operator sign-on bonus and referral bonus will be only implemented if pre-approved by both the City of Fargo and City of Moorhead based on the current need for recruitment, such as lack of qualified driver applications.

New Operator Sign-On Bonus:

The minimum bonus of \$500 can be increased up to \$2,500 based on the demands of the recruitment needs.

Bonus will be split into 3 pay out time of equal value:

Entering into Revenue Service

At 60 Days

At 180 Days

Employee Referral Bonus:

The bonus is paid to both the current employee and their referrals at:

60 days = \$500

180 days = \$500

Safety Bonus:

An employee who performs their job exhibiting superior safety habits and behaviors will be rewarded! The monthly payment for each employee who achieves safety goal is \$50.00 for full time employees and \$25.00 for part time employees. Employees who receive this bonus for the entire quarter (3 months) will be given an additional bonus of \$100.00 for full time employees and \$50.00 for part time employees. Part-Time employees must work at least 40 hours per month in order to receive this bonus.

Eligibility requirements:

- The employee must complete a pre/post trip inspection each day they work
- The employee must have no preventable collisions or passenger injuries
- The employee has no preventable safety incidents resulting in any personal/passenger injury, damage, or other safety related issues
- The employee must have no traffic violations in company or personal vehicles
- Attend Monthly Safety Meeting
- Fewer than three (3) coachable DriveCam clips monthly

Incentive Bonus:

The Incentive Bonus program will reward employees that provide excellent customer service, have perfect attendance, and exhibit superior performance and behavior when performing all job functions. Contractor employees have the opportunity to earn an additional \$1,000.00 per year. This bonus will be paid out at \$50.00 per month for full time employees who achieve the requirements listed below. Any full-time employee who has achieved this bonus for the entire quarter (3 months) will be given an additional \$100.00 at the end of the quarter. Part-time employees are not eligible for this bonus.

Eligibility requirements:

- No substantiated passenger complaints or incidents
- Monthly Average OTP above 90% for fixed drivers and 95% for para drivers, unless there is a reasonable explanation, such as weather events, traffic delays, and construction detours, passenger related delays, event traffic, dispatch issues, routing issues or other circumstances outside of the Bus Operator's control.
- Have a perfect attendance record
 - Zero attendance points for current month (Late, absent, etc.)
- Be in a full and clean uniform at all times (shirt, trousers, tie, and plain black shoes)
- Completing and turning in all paperwork with no missing information; including: Manifests, DVIR for Pre and Post trip inspections, Payroll exception forms
- No ADA Violations (i.e. P.A. Announcements, lowering ramp/kneeler)
- Attended the monthly safety meetings
- Having no other discipline incidents / actions

Quarterly payouts will be paid on the following scale.

Quarter	Start Month		End Month	Payout Month
1	January	-	March	April
2	April	-	June	July
3	July	-	September	October
4	October	-	December	January

By entering into a sale with the City of Fargo, ND, and/or the City of Moorhead, MN, doing business as MATBUS, the supplier is agreeing to be bound by the following federal clauses and certifications as applicable:

1. **No Government Obligation to Third Parties:** *Applies to all third-party contracts that are federally funded.*

- a. The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. **Access to Records and Reports:** *Applies to all contracts funded in whole or in part with FTA funds.*

- a. **Record Retention.** The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- b. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

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

3. Federal Changes: *Applies to all contracts.*

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

4. Civil Rights and Equal Opportunity: *Applies to all contracts.*

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

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

addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

X

5. **Incorporation of FTA Terms:** *Applies to all contracts.*

The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Agency requests which would cause the Agency to be in violation of the FTA terms and conditions.

X

6. **Energy Conservation:** *Applies to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, 'Requirements/or Energy Assessments,' 49 C.F.R. part 622, subpart C.*

The Contractor shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).

X

7. **Veterans Employment:** *Applies to capital projects, to the extent practicable*

As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, the Contractor agrees that it:

- a. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
- b. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

The Contractor also assures that its sub-recipients will:

- a. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third-party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
- b. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

X

8. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:** *Applies to all contracts.*

The Contractor is prohibited from obligating or expending federal funds to:

- a. Procure or obtain
- b. Extend or renew a contract to procure or obtain; or
- c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, "covered telecommunications equipment or services" is:

- i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
 - ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - iii. Telecommunications or video surveillance services provided by such entities or using such equipment.
- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Contractor shall not provide covered telecommunications equipment or services in the performance of this contract.

X

9. **Termination Provisions:** *Applies to all contracts over \$10,000.*

Termination for Convenience (General Provision): The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to the Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision): If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.5

Opportunity to Cure (General Provision): The Agency in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Agency's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within ten [10] days after receipt by Contractor or written notice from the Agency setting forth the nature of said breach or default, the Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach: In the event that the Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the Agency shall not limit the Agency's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

This termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

X

10. **Debarment, Suspension, Ineligibility and Voluntary Exclusion:** *Applies to contracts in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.*

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a. Debarred from participation in any federally assisted Award;

- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the Bidder or Proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined by the Agency that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Proposer agrees to comply with the requirements of 2 C.F.R. part 1 80, subpart C, as supplemented by 2 C.F.R. part 1 200, while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

X

11. **Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters** : *Applies to all contracts exceeding \$25,000.*

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify City Utilities, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which City Utilities is located. The Contractor must include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement between the FTA and City Utilities, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

Additional Notice to U.S. DOT Inspector General. The Contractor must promptly notify the Agency, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Agency is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project is subject to this agreement or another agreement with the Agency involving a principal, officer, employee, agent, or Third-Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

12. **Lobbying Restrictions:** *Applies to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

The undersigned certifies (Note: A separate certification will be required to be signed if the contract meets this criteria), to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of

any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- 13. **Buy America:** *Applies to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.*

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

- 14. **Clean Air Act and the Federal Water Pollution Control Act:** *Applies to all contracts exceeding \$150,000.*

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq and the Federal Water Pollution Control Act as amended, 33 U.S.C. § 1251-1388. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

X

15. **Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate:** *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$250,000) and those contracts shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.*

- a. Disputes will be presented in writing to the appropriate Agency personnel - in Fargo, the Fargo Transit Director, in Moorhead, the Moorhead Transit Manager. Agency personnel and the Contractor will attempt to resolve any dispute arising in the performance of the contract.

Fargo: If the Transit Director and Contractor cannot resolve the dispute, the issue will be presented in writing to the Fargo City Administrator within ten [10] working days of dispute. If the dispute cannot be resolved by the City Administrator, it will be submitted in writing within ten [10] working days of the Fargo City Administrator's decision to the Fargo City Commission - it is the sole responsibility of the Contractor to schedule a hearing with the Fargo City Commission. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

Moorhead: If the Transit Manager and Contractor cannot resolve the dispute, the issue will be presented in writing to the Moorhead City Manager within ten [10] working days of the dispute. If the dispute cannot be resolved by the City Manager, it will be submitted in writing within ten [10] working days of the Moorhead City Manager's decision to the Moorhead City Council - it is the sole responsibility of the Contractor to schedule a hearing with the Moorhead City Council. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

The decision of the Fargo City Commission or Moorhead City Council shall be binding upon the Contractor and the Contractor shall abide by the decision.

- b. Unless otherwise directed by the Cities of Fargo/Moorhead, the Contractor shall continue performance under this contract while matters in dispute are being resolved.

- c. Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- d. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Cities of Fargo and/or Moorhead and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the applicable state.

X

16. **Cargo Preference:** *Applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.*

The Contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

X

17 **Fly America:** *Applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.*

Definitions. As used in this clause—

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- a. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- b. If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- c. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR§ 47.403. [State reasons]:

(End of statement)

The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.



18. **Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback:**

Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

a. **Prevailing Wage Requirements**

- i. *Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA 's 'Davis-Bacon Related Act");*
- ii. *The Davis-Bacon Act, 40 USC. §§ 3141-3144, 3146, and 3147; and*
- iii. *U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.*

b. **"Anti-Kickback" Prohibitions**

- i. *Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;*
- ii. *Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 USC. § 3145; and*
- iii. *US. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

X

19. **Contract Work Hours & Safety Standards Act:** *Applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers. Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:*

a. **Contract Work Hours and Safety Standards**

- i. *Contract Work Hours and Safety Standards Act, as amended, 40 USC §§ 3701- 3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and A-38*
- ii. *U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.*

b. **For Construction Contracts:**

- i. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
- ii. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
- iii. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other

Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

- iv. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

c. For Awards Not Involving Construction:

- i. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
- ii. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
- iii. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.



20. **Bonding:** *The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (exceeding \$175,000. Minnesota State Statute 574.26 limit is \$100,000) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:*

- a. A bid guarantee from each bidder equivalent to five [5] percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond,

certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - i. 50% of the contract price if the contract price is not more than \$1 million;
 - ii. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - iii. \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond. Bid Bond Requirements (Construction)

Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the Agency to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety [90] days subsequent to the opening of bids, without the written consent of the Agency.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety [90] days after the bid opening without the written consent of the Agency, shall refuse or be unable to enter into this contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting Bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the Agency as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense the Agency for the damages occasioned by default, then the

undersigned bidder agrees to indemnify the Agency and pay over to the Agency the difference between the bid security and the Agency's total damages, so as to make the Agency whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive. Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

Performance bonds

- a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
- b. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

Payment bonds

- a. The penal amount of the payment bonds shall equal:
 - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
 - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;
 - iii. Two and one half million if the contract price is more than \$5 million.
- b. If the original contract price is \$5 million or less, the Agency may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the Agency's interest.

The following situations may warrant a performance bond:

- a. The Agency's property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
- b. A contractor sells assets to or merges with another concern, and the Agency, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

- c. Substantial progress payments are made before delivery of end items starts.
- d. Contracts are for dismantling, demolition, or removal of improvements.

When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

- a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Agency determines that a lesser amount would be adequate for the protection of the Agency.
- b. The Agency may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.
The Agency may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Agency's interest.
- d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

The penal amount of payment bonds shall equal:

- I. Fifty percent of the contract price if the contract price is not more than \$1 million;
- II. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- III. Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The Agency shall determine the amount of the advance payment bond necessary to protect the Agency.

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished, and the financial responsibility of the Contractor is unknown or doubtful. The Agency shall determine the amount of the patent indemnity to protect the Agency.

Warranty of the Work and Maintenance Bonds

The Contractor warrants to the Agency, the architect and/or engineer that all materials and equipment furnished under this contract will be of highest quality and new unless otherwise specified by the Agency, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be

considered defective. If required by the project manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one [1] year after final payment by the Agency and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the Agency. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate maintenance (or guarantee) bonds in form acceptable to the Agency written by the same corporate surety that provides the performance bond and labor and material payment bond for this contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one [1] year after final payment and shall be written in an amount equal to ONE HUNDRED PERCENT [100%] of the CONTRACT SUM, as adjusted (if at all).

21. **EEO:** *Applies to all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3*

All Firms will be required to follow Federal Equal Employment Opportunity (EEO) policies. The Agency will affirmatively assure that on any project constructed pursuant to this advertisement, equal employment opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, sex, and marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.

22. **Seismic Safety:** *Applies only to contracts for the construction of new buildings or additions to existing buildings.*

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

23. **Transit Employee Protective Arrangements:** *Applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.*

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a. U.S. DOL Certification. Under this contract or any amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the contract.
- b. Special Warranty. When the contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a special warranty for its award, including its award of federal assistance under the Tribal Transit Program. The U.S. DOL special warranty is a condition of the contract.
- c. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

X

24. Charter Service Operations: *Applies to contracts for operating public transportation service.*

The Contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b. FTA regulations, "Charter Service," 49 C.F.R. part 604;
- c. Any other federal Charter Service regulations; or
- d. Federal guidance, except as FTA determines otherwise in writing.

The Contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- a. Barring it or any subcontractor operating public transportation under its award that has provided prohibited charter service from receiving federal assistance from FTA;

- b. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA 's Charter Service regulations; or
- c. Any other appropriate remedy that may apply.

The Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

X

25. School Bus Service Operations: *Applies to contracts for operating public transportation service.*

The Contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- a. Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
- c. Any other Federal School Bus regulations; or
- d. Federal guidance, except as FTA determines otherwise in writing.

If the Contractor violates this school bus agreement, FTA may:

- a. Bar the Contractor from receiving Federal assistance for public transportation; or
- b. Require the Contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the Contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

X

26. Substance Abuse Requirements: Drug & Alcohol Testing: *Applies to third party contractors who perform safety-sensitive functions. Contractors must comply with FTA 's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:*

- a. *Operating a revenue service vehicle, including when not in revenue service;*

- b. *Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
- c. *Controlling dispatch or movement of a revenue service vehicle;*
- d. *Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts or such services; or an employer who receives funding under 49 USC § 5311 and contracts out such services.*
- e. *Carrying a firearm for security purposes.*

Additionally, third-party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of North Dakota and/or Minnesota, or the Cities of Fargo/Moorhead, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager and City of Fargo Transit Director. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

X

27. Rights to Inventions Made Under a Contract or Agreement: *Applies when entering into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award. The recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, "and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:*

- a. Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
- b. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

Intellectual Property Rights: This project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the contract.

- a. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - i. Any subject data developed under the contract, whether or not a copyright has been obtained; and
 - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- b. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this contract, is not completed for any reason whatsoever, all data

developed under the contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

- c. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- d. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- e. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the contract work.
- f. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

X

28. Disadvantaged and Small Business Enterprise (DBEs): Applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year.

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the Contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

In connection with the performance of this service, the Contractor will cooperate with the Agency in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to ensure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to ensure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by Agency for purchases pertaining to this contract to the best of the Contractor's ability and will provide the Agency with the necessary certification and records for reporting purposes. When the majority of the contract is labor, which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

The Contractor will be required to report its DBE participation obtained through race neutral means throughout the period of performance.

The contractor must promptly notify the Agency whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

Fostering Small Business Participation

The Agency has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the Agency. This program is race and gender-neutral, however SBEs can also count towards DBE goals.

X

29. Prompt Payment and Return of Retainage: *Applies to all contracts.*

Recipients must establish a contract clause to require prime Contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days (payment required within 10 days or paying interest at 1 ½ percent per Minnesota State Statute 471.425 subd. 4a) from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the Contractor shall utilize the specific DBEs listed unless the Contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

X

30. 6002 of the Solid Waste Disposal Act: *Applies to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.*

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6962) by the Resource Conservation and Recovery Act (RCRA), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

X

31. Americans with Disabilities Act Access (ADA): *Applies to all contracts.*

Introduction: 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I thru V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issues by other Federal agencies.

- a) **Rolling Stock Accessibility:** Rolling stock must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", "49 CFR Part 37, and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA Accessibility Specifications for Transportation Vehicles," 36

CFR Part 1192 and 49 CFR Part 38. Vehicles acquired (with limited exceptions) should be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;

- b) **Purchased Transportation Services Accessibility:** A third party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. MART advises its third party contractors operating public transportation services to review the requirements for public entities in this context which include but are not limited to:

- a. **Complementary Paratransit Service:** Requirements that public entities providing fixed-route service provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route system.
- b. **Equal Opportunity:** Requirements for service with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.

- c) **Design and Construction Accessibility:** Facilities to be used in public transportation systems and service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB's Americans with Disabilities Act Accessibility Guidelines" (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

32. Assignability Clause: *Applies to all contracts.*

Procurements through assignments: Neither the Agency nor the Contractor shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other.

33. Program Fraud & False or Fraudulent Statements & Related Acts: *Applies to all third-party contracts that are federally funded.*

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and U.S. DOT

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

- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.



34. Bus Testing: *Applies only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA 's bus testing requirements in all grant applications for FTA funding for bus procurements.*

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FT A's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.



35. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases: *Applies to the purchase of revenue service rolling stock with FTA funds and must comply with the*

pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(111) and supplemented by 49 C.F.R. part 663.

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance

X

- 36. Safe Operation of Motor Vehicles:** *Applies to all federally funded third party contracts.*

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

X

- 37. Recycled Products:** *Applies to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000. Applies to States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.*

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource

Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

DEBARMENT AND SUSPENSION CERTIFICATION

The proposer certifies to the best of its knowledge and belief, and that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not, within a three-year period preceding this proposal/contract, been convicted or had a civil judgment awarded against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public bribery, falsification or destruction of records, making false statement, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification;
4. Have not, within a three-year period preceding this application/proposal/contract, had one or more public transactions (Federal, State, Local) terminated for cause or default.

THE PARTICIPANT, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ ARE APPLICABLE THERETO.


NAME

August 29, 2022
DATE

LOBBYING RESTRICTIONS CERTIFICATION

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Signature of Contractor's Authorized Official

Bradley Thomas, CEO

Name and Title of Contractor's Authorized Official

August 29, 2022

Date

REPORT OF ACTION
UTILITY COMMITTEE

Project: BN-23-F0

Type: AE2S Task Order #10

Location: North Fargo Wastewater Service

Date of Hearing: 2-7-2024

<u>Routing</u>	<u>Date</u>
City Commission	2-20-2024
Project File	_____

Jim Hausauer, Water Reclamation Facility (WRF) Utility Director, presented the attached memo describing the plan for a north Fargo development consisting of approximately 590 acres. In preparation for the development, the WRF completed a study to determine wastewater infrastructure needs for the service area, which includes a new sanitary lift station (LS). In addition to serving the planned development, the proposed lift station will need to serve a larger growth area that will include Fargo ET area to the north, west of I-29, the city of Harwood and return flow from the proposed North Dakota Soybean Processors (NDSP) in Casselton.

Task Order #10

AE2S Task Order #10 will consist of:

- Scope of services for preliminary, final design, & geotechnical investigation.
- Evaluate growth scenarios for the lift station service area. Recommend lift station capacities for near term and future expansion.
- Bidding, construction administration, post construction field services, start-up, & I/C services.

The pumping capacity of this LS can be increased in phases to accommodate near & long term growth for these service areas. Funding for this project will consist of both special assessment and Water Reclamation Funds.

On a motion by Tom Knakmuhs, seconded by Scott Olson, the Utility Committee voted to approve Task Order #10 from AE2S in the amount of \$121,700 for engineering services for Project BN-23-F0.

RECOMMENDED MOTION:

Concur with the Utility Committees recommendation to approve Task Order #10 from AE2S for wastewater engineering services associated with Project BN-23-F0.

<u>COMMITTEE</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous X</u>
				<u>X Proxy</u>
Denise Kolpack, City Commissioner	X	X		
Susan Thompson, Finance Director	X	X		proxy J. Bullock
Brian Ward, Water Plant Superintendent	X	X		
Mark Miller, Water Reclamation Plant Supt.				
Bruce Grubb, Temp. PT City Administrator	X	X		
Scott Liudahl, City Forester	X	X		
Scott Olson, Solid Waste Utility Director	X	X		
Jim Hausauer, Water Reclamation Utility Di	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director				
Tom Knakmuhs, City Engineer	X	X		
Dan Portlock, Water Utility Engineer	X	X		

ATTEST:



 Jim Hausauer
 Water Reclamation Utility Director

C: Mayor Mahoney
Commissioner Strand
Commissioner Piepkorn
Commissioner Preston



Memorandum

February 7th, 2024

To: Utility Committee
From: Jim Hausauer, Water Reclamation Utility Director
RE: AE2S Task Order #10
Project BN-23-F0 (North Fargo Wastewater Service)

Background

The City of Fargo is planning for the development of approximately 590 acres of land in north Fargo. In preparation for the development, the City completed a study to determine wastewater infrastructure needs for the service area, which includes a new sanitary lift station (LS). In addition to serving the planned development, the proposed lift station will need to serve a larger growth area that will include Fargo ET area to the north of the development, west of I-29, the city of Harwood and return flow from the proposed North Dakota Soybean Processors (NDSP) in Casselton.

Task Order #10

AE2S Task Order #10 will consist of:

- Scope of services for Preliminary and Final Design.
- Engineering services for geotechnical investigation.
- Evaluation growth scenarios for the lift station service area
- Recommend lift station capacities for near term and future expansion.
- Bidding, Construction Administration and Post Construction Field Services
- Start-up, Instrumentation and Control Services

The pumping capacity of this LS can be increased in phases to accommodate near & long term growth for these service areas. The project will include a wet well structure, pump recommendations, valve vault structure, electrical and programming for the anticipated lift station. The lift station, when complete, will be one of the largest and deepest (~40') duplex lift stations that the Water Reclamation Utility operates and maintains.

Recommended Motion

Approve Task Order #10 from Advanced Engineering and Environmental Services for Preliminary Design, Final Design, Bidding, Construction, Post Construction and I&C Services for Project BN-23-F0.



February 7, 2024

Mr. Jim Hausauer
Water Reclamation Utility Director
3400 North Broadway
Fargo, ND 58102

**RE: Lift Station BN-23-F0
Preliminary Design, Final Design, Bidding, Construction, Post-Construction, and I&C System Phase
Services
Task Order No. 10**

Dear Jim:

Thank you for the opportunity to submit this letter proposal for professional engineering services for the Lift Station BN-23-F0 Project. This letter and the attached Task Order No. 10 provide the proposed scope of services for Preliminary Design, Final Design, Bidding, Construction, Post-Construction, and I&C System Phase Services. The proposed fee for these services, expenses, and reimbursables is \$121,700.

The City of Fargo is planning for the development of approximately 590 acres of land in north Fargo. In preparation for development, the City completed a study to determine sanitary sewer infrastructure needs for the service area, which included a new sanitary sewer lift station. In addition to the serving the planned development, the proposed lift station needs to serve a larger growth area that includes Fargo extra-territorial (ET) area to both to the north of the development and west of I-29, the City of Harwood, and return water flow from the proposed North Dakota Soybean Processors facility in Casselton. This Task Order includes preliminary engineering services to perform a geotechnical investigation, evaluate growth scenarios for the lift station service area and recommend lift station capacities for both near-term service and future expansion. This Task Order also includes final design, construction, programming, and start-up services for the lift station.

If you agree with the proposed scope of services and associated professional fees presented in the attached Task Order No. 10, please sign both copies in the spaces provided, retain one fully-executed copy for your records, and return the other fully-executed copy to AE2S. We are excited to assist the City of Fargo in completing this important project.

Submitted in Service,

A handwritten signature in blue ink that reads "Ryan Grubb".

Ryan Grubb, PE
Client Services Manager

This is Water Reclamation Consulting Task Order No. 10, consisting of 4 pages.

Water Reclamation Consulting Task Order No. 10

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated January 1, 2021 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- A. Effective Task Order Date: February 7, 2024
- B. Owner: City of Fargo (Water Reclamation Utility)
- C. Engineer: Advanced Engineering and Environmental Services, LLC (AE2S)
- D. Engineer Project No.: P00803-2023-015
- E. Specific Project (title): Lift Station BN-23-F0
- F. Specific Project (description):

The City of Fargo is planning for development of approximately 590 acres of land in north Fargo. A prior study was completed in January 2023 that provided preliminary sanitary sewer infrastructure recommendations for the proposed development, which included a lift station to provide service to the area.

This Task Order provides for the Preliminary Engineering Phase Services, Final Design Phase Services, Bidding or Negotiating Services, Construction Administration Services, Construction Field Services, Post-Construction Services, and I&C System Services for a proposed sanitary lift station along 37th Street North. The project will include the wet well structure, pumps, valve vault structure, electrical, and programming for the new lift station.

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are detailed in Attachment 1 and include the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference.
 - Preliminary Engineering Phase Services (Exhibit A, Paragraph A1.02)
 - Final Design Phase Services (Exhibit A, Paragraph A1.03)
 - Bidding or Negotiating Services (Exhibit A, Paragraph A1.04)
 - Construction Administration Services (Exhibit A, Paragraph A1.05)
 - Construction Field Services (Exhibit A, Paragraph A1.05.A.2)
 - I&C System Service (Exhibit A, Paragraph A1.07)
- B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Owner's Responsibilities

OWNER shall have those responsibilities set forth in Article 2, Exhibit B of the Agreement.

4. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following approximate schedule:

- Task Order approval – February 7, 2024
- Preliminary Engineering Phase – January 2024
- Final Design Phase – January – February 2024
- Bidding Phase – March 2024
- Anticipated Start Construction – May 2024
- Project Completion – November 2024

5. Payments to Engineer

A. OWNER shall pay Engineer for services rendered under this Task Order as follows:

<i>Phase</i>	<i>Task Number and Task Name</i>	<i>Payment Method</i>	<i>Estimated Hours</i>	<i>Amount</i>
030	<i>Preliminary Engineering Services</i>	<i>Method A</i>		
01	<i>Project Management and Admin</i>		18	\$3,600
02	<i>Lift Station Sizing Evaluation</i>		74	\$13,700
03	<i>Geotechnical Evaluation</i>		N/A	\$9,700
040	<i>Final Design Phase Services</i>	<i>Method A</i>		
01	<i>Project Management and Admin</i>		4	\$900
02	<i>Process Design</i>		240	\$39,700
03	<i>Structural Design</i>		28	\$5,300
04	<i>Electrical Design</i>		100	\$17,600
050	<i>Bidding or Negotiating Services</i>	<i>Method A</i>		
01	<i>Bidding Administration</i>		14	\$2,700
060	<i>Construction Administration Services</i>	<i>Method B</i>		
01	<i>Construction Administration</i>		46	\$8,200
061	<i>Construction Field Services</i>	<i>Method B</i>		
01	<i>On-Site Observation</i>		48	\$8,800
02	<i>Surveying</i>		16	\$3,200
080	<i>I&C System Services</i>	<i>Method B</i>		
01	<i>Programming and Startup</i>		40	\$8,300
Total			628	\$121,700

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C, where Method A is a Lump Sum payment and Method B is payment for Standard Hourly Rates.

6. Consultants retained as of the Effective Date of the Task Order: None.

7. Other Modifications to Agreement and Exhibits: None.

8. Attachments:

Attachment 1 – Scope of Services for Task Order No. 10

Attachment 2 – Fargo NE Sewer Service Planning Technical Memorandum

9. Other Documents Incorporated by Reference: None.

10. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement 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 February 7, 2024.

OWNER: City of Fargo (Water Reclamation Utility)

ENGINEER: Advanced Engineering and Environmental Services, LLC (AE2S)

By: 

By: 

Name: Jim Hausauer, REHS

Name: Brian R. Bergantine, PE

Title: Water Reclamation Utility Director

Title: Project Quality Director

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Jim Hausauer, REHS

Name: Chase Julson, PE

Title: Water Reclamation Utility Director

Title: Project Manager

Address: 34500 N. Broadway
Fargo, ND 587102

Address: 4170 28th Ave S
Fargo, ND 58104

E-Mail Address: JHausauer@FargoND.gov

E-Mail Address: Chase.Julson@AE2S.com

Phone: (701) 241-8565

Phone: (701) 364 - 9111

This is Attachment 1 to Water Reclamation Consulting Task Order No. 10 consisting of 5 pages.

Attachment 1 to Water Reclamation Consulting Task Order No. 10

Lift Station BN-23-F0

February 7, 2024

Scope of Services

The Project entails the design, bidding, and construction of a lift station to serve an area of new development in north Fargo. This Scope of Services provides for the Preliminary Engineering, Final Design, Bidding or Negotiating, Construction Administration, Construction Field, Post-Construction, and I&C System Phase services to support the design and construction of the Project. The following is a detailed breakdown of this Scope of Services to Water Reclamation Consulting Task Order No. 10.

Phase 030 – Preliminary Engineering Phase Service

In accordance with Paragraphs A1.01 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Preliminary Engineering Phase Services under Water Reclamation Consulting Task Order No. 10.

Task 01 – Project Management and Administration

ENGINEER shall develop of Scope of Work for the design, construction, and start-up of the proposed lift station. ENGINEER shall coordinate and review the Scope of Work with Project stakeholders, including representatives from the Fargo Water Reclamation Utility and Fargo Engineering Department to ensure OWNER’s objectives are met. Comments received through these reviews shall be incorporated into a revised Scope of Work prior to presenting Task Order for approval.

Under this Task, ENGINEER shall also perform general Project administration activities including progress monitoring, scheduling, general correspondence, office administration, and invoicing. These activities include maintaining contact and liaison with the OWNER and Project staff; providing OWNER with monthly Project financial status updates; ensuring that the needs of the OWNER are met in a timely manner, and monitoring Project budgets and schedules.

Task 02 – Lift Station Sizing Evaluation

ENGINEER shall build off of the prior completed infrastructure study titled “*Fargo NE Sewer Service Planning*” and shall develop a new Technical Memorandum (TM) that documents the assumptions and considerations associated with the design lift station capacity. The TM shall include, but is not limited to, the following information associated with lift station design criteria:

- Flow projections (average day and peak hourly) for phased build-out of the lift station service area;
- Preliminary sizing information for the lift station pumps and wet well (structure diameter, depth, and proposed operating band);
- Considerations for expanding the capacity of the lift station in the future growth occurs within the service area; and
- Lift station design criteria recommendations.

ENGINEER shall meet with OWNER to receive feedback on lift station service design recommendations and decide on lift station capacity to carry forward into Final Design.

Task 03 – Geotechnical Evaluation

ENGINEER shall obtain the services of a geotechnical engineering subconsultant to perform a geotechnical evaluation for proposed lift station. Key components of the geotechnical evaluation are anticipated to include:

- Review bore logs from previously completed bores near the lift station site.
- Call in one-call locates.
- Perform one (1) standard penetration test (SPT) soil bore to a depth of 50 feet at the lift station site.
- Monitor and collect information on groundwater at the bore location.
- Perform engineering analysis related to the lift station design and performance.
- Document geotechnical findings and recommendations in a geotechnical report.

Phase 040 – Final Design Phase Service

In accordance with Paragraphs A1.01 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Final Design Phase Services under Water Reclamation Consulting Task Order No. 10.

Task 01 – Project Management and Administration

ENGINEER shall perform general Project administration activities including progress monitoring, scheduling, general correspondence, office administration, and invoicing. These activities include maintaining contact and liaison with the OWNER and Project staff; providing OWNER with monthly Project financial status updates; ensuring that the needs of the OWNER are met in a timely manner, and monitoring Project budgets and schedules.

Task 02 – Process Design

The proposed lift station is anticipated to be a duplex-style lift station (no above-grade building) with separate wet pit and valve / meter vault structures. ENGINEER shall perform Process Design services for the proposed lift station and valve vault consisting of the following key items:

- Plan and profile drawings of process related pipe, fittings, and equipment for the lift station and valve vault.
- Process details for process pipe, fittings, and equipment associated with the lift station and valve vault.
- Process specifications for all process materials, construction, and equipment formatted in accordance with the OWNER's Special Instructions to Bidders (SIBs) format.

Design review plan sets shall be provided to the OWNER for review and comment via Bluebeam Review Sessions at the following milestones:

- Intermediate Design Submittal
- Pre-Final Design Submittal

ENGINEER shall conduct design review meetings with OWNER at each design milestone to receive and incorporate comments into the Project bidding documents.

Task 03 – Structural Review

The proposed lift station is anticipated to consist of a precast concrete wet pit structure with a separate precast concrete dry pit valve / meter vault. ENGINEER shall complete a Structural Review that is anticipated to include the following key items:

- Structural design considerations to mitigate buoyancy concerns (if any) from ground water anticipated at the lift station site;
- Review of geotechnical report and recommendations related to lift station foundation design;
- Review of drawings for the new valve vault and lift station structures; and
- Review of specifications for precast concrete structures and associated appurtenances.

Design of poured-in-place concrete structures is not included within this Scope of Services. In the event that the lift station size dictates that the structures need to be poured-in-place in lieu of precast concrete, ENGINEER shall present an amendment to the OWNER for additional Structural Design services.

Task 04 – Electrical Design

ENGINEER shall perform Electrical Design services for the proposed lift station and valve vault consisting of the following key items:

- Plan and profile drawings of electrical connections and equipment for the new lift station and valve vault.
- Plan details for site electrical service, lift station control panel, variable frequency drives (VFDs), and onsite emergency generator.
- Plan details for electrical connections and equipment for the new lift station and valve vault.
- Plan schedules for electrical materials.
- Project specifications for all electrical materials, construction, and equipment.

Design review plan sets shall be provided to the OWNER for review and comment via Bluebeam Review Sessions at the following milestones:

- Intermediate Design Submittal
- Pre-Final Design Submittal

ENGINEER shall conduct design review meetings with OWNER at each design milestone to receive and incorporate comments into the Project bidding documents.

Phase 050 – Bidding or Negotiating Services

In accordance with Paragraphs A1.01 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Bidding or Negotiating Services under Water Reclamation Consulting Task Order No. 10.

Task 01 –Bidding Administration

OWNER shall lead the Bidding Phase services, including the development and distribution of construction contracts. Bidding administration services shall be provided by the ENGINEER to assist the OWNER in soliciting bids for construction, responding to plan holder questions, preparing and certifying addenda for distribution, attending the bid opening for the Lift Station BN-23-F0, reviewing bids, and recommendation to award contract.

Phase 060 – Construction Administration Services

In accordance with Paragraphs A1.01 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Construction Administration Services under Water Reclamation Consulting Task Order No. 10.

Task 01 – Construction Administration

ENGINEER shall provide basic construction administration services associated with the proposed lift station, which are anticipated to consist of the following key items:

- Preconstruction meeting attendance with OWNER and CONTRACTOR.
- Clarifications and interpretations of the Contract Documents.
- Shop drawing and sample submittal review.
- Assistance with other specific related Project documentation to the OWNER at the completion of the Project.
- Operation and maintenance (O&M) manual review.
- Record drawings to incorporate as-built changes to the contract documents based on markups received from the CONTRACTOR.

Phase 061 – Construction Field Services

In accordance with Paragraphs A1.01 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Construction Field Services under Water Reclamation Consulting Task Order No. 10.

Task 01 – On-Site Construction Observation

ENGINEER shall provide on-site observation services of a Resident Project Representative (RPR) to observe and document construction activities in accordance with Exhibit A of the Original task Order Agreement. Engineer shall provide part-time RPR services when the contractor is on-site performing the work based on the following approach:

- Facilitate a construction kickoff meeting with OWNER and CONTRACTOR.
- Observe and document the installation of precast wet well and valve vault.
- Observe and document startup of the new lift station.
- Two (2) additional trips to the site for necessary observation.
- Perform a substantial walkthrough of the Project with the OWNER.
- Compile a final punch list containing items identified during the substantial walkthrough.
- Perform a final walkthrough of the Project with the OWNER to review the final punch list.

Task 02 – Surveying

ENGINEER shall provide one-time construction surveying including the following:

- One time staking for reference points that will guide the construction of the lift station structures. Re-staking of reference points are not included within this scope of services but can be provided as Additional Services on an hourly basis.
- Verifying the location of structures during construction.
- Collect limited survey data at the end of the Project to be used in the creation of as-built drawings.

Phase 080 – I&C System Services

In accordance with Paragraphs A1.01 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional I&C System Services under Water Reclamation Consulting Task Order No. 10.

Task 01 – Programming and Startup

ENGINEER shall provide Control System Programming Services which shall include:

- Meet with Fargo Water Reclamation Facility staff to develop a written functional description detailing how each instrument and control device will be monitored and controlled.
- Develop a customized Programmable Logic Controller (PLC) program for the lift station based on the written functional description. The PLC program will utilize standards from the current PLC program structure utilized throughout the Water Reclamation Facility.
- Program the Supervisory Control and Data Acquisition (SCADA) application for remote monitoring and control of the lift station.

ENGINEER shall provide Control System Startup Services which shall include:

- Perform a pre-startup check at the lift station to verify that all control signals are correctly terminated in the control panels, and all control signals are reading correctly in the PLC.
- Work on-site at the lift station to verify that the PLC program operated the lift station as described in the written functional description.
- Configure the lift station telemetry data radios to connect to the existing Water Reclamation Facility.
- Import the lift station objects and graphics into the existing Water Reclamation Facility SCADA application and verify that all remote monitoring and control functions operate correctly.

1 inch equals 1,000 feet

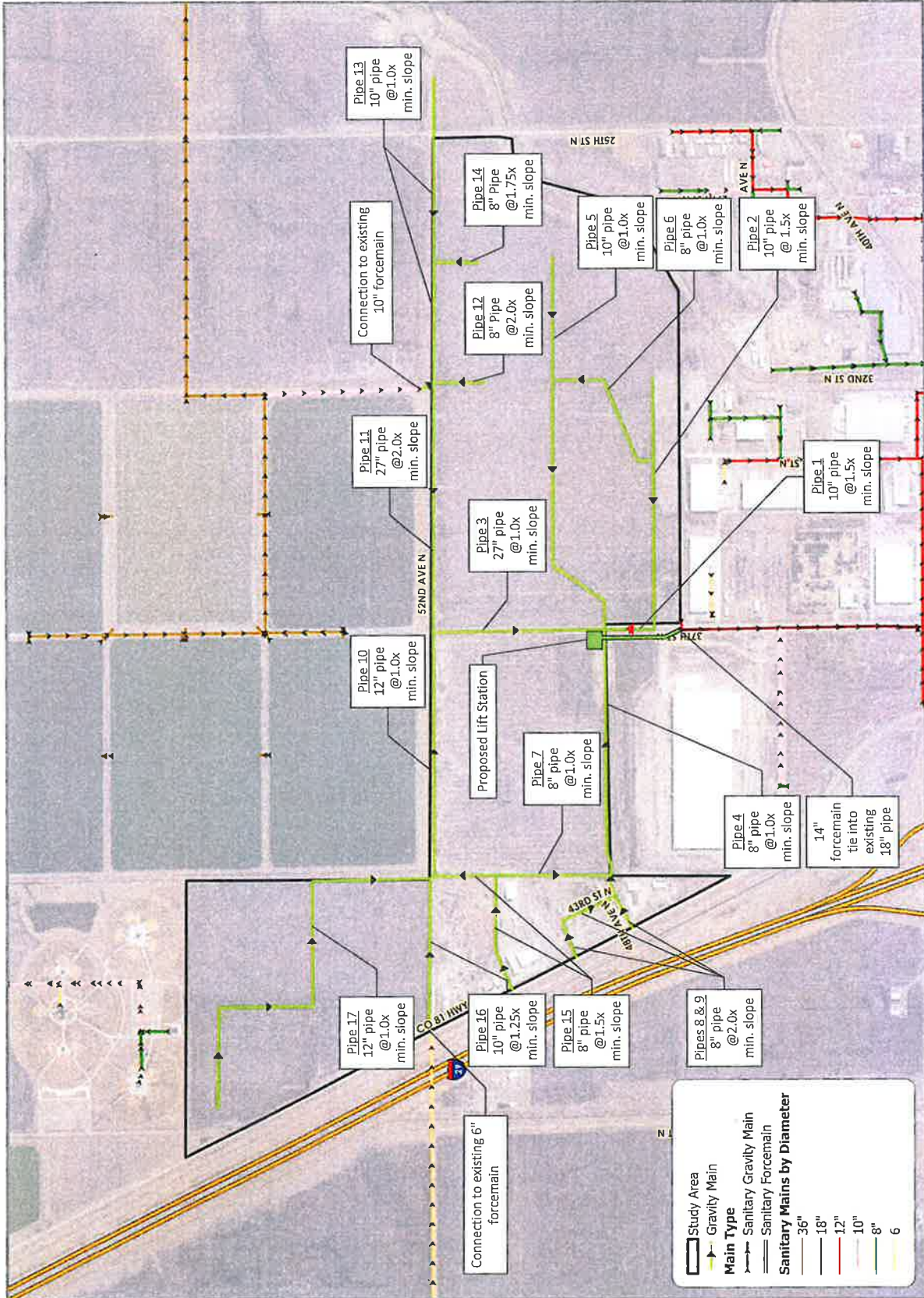
Locator Map Not to Scale

Fargo
Cass County, ND

Figure 3. Sanitary Sewer Service Alternative 1

CITY OF FARGO

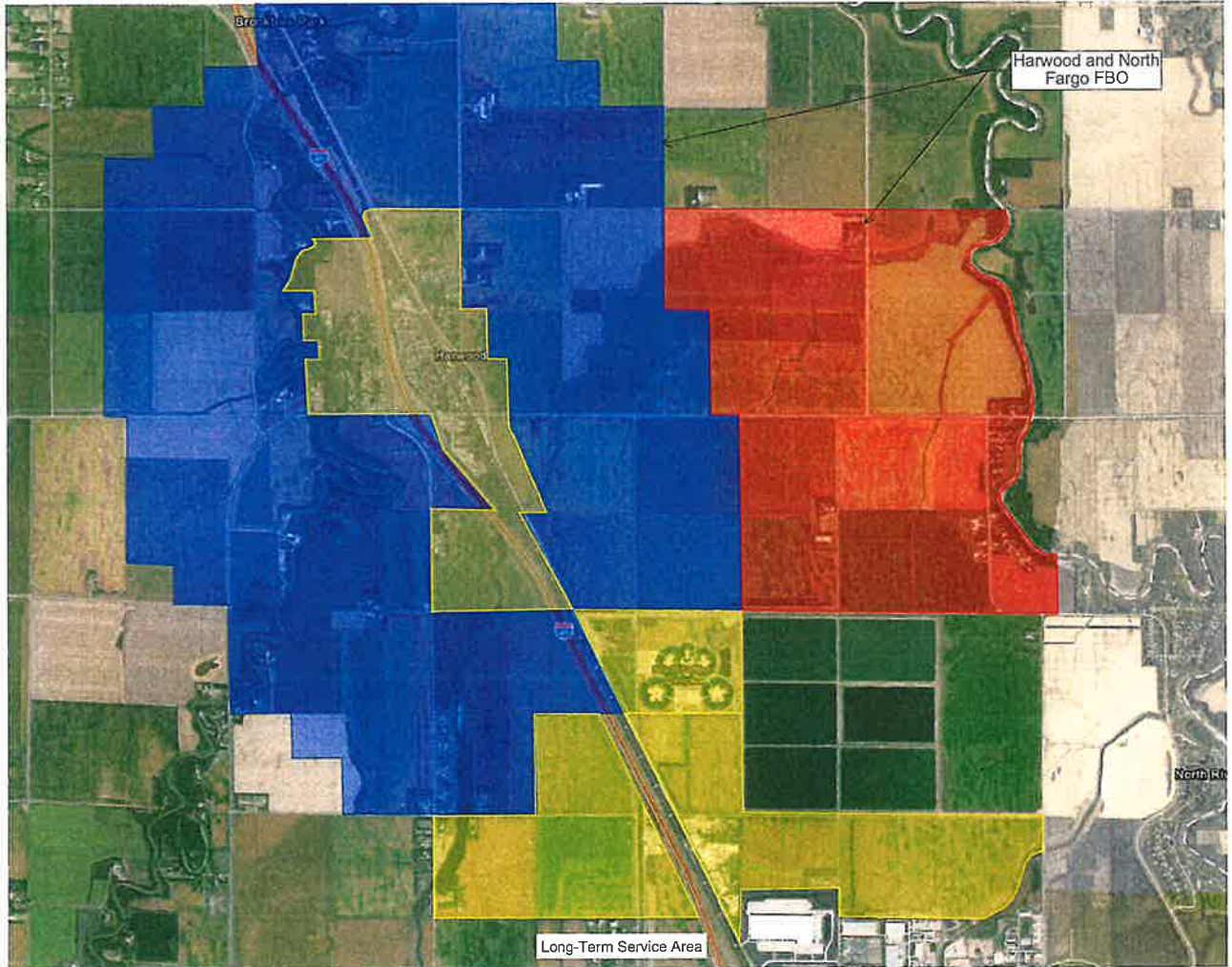
Date: 1/3/2023



Information depicted may include data unverified by AES2. Any reliance upon such data is at the user's own risk. AES2 does not warrant this map or its features are either spatially or temporally accurate. Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet. | Edited by: CUMember. | C:\Data\Projects\Wassum\Fargo\0903-2022-005\GIS\0903-2022-006 NE Sewer Service Planning - Mapping and Analysis.mxd | Figure 3 Mt. 1







Scenario	Average Flow (gpm)	Peak Flow (gpm)
Near-Term	690	1,350
Mid-Term	1,245	2,900
Long-Term	1,800	4,465