

FARGO CITY COMMISSION AGENDA
Monday, February 5, 2024 - 4:30 p.m.

Executive Session at 4:30 p.m.

Roll Call.

PLEASE NOTE: The City Commission will convene at 4:30 p.m. and retire into Executive Session in the Red River Room for the purpose of attorney consultation regarding threatened litigation pertaining to 501 Main Avenue, and to discuss negotiating strategy or provide negotiation instructions to its attorney or other negotiator regarding the threatened litigation, and to receive its attorney's advice and guidance on the legal risks, strengths and weaknesses of an action of a public entity. To discuss these matters in public in an open meeting would have an adverse fiscal effect on the City. Thus, an Executive Session for these matters is authorized pursuant to North Dakota Century Code 44-04-19.1 subsections 2, 5 and 9.

Regular Meeting at 5:00 PM

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, January 22, 2024; Special Meeting, January 23, 2024).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Receive and file 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.
- 2. 2nd reading and final adoption of an Ordinance rezoning certain parcels of land lying in The Pines at the District Fourth Addition to the City of Fargo, Cass County, North Dakota; 1st reading, 1/22/24.
- 3. Gaming Site Authorization for West Fargo Baseball, Inc. at Puerto Vallarta Bar and Grill.
- 4. Applications for Games of Chance:
 - a. Fargo-Moorhead #246 of the National Association of Women in Construction for a raffle on 3/7/24.
 - b. Vietnam Veterans of American Chapter #941 for a calendar raffle from 3/1-3/30/24.
 - c. Red River Range for a raffle on 4/19/24.
 - d. St. Mary's Cathedral for a raffle on 5/5/24.
 - e. Ronald McDonald House Charities of the Red River Valley for a raffle board on 2/10/24.
 - f. USA Wrestling of North Dakota for a raffle on 7/18/24.
- 5. Contract and bond for Project No. SL-23-B1.

6. Bid advertisement for Project No. SR-24-A.
7. Memorandum of Offer to Landowner for an Easement (Temporary Construction Easement) with Aaron Properties, LLC (Improvement District No. BR-23-G2).
8. Purchase of Service Agreement with ND Department of Health and Human Services, Behavioral Health Division for withdrawal management program.
9. Purchase of Service Agreement with FM Metropolitan Council of Governments.
10. Notice of Grant Award from ND Department of Health and Human Services for PHEP-EPR All Hazards (CFDA #93.069).
11. Notice of Grant Award from the ND Department of Emergency Services for FY 2023 State and Local Cybersecurity Grant Program and related budget adjustments (CFDA #97.137).
12. Agreements to provide in-kind contributions to Comstock Services LLC, JGC Leasing LLC and Kjos Investments LLC for the Corvent Medical Project.
13. Tree and Stump Removal Services – 2024 Agreement with Cougar Tree Care, Inc. (RFP21023) and Landscape Maintenance Services – 2024 Agreement with All-Terrain Grounds Maintenance (RFP22004).
14. Bills.

REGULAR AGENDA:

15. **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:**

16. **PUBLIC HEARING** – Annexation of 14.20 acres, more or less located in a part of the Northwest Quarter of Section 14, Township 140 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota
 - a. 1st reading of annexation Ordinance.
17. **PUBLIC HEARING** – 46th Avenue Industrial Park Addition (3336 52nd Avenue North); approval recommended by the Planning Commission on 7/6/23:
 - a. Zoning Change from AG, Agricultural to LI, Limited Industrial.
 - b. 1st reading of rezoning Ordinance.
 - c. Plat of 46th Avenue Industrial Park Addition.
18. Receive and file General Fund 2023 Year End Projections.
19. 2023 Downtown Fargo Business Improvement District Overview.
20. Applications for Property Tax Exemptions for Improvements Made to Buildings:
 - a. Conner Riley, 120 University Drive South (5 years).
 - b. James and Sandra Roers, 4420 Carrie Rose Lane South (5 years).
 - c. Gregory and Suzanne Morrison, 4422 Carrie Rose Lane South (5 years).
 - d. Timothy and Patricia Mayo, 4404 Carrie Rose Lane South (5 years).

- e. Brian and Marea Berg, 135 North Woodcrest Drive North (5 years).
- f. Robert and Kathleen Bennett, 3221 36 Avenue South (5 years).
- g. Ann Zimny, 1010 26 Street North (5 years).
- h. Spaceage Properties, LLC, 1402 39th Street North (5 years).
- i. Kevin and Jeanne Moug, 4406 Carrie Rose Lane South (5 years).
- j. Mary Ann Armbrust, 4428 Carrie Rose Lane South (5 years).
- k. Earlyne Hector, 4440 Carrie Rose Lane South (5 years).
- l. John Hicks, 4424 Carrie Rose Lane South (5 years).
- m. Thomas and Anna Marie Heistand, 4408 Carrie Rose Lane South (5 years).

21. 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.

CITY ATTORNEY

Nancy J. Morris

ASSISTANT CITY ATTORNEYS

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

February 1, 2024

(1)

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

**RE: An Ordinance Amending the 2021 International Property Maintenance Code
Relating to Pool Enclosure Requirements**

Dear Commissioners,

Enclosed for your approval is an ordinance amending Section 31-0102 of the Fargo Municipal Code relating to enclosure requirements for swimming pools, spas, and hot tubs found in the 2021 International Property Maintenance Code (IPMC). This ordinance adopts certain additional standards found in the 2021 International Swimming Pool and Spa Code which act to clarify what pool enclosures are acceptable, where to place them, and how to ensure proper stabilization of the enclosures. These additional standards have been reviewed and approved by the Board of Appeals at its January 4, 2024 meeting.

At its January 22, 2024 meeting, the Board of City Commissioners directed the City Attorney's Office to amend the IPMC to adopt and clarify these standards for pool enclosures. As such, I am remitting to you for your approval, an ordinance adopting additional pool enclosure requirements to the IPMC.

Suggested Motion: I move to receive and file 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 and to place the ordinance on for first reading at the next regularly-scheduled city commission meeting.

Sincerely,



Alissa R. Farol Czapiewski
Assistant City Attorney

Enclosure

cc: Shawn Ouradnik, Inspections Department

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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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2 **303.2.7 Chain link dimensions.** The maximum opening formed by a chain link fence shall be not
3 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).

4 **303.2.8 Diagonal members.** Where the barrier is composed of diagonal members, the maximum
5 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.

6 **303.2.9 Clear zone.** Where equipment, including pool equipment such as pumps, filters and
7 heaters, is on the same lot as a pool or spa and such equipment is located outside of the barrier
8 protecting the pool or spa, such equipment shall be located not less than 36 inches (914mm) from
the outside of the barrier.

9 **303.2.10 Doors and gates.** Doors and gates in barriers shall comply with the requirements of
10 Sections 303.3.11 through 303.2.13 and shall be equipped to accommodate a locking device.
11 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.

12 **303.2.11 Utility or service doors and gates.** Doors and gates not intended for pedestrian use,
13 such as utility or service doors and gates, shall remain locked when not in use.

14 **303.2.12 Double or multiple doors and gates.** Double doors and gates or multiple doors and gates
15 shall have not fewer than one leaf secured in place and the adjacent leaf shall be secured with a
self-latching device.

16 **303.2.13 Latch release.** For doors and gates in barriers, the door and gate latch release
17 mechanisms shall be in accordance with the following:

- 18 1. Where door and gate latch release mechanisms are accessed from the outside of the barrier
19 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).
- 20 2. Where door and gate latch release mechanisms are of the self-locking type such as where
21 the lock is operated by means of a key, an electronic opener or the entry of a combination
22 into an integral combination lock, the lock operation control and the latch release
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2 mechanism shall be located above the finished floor or ground surface at residential pools
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)
of the latch shall not be greater than 1/2 inch (12.7 mm) in any dimension.

8 **303.2.15 Structure wall as a barrier.** Where a wall of a dwelling or structure serves as part of
9 the barrier and where windows having a sill height of less than 48 inches (1219 mm) above the
10 indoor finished floor, doors and gates shall have an alarm that produces an audible warning when
the window, door or their screens are opened. The alarm shall be listed and labeled as a water
hazard entrance alarm in accordance with UL 2017.

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

14 **303.2.16 On-ground residential pool structure as a barrier.** An on-ground residential pool wall
15 structure or a barrier mounted on top of an on-ground residential pool wall structure shall serve as
a barrier where all the following conditions are present:

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

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ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN THE PINES AT THE DISTRICT FOURTH ADDITION TO THE
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

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

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

WHEREAS, the rezoning changes were approved by the City Commission on January 22, 2024,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot One (1), Block One (1) of The Pines at the District Fourth Addition to the City of Fargo, Cass County, North Dakota,

that is currently zoned "LC", Limited Commercial, District, subject to the existing "C-O", Conditional Overlay, Districts, as established by Fargo Municipal Ordinance Nos. 4634 and 4688, will hereby retain the base zoning of "LC", Limited Commercial District, and repeal the "C-O", Conditional Overlay, Districts and re-establish the "C-O", Conditional Overlay, District as follows:

Conflicting Provisions.

In the event of a conflict between these standards and provisions found in other adopted codes, ordinances, or regulations of the City of Fargo, the more stringent and/or restrictive provisions shall control.

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Definitions.

1 **Major Tenant/Buildings:** Major Tenants are defined as single tenants or buildings
2 larger than 80,000 SF.

3 **Sub-Major Tenant/Buildings:** Sub-Major Tenants are defined as tenants or buildings
4 larger than 10,000 SF and less than 80,000 SF.

5 **In-Line Shop Buildings:** In-Line Shop Buildings are defined as common depth in-line
6 buildings that can accommodate a variety of tenants in varying width storefronts. Shop
7 buildings are typically less than 16,000 SF.

8 **Village Buildings:** Village buildings are situated in the Village area of the project. They
9 are thematically connected with plazas, hardscape, design, and common outdoor seating
10 areas. Village buildings are defined as individual buildings or tenants typically greater
11 than 6,000 SF and less than 8,000 SF.

12 **Pad Site Buildings:** Pad Site Buildings are defined as individual tenants or buildings
13 typically less than 8,000 SF with dedicated parking. Free standing Restaurants and
14 Banks are representative tenants of this group.

15 **Architectural Design.**

16 **Building Exterior Materials.**

17 Approved Materials:

- 18 • Natural stone
- 19 • Synthetic stone products (bottom of stone 6" above grade minimum) Village
20 shops only
- 21 • Integrally colored ground face or split face concrete block
- 22 • Brick Masonry (clay-fired or concrete cured)
- 23 • Wood
- EIFS (above 6'-0" above grade)
- Accent architectural metal panel (not to exceed 5% of building elevation)
- Architectural steel
- Standing seam metal roofing

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- Storefront or curtain wall glazing systems
- Tilt up/precast concrete panels (with brick/masonry and/or ceramic cladding and/or architecturally detailed finish)
- Wood or synthetic siding (not to exceed 10% of building elevation)

Prohibited Materials and Treatments:

- Metal wall panels exceeding 5% of building elevation.
- Painted concrete masonry units
- Full ceramic tile walls
- Highly reflective wall treatments
- The use of reflective glazing, with over 65% reflectivity
- Exposed neon or color tubing (except with Developer & City of Fargo approval.)
- Untextured concrete or untreated CMU or plain/untextured tilt-up/precast concrete panels

Architectural Features.

Architectural features, which project over the sidewalk, must be a minimum of nine (9) feet above the sidewalk. These include balconies, eaves, decorative roofs, entry features, trellises, canopies and fabric awnings. Internally lit awnings shall not be used. No such improvements shall encroach into bike or street travel lanes.

Roof Top Screening.

Parapets shall conceal flat roofs and rooftop equipment such as HVAC units from public view, from the interior of the site, from a distance of 200 feet. The average height of such parapets shall not exceed fifteen percent (15%) of the height of the supporting wall and such parapets shall not at any point exceed one-third (1/3) of the height of the supporting wall.

Truck Docks/Trash Enclosures.

All truck docks must be fully screened with materials to match the adjacent building. The screen walls shall be a minimum height of 8' -0" above grade. Trash enclosures must be constructed out of a masonry material. Doors must fully screen the interior of the trash enclosure. Trash compactors can be incorporated into Truck Docks. Trash enclosure walls shall be a minimum of 8' -0" above grade.

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Building Entrances.

Each primary building on a site, regardless of size, shall have clearly defined, highly-visible public entrances featuring no fewer than two (2) of the following:

- Canopies, awnings or porticos.
- Recesses/projections varying the façade
- Arcades
- Raised corniced parapets over the door
- Peaked roof forms
- Arches
- Entry courts
- Planter and wing walls integrated with building
- Outdoor patios
- Display Windows

Each development shall contribute to the establishment or enhancement of community and public spaces by providing at least two (2) of the following which have direct access to the public sidewalk network and such features shall not be constructed of materials inferior to the principal materials of the building and landscape.

- Patio/seating area
- Pedestrian plaza with benches and planters
- Bike parking areas
- Window shopping walkway
- Outdoor playground
- Water feature

Architectural articulation shall be evident at primary entrances. These shall feature gable or hip roof forms clad in standing seam metal with an accent lighted fascia Textural and massing changes are required for visual interest as well as reinforcing "human scale." Maximum entry feature height and maximum parapet height is as follows:

Major Building:	45'-0"/35'-0"
Sub-Major Building:	42'-0"/30'-0"
In-Line Shop Building:	NA/24'-0" w/ Architectural Tower not to exceed 35'-0"
Village Building:	30'-0"/24'-0" w/ Architectural Tower not to exceed 40'-0"

Scored concrete patterns and textured concrete (non-slip) and/or unit pavers at

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entrances are required. Sidewalk paving patterns at entries must extend from the storefront to the back of curb, or to the established line, or edge, of the street, or vehicle access route, and be at least as wide as the glazing system at the entry.

Building Elevations.

Break down building massing to a human scale eliminating uninterrupted flat facades by articulating a wall plane with the following architectural elements:

- Change in plane at change of material
- Change in color, texture or material
- Windows
- Trellises, awnings or canopies
- Cast stone detailing in horizontal bands
- Raised planters
- Pilasters or over framed elements
- Brick type material (20% of elevation)

Use the above architectural elements to limit uninterrupted wall planes to no more than 75 feet.

All buildings shall be designed to incorporate no fewer than four (4) of the architectural elements from the list below. Buildings over 10,000 square feet must include a minimum of six (6) and buildings over 80,000 square feet must include a minimum of seven (7) of the referenced architectural elements:

- Canopies, awnings or porticos
- Recesses/projections
- Arcades
- Peaked roof forms
- Outdoor patios
- Display Windows
- Architectural details (such as tile work and moldings) integrated into the building façade
- Articulated cornice line
- Integrated planters or wing walls that incorporate landscape and sitting areas
- Offsets, reveals or projecting rib used to express architectural/structural bays
- Accent materials (minimum 15% of exterior façade)
- Varied roof heights
- Other architectural features approved by the City

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Specific Convenience Store and Gas Station Standards.

- Canopies shall not exceed twenty-four (24) feet in height
- The maximum illumination at grade under the canopy shall not exceed twenty (20) foot candles.
- The minimum distance between parallel fuel pump islands shall be twenty-five (25) feet. The minimum distance from the outside edge of the fuel pump island and a required drive lane shall be no less than twelve (12) feet.
- The minimum distance from the end of a fuel pump island and a required drive lane shall be no less than fifteen (15) feet.

Signage Design.

Sign Area.

Sign area shall be measured for all types of signs as follows:

1. Signs with backing shall include, but not limited to, cabinet signs or signs that are outlined or framed. The area of a cabinet sign or sign enclosed by a box, outlined or framed, shall be measured by determining the smallest possible area of any rectilinear geometric shape that utilizes eight or fewer lines that join each other at right angles that enclose the extreme limits of the display surface or face of the sign; including all frames, backing, face plated, nonstructural trim or other component parts not otherwise used for support.
2. Signs without backing. If the sign is composed of individual letters or symbols that are mounted against a surface that has not been painted, textured or otherwise altered to provide a distinctive background for the sign copy, the area of the sign shall be measured by determining the area of the smallest possible area of a rectilinear geometric shape that utilizes eight or fewer lines that join each other at right angles that enclose the extreme limits of each message.
3. Multi-faced signs. Sign area or signs which have two parallel sign faces assembled in such a way that the faces cannot be viewed from any one point at the same time shall be calculated using only the larger of the two sign faces. Sign area for signs which have multiple sign faces not being parallel, which can be viewed from any one point at the same time, such as a v-shaped, triangles or cubes, shall be calculated using the total of all faces.

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4. When a sign is spherical, free form, sculptural or other non-planar form, the sign area is measured as the sum of the area of the four vertical sides of the smallest polyhedron that will encompass the sign structure.
5. An illuminated canopy, awning, or architectural feature of a building is not considered a distinctive background for the purposes of measuring the sign area.
6. Neon or other outdoor building background for the purposes of measuring the sign area. Neon or other outdoor building illumination, which does not identify or convey information, is not considered in the calculation of sign area. All neon lighting must be approved by the Landlord and the City of Fargo.
7. Works of art, architectural features and building decoration, which contain or portray a commercial message suggestive of the on-site business shall be interpreted to constitute a sign, and the area shall be included in the calculation for determining the allowable sign area.

Sign Type Descriptions.

The Master plan Project signage includes the following:

Tenant Highway Monument/Pylon Sign (Sign Type A):

Signs are located along 1-29. Monuments are allowed for Major tenants 1, 2, Maximum height is 34'-2".

Single Tenant Monument (Sign Type B):

Signs are located at interior access points. Maximum height 6' -9".

Project Identity/City Gateway Monument (Sign Type C):

Sign is placed on the islands located inside the ponds at the intersection of 38th Street and 52nd Avenue.

Entry Tower Multi Tenant Monument (Sign Type D):

Tower is located at the site entry along 38th Street. Stores under 80,000 SF are permitted (1) one-2'-1" x 10' -8" panel each side. Stores over 80,000 SF are permitted (1) one-4'-2" x 10'-8" panel each side. Maximum height 45'-0".

Prohibited Signage.

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Animated Sign means a sign having an intermittent or continuing variation in the illumination or physical position of any part of the device, except variations required for displaying time or temperature information.

Awning sign means a sign attached to an awning.

Billboards mean a sign advertising products not made, sold, used or served on the premises displaying the sign or that conveys an informational or ideological message.

Fence Signs means a sign affixed in any way to or painted on a fence.

Off Site Sign means a sign directing attention to a business commodity, service, product, or property not located, sold or conducted on the same property or site as that on which the sign is located. Off site signs are not permitted except as indicated in the Signage Master plan.

Pennant means a flag tapering to a point usually strung together by line or rope.

Portable Sign means any sign designed to be moved easily and not permanently affixed to the ground or to a structure or building.

Roof Sign means a sign erected above the highest point of a flat roof or mounted on a gable pitched or hipped roof.

Vehicular Sign means a sign or business identification affixed to any vehicle, including but not limited to automobiles, trucks, tractors, trailers, wagons, carts, manufactured homes and similar vehicles and their accessories.

Exterior Window Sign means any sign painted or applied to the interior/exterior of the window of a tenant.

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Sign Requirements.

Walls

Sign Criteria	
Maximum Sign Area	<p>Major and Sub-Major Tenants:</p> <ul style="list-style-type: none"> • 90 square feet or 17.5% of the square footage of the largest elevation of a single user building on a zone lot or the end cap of a Sub Major bar, whichever is greater shall be used to determine the maximum sign area. • The maximum percentage on any one face is not to exceed 8% of the largest elevation • If the building is a joint use building with 2 elevations available for signage, 60 square feet or 12% of the square footage of the largest leased exterior wall of a leased space shall be used to determine the maximum sign area.
Maximum Number of Signs:	No limit
Maximum Height:	Determined by the wall the sign is attached to
Illumination:	Only concealed illumination
Special Requirements:	

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Sign Criteria	
Maximum Sign Area	<p>Village and In-Line Shop Tenants:</p> <ul style="list-style-type: none"> • 6% of the square footage of the front building elevation of a single tenant of a Village shop or In-Line shop shall be used to determine the maximum sign area for the front of the building. Maximum sign height is 2'-0" • 5% of the square footage of the rear building elevation of a single tenant of a Village shop or In-Line shop shall be used to determine the maximum sign area for the rear of the shop. Maximum sign height is 2'-0". <p>3% of the square footage of the side building elevation of a single tenant end cap of a Village shop or In-Line shop shall be used to determine the maximum sign area for the exposed side of the shop. Maximum sign height is 2' -0".</p>
Maximum Number of Signs:	No limit
Maximum Height:	Determined by the wall the sign is attached to
Illumination:	Only concealed illumination
Special Requirements:	If there are continuous Village or In-Line shops sign faces for the different spaces must be centered in the sign band and have a minimum of 5'-0" separating the signs.

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Highway Monument/Pylon Signs

Sign Criteria	
Maximum Sign Area	Refer to Sign Type A
Maximum Number of Signs:	2
Maximum Height:	34'-2"
Illumination:	Concealed illumination or up lights with shielded fixtures
Special Requirements:	

Monuments Signs

Sign Criteria	
Maximum Sign Area	Refer to Sign Type B Entry Single Tenant Identity Monument:
Maximum Number of Signs:	Refer to Signage Location Plan
Maximum Height:	6'-9" Sign Type B
Illumination:	Concealed illumination or up lights with shielded fixtures
Special Requirements:	

Canopy Signs (Gas Station)

Sign Criteria	
Maximum Sign Area	60 square feet
Maximum Number of Signs:	2 per canopy
Maximum Height:	Below top of canopy
Illumination:	Only concealed illumination. Illuminated sign(s) on canopy. Canopy fascia not to be illuminated.
Special Requirements:	

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Menu Signs

Sign Criteria	
Maximum Sign Area	30 square feet
Maximum Number of Signs:	2 per drive through
Maximum Height:	6' -0"
Illumination:	Only concealed illumination
Special Requirements:	

Construction Signs

Sign Criteria	
Maximum Sign Area	32 square feet
Maximum Number of Signs:	1 per Major, Sub-Major or Pad Site tenant only
Maximum Height:	6' -0"
Illumination:	Not Permitted
Special Requirements:	

Future Use Identification Signs

Sign Criteria	
Maximum Sign Area	32 square feet
Maximum Number of Signs:	1 per Major, Sub-Major or Pad Site tenant only
Maximum Height:	6'-0"
Illumination:	Not Permitted
Special Requirements:	

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Landscape Design.

Access and Circulation.

Separate vehicular and pedestrian circulation systems should be provided. An on-site system of pedestrian walkways shall be designed to provide direct access and connections to and between the following:

- the primary entrance or entrances to each commercial building, including pad site buildings
- any sidewalks or walkways on adjacent properties that extend to the boundaries shared with the commercial development
- parking areas or structures that serve such primary buildings
- connections between the on-site (internal) pedestrian walkway network and any public sidewalk system located along adjacent perimeter streets shall be provided at regular intervals along the perimeter street as appropriate to provide easy access from the public sidewalks to the interior walkway network
- any public sidewalk system along the perimeter streets adjacent to the commercial development
- where practical and appropriate, adjacent land uses and developments, including but not limited to residential developments, retail shopping centers, office buildings

Walkways or sidewalks shall be a minimum of five (5) feet in width. At each point that the on-site pedestrian walkway system crosses a parking lot or internal street or driveway, the walkway or crosswalk shall be clearly marked through the use of a change in paving materials distinguished by their color, texture or height, such as brick, concrete pavers, scored or patterned colored concrete.

Provide "mid-block" pedestrian corridors on long blocks.

Continuous pedestrian walkways of eight feet (8') wide should be provided along the full length of a primary building along any façade featuring a customer entrance and along any facade abutting customer parking areas. Such walkways should be located at least six feet (6') from the facade of the building to provide planting beds for foundation landscaping, except where features such as arcades or entryways are part of the facade.

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Public Right-of-Way.

The following landscape requirements shall be applicable for all areas within public rights-of-way.

At least one (1) street tree is required for every 35 feet of local street frontage unless the City Forester determines that additional space between trees is necessary to address specific siting or other conditions. All areas of right-of-way for streets and utilities not covered by concrete, asphalt or such other material for vehicular, bicycle or pedestrian travel shall be covered by grass or groundcover, unless otherwise approved by the Zoning Administrator.

At least one (1) street tree is required for every 50 feet of collector and arterial street frontage unless the City Forester determines that additional space between trees is necessary to address specific siting or other conditions. All areas of right-of-way for streets and utilities not covered by concrete, asphalt or such other material for vehicular, bicycle or pedestrian travel shall be covered by grass, unless otherwise approved by the Zoning Administrator.

Required street trees shall be installed within the street right-of-way or within ten (10) feet of the street right-of-way. If street trees are to be located outside of the right-of-way, the City shall be authorized to require the establishment of a 15-foot landscape easement. The proposed location of street trees must be shown on the Amenities Plan that accompanies the subdivision plat.

Street trees need not be placed exactly at 35 or 50 foot intervals, but they must be placed fairly evenly along the street frontage. The City Forester shall have the authority to determine the final location of street trees, based on site factors such as the location of utilities and driveways, intersection visibility requirements and other factors.

Street trees must comply with the following minimum size standards (all sizes to be measured in accordance with American Standards for Nursery Stock published by the American Association of Nurserymen.)

- Street trees planted adjacent to local streets must be a minimum size of 3 1/2-inch caliper.
- Street trees planted adjacent to collector streets must be a minimum size of 3 1/2- inch caliper.

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- Street trees planted adjacent to arterial streets must be a minimum size of 4-inch caliper.

Organic mulch (woodchips) shall be installed to a minimum coverage thickness of 2 inches around street tree plantings within a radius to 3 feet of the trunk base.

Views into parking lots shall be screened from all public and private right of ways.

Plant materials must be located such that a minimum two-foot clear zone behind the back of curb allows for car bumper overhang unless curb stops are utilized.

Shrubs shall be massed in order to strengthen street edges and buffer parking lots.

Medians in public rights-of-way shall be landscaped pursuant to City of Fargo Land Development Code or as approved in the Development Permit process.

Open Area Landscaping.

The following landscape requirements shall be applicable for all landscape open areas.

Landscaping provided to meet the Site Perimeter and Parking Lot Landscaping standards may not be counted towards meeting a project's Open Space Landscaping requirements. Landscaping provided in excess of either of these standards may count to Open Space Landscaping requirements.

All developments are required to provide at least five (5) plant units for each 1,000 square feet of lot area or fraction thereof based on the following table, and ten (10) square feet per plant unit shall be provided

Type of Plant Material	Size	Equivalent Plant Units
Large, Mature Deciduous Tree	2 to 3.5-inch caliper >30 foot mature height	10
Large, Mature Evergreen Tree	8/10 foot height >30 foot mature height	10
Small, Mature Deciduous Tree	1.5 to 3-inch caliper 12 to 30 foot mature height	5
Small, Mature Evergreen Tree	4 to 5 foot height 12 to 30 foot mature height	5
Mature Shrub	2 gallon	1
Perennial Plants	2 gallon 1 gallon	1 0.5

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A minimum of 70 percent of the plant units required shall be installed in required front or street side setback areas.

1 A maximum of 50% of the total landscape area of each property may be
2 planted with approved turf.

3 **Parking.**

4 All developments shall meet the Off-Street Parking Schedules in Section 20-0701 B
5 of the Land Development Code. All developments shall be allowed to have a maximum
6 of 20% more spaces than the required minimum. Any additional spaces above the
7 required 20% shall be allowed only through a conditional use permit. The conditional
8 use permit shall be granted in accordance with Section 20-0909 upon the finding that
9 additional spaces are needed. The applicant and City shall agree to a specified amount
10 of additional plant units to be provided for the increased amount of parking starting at
11 a base of 5% additional plant units provided for each 5% increase in parking.

12 All developments seeking to provide fewer off-street parking spaces than required in
13 the Off-Street Parking Schedule of Sec. 20-0701-B, shall secure approval of an
14 Alternative Access Plan in accordance with Sec. 20-0701-E. Shared parking between
15 adjacent businesses and/or developments is highly encouraged whenever practical.

16 Off-street parking must be provided within 500 feet from the principal use and must
17 not be located where crossing of a roadway classified as a collector or higher is
18 required.

19 In order to reduce the scale of parking areas, the total amount of parking provided
20 shall be broken up into parking blocks containing no more than 90 spaces which:

- 21 • Are separated from each other by landscaping, access drives or public streets,
22 pedestrian walk ways or buildings.
- 23 • Have a consistent design angles for all parking within the block.
- Are oriented to buildings to allow pedestrian movement down and not across rows
so that they are walking parallel to moving cars and the need to cross parking aisles
and landscaped areas is minimized.

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Where parking blocks are not easily defined, there shall be no more than fifteen (15) spaces without an intervening, landscaped island at least nine (9) feet wide. A minimum of 25% of the islands shall have a tree.

1 All parking plans shall identify areas for snow storage in the winter months.

2 As applicable, shopping cart return stations shall be evenly distributed within and
3 between separate parking blocks and be identified on the final plan.

4 Required off-street parking areas are to be used solely for the parking of licensed,
5 motor vehicles in operating condition. Required spaces may not be used for the display
6 of goods for sale or lease or for long-term storage of vehicles, boats, motor homes,
7 campers, mobile homes, or building materials.

8 **Parking Lot Landscaping.**

9 The following additional landscape requirements shall be applicable for all landscaped
10 parking lots.

11 Landscaping provided to meet Site Perimeter and Open Space Landscaping standards
12 shall not be counted toward meeting the Parking Lot Landscaping standards.

13 Parking lot perimeter buffers shall be required for any off-street parking area
14 containing more than six (6) parking spaces that is within 100 feet (100') of a public
15 street or within 50 feet (50') of an adjoining residential use or zoning district. Parking
16 lot screening shall be required to be:

- 17 • Provided within ten feet (10') of the perimeter of the parking lot or driveway to be
18 screened.
- 19 • At least three feet (3') in height above the adjacent finished surface of the parking
20 area.
- 21 • Encompass a minimum of 100% of the linear distance of the parking area and/or
22 driveway(s). The maximum distance between screening shall be fifteen feet (15').
- 23 • Of one of the following materials:
 - 24 i. Plant material screen - a compact shrub of evergreen or densely
25 twigged deciduous shrubs planted at three feet (3') on center in one
26 row or at six feet (6') on center in two (2) staggered rows.
 - 27 ii. An architecturally compatible solid wall or solid fence.

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1 iii. A berm. Berms shall have a minimum crown width of two feet (2')
2 and shall be planted with vegetation. The height, slope and area
3 required for the berm shall be appropriate to the prevention of
4 erosion and to facilitate safe maintenance of the berm. The
5 maximum slope for any berm shall be 3:1.

6 iv. Plant materials, architecturally compatible walls, and berms may
7 be used in combination to screen.

8 Each parking block shall be separated from other parking blocks by a landscaped
9 median or berm that is at least eight feet (8') wide, or by a landscaped median with
10 a pedestrian walkway or sidewalk that is at least ten feet (10') wide, or by a low
11 decorative fence or wall that has a maximum height of three feet (3') bordered by
12 landscaping on at least one side.

13 The primary landscaping material to be used within a parking lot shall be trees
14 which provide shade or are capable of providing shade at maturity. Shrubbery, hedges
15 and other planting materials may be used to complement the tree landscaping.

16 Trees should be located throughout the parking lot and not simply at the ends of
17 parking aisles. In order to be considered within the parking lot, trees should be
18 located in planters that are bounded on at least three (3) sides by parking area
19 paving.

20 Within parking lot islands and medians, trees shall be a minimum of four feet (4')
21 from any curb edge. All parking lot islands shall maintain an eighteen inch (18")
22 clear zone from any curb edge. In no circumstance shall any shrub, perennial or
23 ornamental grass have a mature height of more than three feet (3').

 Plant materials must be located such that a minimum two-foot clear zone behind the
 back of curb allows for car bumper overhang unless curb stops are utilized.

 Shrubs shall be massed in order to strengthen street edges and buffer parking lots.

 At 18' and wider islands, a 3' wide band of 3" to 6" diameter cobble mulch over
 filter fabric shall be provided behind the curb. Top of cobble shall not be higher than
 the adjacent top of curb. All cobble shall be hand laid with flat sides down. Interior
 to the cobble mulch shall be Shredded Hardwood mulch.

 At 9' and up to 18' wide islands, a 2' wide band of 3" to 6" diameter cobble mulch

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1 or river rock over filter fabric shall be provided behind the curb. Top of cobble/river
2 rock shall not be higher than adjacent top of curb. All cobble/river rock shall be
3 hand laid with flat sides down. Interior to the cobble/river rock mulch shall be
4 Shredded Hardwood mulch.

5 Parking lot islands in front of all buildings shall be a minimum 18 feet wide and 18
6 feet long and contain a minimum of 3 TE per island or as approved in the
7 Development Permit process.

8 **Building Perimeter and Pad Site Foundations.**

9 Building foundations shall be planted with ornamental plant material, such as
10 ornamental trees, flowering shrubs and perennials, and ground covers. Landscaping
11 should also include benches.

12 Regularly maintained turf areas are acceptable.

13 In lieu of foundation plantings and/or turf areas adjacent to the building entryways and
14 areas bordering public parking; raised landscape planters and/or plaza-like treatment of
15 the ground plane will be considered pending review of the City.

16 **Service Area, Loading Dock and Utility Device Screening.**

17 Service, loading and utility areas shall be screened by fences, walls, landscaping,
18 berms, or any combination thereof.

19 Service areas must double (2x) the open space landscaping requirements.
20 See requirements of Plant Material Standards & Upgrades.

21 Service, loading, and utility areas visible from residential areas shall be screened with
22 a wall, berm, trellising or combination, in addition to landscape requirements.

23 **Detention, Retention, Water Quality Ponds and Bio-Swales.**

Detention, retention, and water quality ponds shall be integrated physically,
functionally, and aesthetically into the adjacent landscape design. Vegetated slopes
shall not exceed 4:1 and all pond turf areas shall be properly drained. Water quality

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enhancement areas within the bottom of the pond shall be planted with vegetation that is appropriate with the presence of saturated soils and fluctuating water levels.

1 Pond depth should be limited to not more than ten feet. Pond grading should be designed
2 to accommodate access for maintenance equipment. Rock-scaped or riprap slopes are
3 prohibited except when necessary for erosion control and when approved by the City of
4 Fargo. Ponds shall be designed with natural sides and bottoms and shrub beds adjacent to
5 the top for transition to traditional, cultivated landscapes. Wetland plantings in low spots
6 will be encouraged.

Additional landscaped requirements for areas surrounding detention, retention and water quality ponds are as follows:

- The area within the tract surround the pond(s) shall be double (2x) the requirements of open space landscaping.
- All natural seeded areas shall be watered by a permanent automatic irrigation system

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8 Bio Swales are encouraged in lieu of underground storm sewer whenever practical.
9 The use of Bio Swales will allow the reduction of parking lot landscaping by 50%.

10 **Plant Material Standards & Upgrades.**

11 Plant material standards shall be upgraded at Service Areas, Loading Docks and Utility
12 Device areas. To provide a more immediate screening of these areas. Other locations, as
13 identified during the Development Permit process shall meet the "Upgraded" provisions
14 as noted below:

Plant material for all landscape areas utilized as Service Areas, Loading Docks, and Utility Device areas shall be installed in the following minimum sizes:

- Deciduous and Ornamental trees - B&B or tree spade, 3" caliper or 10' height clump.
- Evergreen Trees - B&B or tree spade, 10' to 12' height
- Deciduous and evergreen shrubs - #5 container
- 50% of evergreen trees to have 12' height minimum
- 75% of all trees to be evergreen

19 Plant material for all landscape areas identified as Upgraded Landscape Areas, shall be
20 installed in the following minimum sizes:

- Deciduous and Ornamental trees - B&B or tree spade, 3" caliper or 10' height clump.
- Evergreen Trees - B&B or tree spade, 8' to 12' height

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- Groundcover - #1 container
- Deciduous and evergreen shrubs - #5 container
- 50% of evergreen trees to have 12' height minimum
- 50% of all trees to be evergreen

Plant material for all landscape areas shall be installed in the minimum sizes established in the Open Space Landscaping requirements of these Standards.

Organic and Inorganic Mulches and Landscape Materials.

The following mulches shall be used as described below:

Perennial, ground cover and ornamental grass shrub beds shall include 3" depth Shredded Hardwood mulch over filter fabric. Re-apply wood mulch as necessary due to settlement.

Landscape parking lot islands shall include a band of 3" to 6" diameter cobble mulch or river rock behind the curb over filter fabric. Cobble mulch shall be keyed-in with brown breeze crusher fines. Interior to the cobble mulch/river rock shall be 3" depth Shredded Hardwood mulch.

Remaining planting beds shall include 1-1/2" diameter river rock mulch with filter fabric, as approved in the Development Permit process.

Mulches shall match development type and samples shall be provided to Developer's Landscape Architect for review and approval prior to installation.

Landscape Design Requirements.

Tree diversity requirements shall be met as follows: 10-19 trees (no more than 50% of any one species), 20 and over trees (no more than 33% of any one species).

Section 2. The following described property:

Lot Two (2), Block One (1) of The Pines at the District Fourth Addition to the City of Fargo, Cass County, North Dakota,

that is currently zoned "LC", Limited Commercial, District, subject to the existing "C-O",

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Conditional Overlay, District, as established by Fargo Municipal Ordinance No. 4688, will hereby retain the base zoning of "LC", Limited Commercial, District, and retain the "C-O", Conditional Overlay, District as follows:

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3 1. This Conditional Overlay is intended to provide for a higher quality of design than is afforded by the City of Fargo Land Development Code regarding the future commercial development.
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8 2. All primary buildings shall be constructed or clad with materials that are durable, economically-maintained, and of a quality that will retain their appearance over time, including but not limited to natural or synthetic stone; brick; stucco; integrally-colored, textured or glazed concrete masonry units; high-quality pre-stressed concrete systems; or glass. Natural wood or wood paneling shall not be used as a principal exterior wall material, but durable synthetic materials with the appearance of wood may be used.
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11 3. Color schemes shall tie building elements together, relate pad buildings within the same development to each other, and shall be used to enhance the architectural form of a building.
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15 4. All building facades greater than 150 feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the facade, and extending at least 20 percent of the length of the facade. No uninterrupted length of any facade shall exceed 150 horizontal feet. An articulated façade would emphasize elements on the face of a wall including change in setback, materials, roof pitch or height.
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18 5. Ground floor facades that face public streets shall have arcades, display windows, entry areas, awnings, or other such features along no less than 60 percent of their horizontal length. If the facade facing the street is not the front, it shall include the same features and/or landscaping in scale with the facade.
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22 6. Flat roofs and rooftop equipment, such as HVAC units, shall be concealed from public view by parapets, including but not limited to the back of the structure. The average height of such parapets shall not exceed one third of the height of the supporting wall, and such parapets shall not be of a constant height for a distance of greater than 150 feet.

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7. Loading facilities shall not be located at the front of structures where it is difficult to adequately screen them from view. All loading and service areas shall be screened from the view of adjacent public streets through a structure and/or landscaping.
 8. Dumpsters and outdoor storage areas must be completely screened from view. Collection area enclosures shall contain permanent walls on three (3) sides with the service opening not directly facing any public right-of-way or residentially zoned property. The fourth side shall incorporate a metal gate to visually screen the dumpster or compactor.
 9. Separate vehicular and pedestrian circulation systems shall be provided. An on-site system of pedestrian walkways shall be designed to provide direct access and connections to and between the following:
 - a. The primary entrance or entrances to each commercial building, including pad site buildings.
 - b. Any sidewalks or walkways on adjacent properties that extend to the boundaries shared with the commercial development.
 - c. Parking areas or structures that serve such primary buildings.
 - d. Connections between the on-site (internal) pedestrian walkway network and any public sidewalk system located along adjacent perimeter streets shall be provided at regular intervals along the perimeter street as appropriate to provide easy access from the public sidewalks to the interior walkway network.
 - e. Any public sidewalk system along the perimeter streets adjacent to the commercial development.
 - f. Where practical and appropriate, adjacent land uses and developments, including but not limited to residential developments, retail shopping centers, office buildings.

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10. On-premise signs

- 1 a. Every structure and complex should be designed with a precise concept for
2 adequate signing. Provisions for sign placement, sign scale in relationship with the
3 building, and sign readability should be considered in developing the signing
4 concept.
- 5 b. Signage size, color and form should complement the architecture of the building
6 and should not compete or become the focal point of the building form.
- 7 c. Signage must not extend horizontally or vertically past the building
- 8 d. Signage text should be legible from arterial streets, use of recognizable imagery can
9 be substituted for legibility of text. Sign should not be larger than necessary to
10 achieve this legibility from the street.
- 11 e. Sign surface areas must be less than 10% of the building surface.
- 12 f. Signs should be located horizontally above first floor doors and windows, on
13 awnings, or adjacent to building entrances if mounted on a wall.
- 14 g. Corporate logos should be appropriately scaled.
- 15 h. Separate pedestrian oriented signs should be provided when pedestrians cannot see
16 the facade signage which is oriented to the street.
- 17 i. Each development site should be appropriately signed to give directions to loading
18 and receiving areas, visitor parking and other special areas.
- 19 j. Multi-tenant buildings or developments may have one monument or ground
20 mounted sign per street frontage listing all of the tenants. Monument or ground
21 mounted signs for individual businesses in multi-tenant buildings or developments
22 are prohibited. Monument-type signs are the preferred alternative for business
23 identification whenever possible.

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- k. Signs should advertise a specific building or business, not products, trademarks, or special events.
- l. Window signs used for shop fronts or mixed-use buildings are permitted provided that the aggregate total of all window signs for each business shall not exceed 25% of its respective window area.

11. A minimum of 4.5% of the internal surface area of the parking lot shall be landscaped. The cumulative open space (green space) of each lot shall consist of at least 15% of the lot.

12. The following use(s) are prohibited:

- a. Detention Facilities
- b. Adult Entertainment Center
- c. Off-Premise Advertising Signs (directional signs that are less than 50 square feet in size are exempt for this prohibition)
- d. Portable Signs
- e. Vehicle Repair
- f. Industrial Service
- g. Manufacturing and Production
- h. Warehouse and Freight Movement
- i. Aviation/Surface Transportation

13. The Zoning Administrator shall review each applicable Site Plan to determine compliance with this Conditional Overlay and act to approve or deny the Site Plan application.

14. The decision of the Zoning Administrator may be appealed to the Planning Commission.

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:



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

3

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

Full, Legal Name of Gaming Organization
West Fargo Baseball, Inc

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

Name of Location
Puerto Vallarta Bar and Grill

Street 4323 45th Street Suite 101	City Fargo	ZIP Code 58104	County Cass
Beginning Date(s) Authorized 02/15/2024	Ending Date(s) Authorized 06/30/2024	Number of Twenty-One tables, if zero, enter "0" 0	

Specific location where games of chance will be conducted and played at the site (required)
Bar area

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

RESTRICTIONS FOR CITY/COUNTY USE ONLY

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

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

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

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
---	---------------------------------

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

APPROVALS

Attorney General	Date
Signature of City/County Official	Date 2/5/24
PRINT Name and official position of person signing on behalf of city/county above Steven Sprague/City Auditor	

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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



Page 38 APPLICATION FOR A LOCAL PERMIT OR RESTRICT D V T P RMIT
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 GAMING DIVISION
 SFN 9338 (9-2023)

4a

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 Fargo-Moorhead, ND #246 of the National Association of Women in Construc		Dates of Activity (Does not include dates for the sales of tickets) March 7, 2024	
Organization or Group Contact Person Amy Berg	E-mail aberg.nawic@yahoo.com	Telephone Number 218-234-6633	
Business Address 657 2nd Ave N. Unit 736	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different) PO Box 763	City Fargo	State ND	ZIP Code 58107

SITE INFO

Site Name The Hall at Fargo Brewing Company		County Cass	
Site Physical Address 610 University Drive 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.) Thursday, March 7, 2024			

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

Game Type	Description of Prize	Exact Retail Value of Prize
50/50 Raffle - Cash Prize		50% of Pot
Total (limit \$40,000 per year)		\$

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds
Chapter construction industry programs which include scholarships and community outreach programs.

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

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

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

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

Printed Name of Organization Group's Permit Organizer Amy Berg	Telephone Number 218-234-6633	E-mail Address aberg.nawic@yahoo.com
Signature of Organization Group's Permit Organizer <i>Amy Berg</i>	Title Treasurer	Date 1/13/2024

APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

GAMING DIVISION

SFN 9338 (4-2023)

4b

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 VIETNAM VETERANS OF AMERICA CHAPTER # 941		Dates of Activity (Does not include dates for the sales of tickets) 3/1 - 3/30 2024	
Organization or Group Contact Person LARRY NICHOLSON, PRESIDENT	E-mail LARRY.NICHOLSON62@GMAIL.COM	Telephone Number 701-412-7992	
Business Address P.O. Box 7327	City FARGO	State ND	ZIP Code 58106
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name FRYING PAN RESTAURANT	County CASS
Site Physical Address 310 MAIN AVE #170	City FARGO
	State ND
	ZIP Code 58103

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

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

Game Type	Description of Prize	Exact Retail Value of Prize
RAFFLE	MON - FRI 50⁰⁰ 3/4-8, 3/11-15, 3/18-22, 3/25-29	
	SAT - 100⁰⁰ 3/2, 3/9, 3/16, 3/23, 3/30	
Total (limit \$40,000 per year)		\$ 4000⁰⁰

Intended Uses of Gaming Proceeds
DONATIONS TO OTHER NON-PROFIT ORGANIZATIONS

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: **4000⁰⁰** (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	Title	Telephone Number	E-mail Address
Signature of Organization or Group's Top Official Roy Delano	Title RAFFLE COORDINATOR		Date 01/18/2024



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

4c

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 Red River Range		Dates of Activity (Does not include dates for the sales of tickets) April 19, 2024	
Organization or Group Contact Person Terrri Suchy	E-mail tsuchy@rrrnc.com	Telephone Number 701-356-0677	
Business Address 640 16th St. NE	City West Fargo	State ND	ZIP Code 58078
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Ramada	County Cass
Site Physical Address 3333 13th Ave S	City Fargo
	State ND
	ZIP Code 58103

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)
April 19, 2024

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

Game Type	Description of Prize	Exact Retail Value of Prize
raffle	list attached	8553.94
Total (limit \$40,000 per year)		\$ 8,553.94

Intended Uses of Gaming Proceeds
proceeds to be used for range improvements & training classes

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: **14,369.** (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 Terrri Suchy	Title Operation Mgr.	Telephone Number 701-356-0677	E-mail Address tsuchy@rrrnc.com
Signature of Organization or Group's Top Official Michael		Title President	Date 1/18/2024

Friends of the Range Banquet Gun List		
		Purchase \$
Gold Table Guns		
	Black Rain Ordinance Fallout 15 Patriot 5.56	1,184.00
	CZ USA Shadow 2 Black and Blue 9mm	1,087.91
	DPMS DR10	722.47
Blue Table Guns		
	Smith and Wesson Response PCC 9mm	639.95
	Glock 43x 8 mm w/ optic	591.59
	Canik METE SFx Pro Full Size	520.00
Red Table Guns		
	CZ P-10F 9mm 4.5" 19rd	375.86
	Savage Axis II 6.5 creed	434.23
	Rossi Rio Bravo Lever Action Rifle 22LR 18"	372.11
White Table Guns		
	Life Card	249.99
	Citadel Boss 25 12 ga	288.40
	Ruger Security 9 Pro	279.98
Game Guns		
Bullet Pull	Winchester Wildcat 22LR Rifle OD Green	190.00
Shell Toss	Mossberg Maverick 88 Pump 12 ga	215.56
Plinko	Ruger Super Wrangler 22 LR/22Mag Revolver	249.90
Guess How Many	Taurus 22 LR 6.5 FS Flame Engrd	165.27
Card Match Game Guns		
LockedLoaded.com	Hi-Point YC9 9mm Engraved	183.23
LockedLoaded.com	Cricket Chipmunk Pistol .22	199.85
Total Firearms Cost		7,950.30
Card Match Game Other		
	K-Bar Knife	84.55
	Goat Guns	247.20
Firearms Related Other		
	CMMG Bravo 22LR Conversion Kit w/3 25rd mags	164.94
35.65 X 3	Crimson Trace CTS-25 Compact 4.0 Red Dot Sight	106.95
Total Raffle Table Prizes		8,553.94



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

4d

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 St. Mary's Cathedral		Dates of Activity (Does not include dates for the sales of tickets) 5/5/24	
Organization or Group Contact Person Jayme Feakes		E-mail jayme@cathedralofstmary.com	Telephone Number 701-235-4289
Business Address 619 7th St. N.	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name St. Mary's Cathedral		County Cass	
Site Physical Address 604 N. Broadway	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.) Raffle drawing on Sunday, May 5, 2024 at 1:30 pm			

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	Cash prizes	3,500
Raffle	Meat gift card	500 250
Raffle	grocery gift card	250
Total (limit \$40,000 per year)		\$ 4,000

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds
To support our youth program bus for the elderly, building mainten.

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 Jayme Feakes	Telephone Number 701-235-4289	E-mail Address jayme@cathedralofstmary.com
Signature of Organization Group's Permit Organizer	Title	Date



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

4e

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 Ronald McDonald House Charities of the Red River Valley		Dates of Activity (Does not include dates for the sales of tickets) 2/10/24	
Organization or Group Contact Person Jakelle Hoffmann		E-mail jakelle@rmhcfargo.org	Telephone Number 701-232-3980
Business Address 4757 Agassiz Xing S.	City Fargo,	State ND	ZIP Code 58104
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

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

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle Board	10kt. white gold/Blue Topaz Necklace	\$2595.00
Raffle Board	Liquor Wagon - 30 Bottles, wagon + cooler	\$1179.68
Total (limit \$40,000 per year)		\$3774.68

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds
To support sick kids + families served by RMHC

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 Jakelle Hoffmann	Telephone Number 701-232-3980	E-mail Address jakelle@rmhcfargo.org
Signature of Organization Group's Permit Organizer <i>Jakelle Hoffmann</i>	Title Development Director	Date 1/28/24



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

pd ck 1528
 4f

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 USA Wrestling of North Dakota		Dates of Activity (Does not include dates for the sales of tickets) 07-18-2024	
Organization or Group Contact Person Dean Shearer	E-mail shearringneckhunter@hotmail.com	Telephone Number 701-371-2738	
Business Address 2515 76th Avenue North	City Fargo	State ND	ZIP Code 58102
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Fargo Dome	County Cass
Site Physical Address 1800 University Drive North	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.) 7-18-2024 One time raffle drawing	

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	(1) \$1000 Scheels Gift Card	1000
Raffle	(3) \$500 Scheels Gift Card	1500
Raffle	(10) \$200 Scheels Gift Card	2000
SEE ATTACHED		Total (limit \$40,000 per year) \$ 6500

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds
To help provide transportation for approx 180 youth and highschool wrestlers at National team dual events in Iowa and Oklahoma

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

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

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

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

Printed Name of Organization Group's Permit Organizer Dean Shearer	Telephone Number 701-371-2738	E-mail Address shearringneckhunter@hotmail.com
Signature of Organization Group's Permit Organizer <i>Dean R. Shearer</i>	Title Treasurer	Date 1-30-2024

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 project as it will appear in the contract:

Sidewalk & Shared Use Path Rehab/Reconstruction

Project No.	<u>SR-24-A</u>		
Call For Bids	<u>February 5</u>	,	<u>2024</u>
Advertise Dates	<u>February 14, 21 & 28</u>	,	<u>2024</u>
Bid Opening Date	<u>March 13</u>	,	<u>2024</u>
Substantial Completion Date	<u>September 27</u>	,	<u>2024</u>
Final Completion Date	<u>October 18</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 Brandon Beaudry

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
 SIDEWALK & SHARED USE PATH
 REHAB/RECONSTRUCTION
 PROJECT NO. SR-24-A
 VARIOUS AREAS CITY WIDE**

Nature & Scope

This project is for new construction and reconstruction of sidewalks and curb ramps located throughout the City of Fargo.

Purpose

To install new sidewalks and repair existing sidewalks ordered by the City Commission.

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 \$703,555.00. The cost breakdown is as follows:

Sidewalk - Assessed			
Construction Cost			\$519,700.00
Fees			
Admin	4%		\$20,788.00
Contingency	5%		\$25,985.00
Engineering	10%		\$51,970.00
Interest	4%		\$20,788.00
Legal	3%		\$15,591.00
Total Estimated Cost			\$654,822.00
Funding			
Sidewalk Assessments	100.00%		\$654,822.00


Sidewalk - City Funded		
Construction Cost		\$183,855.00
Fees		
Admin	4%	\$7,354.20
Contingency	5%	\$9,192.75
Engineering	10%	\$18,385.50
Interest	4%	\$7,354.20
Legal	3%	\$5,515.65
Total Estimated Cost		\$231,657.30
Funding		
Sales Tax Funds - Infrastructure - 420	100.00%	\$231,657.30

Project Funding Summary		
Sidewalk Assessments	73.87%	\$654,822.00
Sales Tax Funds - Infrastructure - 420	26.13%	\$231,657.30
Total Estimated Project Cost		\$886,479.30

This project does not have any alternate or optional containers.

We believe this project to be cost effective.




 Nathan Boerboom, PE
 Division Engineer

February 1, 2024

7

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

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

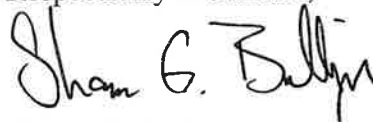
Dear Commissioners:

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

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

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Jeremy Gorden
Nancy J. Morris

MEMORANDUM OF OFFER TO LANDOWNER

City of Fargo, Engineering Department

Project BR-23-G2	County Cass	Parcel(s) 8S
Landowner Aaron Properties LLC		
Mailing Address 921 30th St S Moorhead, MN 56560		


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

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

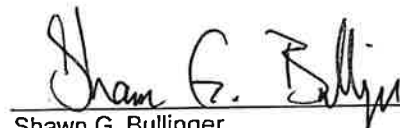
I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 3,503.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	_____
Easement and Access Control	\$	<u>3,503.00</u>
Improvements on Right of Way*	\$	_____
Damages to Remainder	\$	_____
Total Offer	\$	<u>3,503.00</u>

*Description of Damages to Remainder are as follows:



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



 Shawn G. Bullinger
 Land Acquisition Specialist, City of Fargo

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



Timothy J. Mahoney

 MAYOR

 SIGNATURE

 DATE

EASEMENT
(Temporary Construction Easement)

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

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

The North 30.00 feet of the East 40.00 feet of the West 90.00 feet of said Lot 5.

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

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

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

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

activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun. Grantee agrees that the existing sign on the parcel will not be disturbed, and further that in the unlikely event that any damage occurs to the sign, Grantee will be responsible for repair or replacement.

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

(Signatures on following pages).

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

GRANTEE:

City of Fargo, a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steven Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
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, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

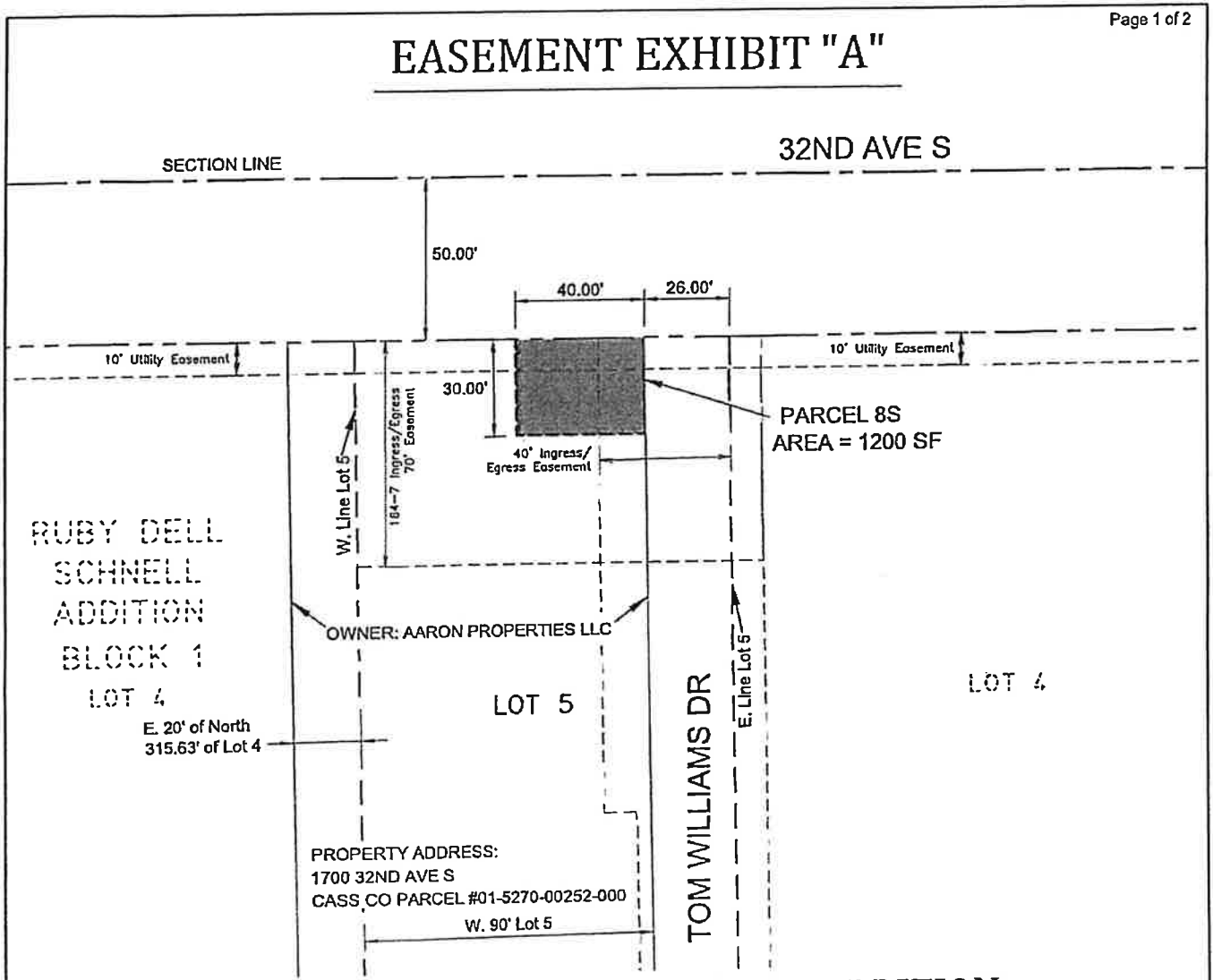
Notary Public
Cass County, ND
My Commission expires:

(SEAL)

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

This document was prepared by:
Nancy J. Morris
City Attorney
Serkland Law Firm
10 Roberts Street
Fargo, ND 58102
(701) 232-8957
nmorris@serklandlaw.com

EASEMENT EXHIBIT "A"



RUBY DELL
SCHNELL
ADDITION
BLOCK 1
LOT 4

E. 20' of North
315.63' of Lot 4

OWNER: AARON PROPERTIES LLC

LOT 5







TOM WILLIAMS DR

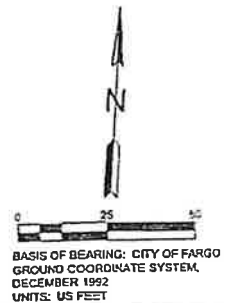
LOT 4

PROPERTY ADDRESS:
1700 32ND AVE S
CASS CO PARCEL #01-5270-00252-000
W. 90' Lot 5

SOUTHGATE PLAZA ADDITION
BLOCK 1

LEGEND

-  PROPOSED PARCEL 8S
-  PROPOSED EASEMENT LINE
-  EXISTING RIGHT OF WAY LINE
-  EXISTING LOT LINE
-  EXISTING PARCEL LINE
-  EXISTING EASEMENT LINE



TEMPORARY EASEMENT - PARCEL 8S
32ND AVE S RECONSTRUCTION
LOT 5, BLOCK 1, SOUTHGATE PLAZA ADD.
SECTION 25, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
Date: 08/11/2023
Drawn By: Mike J
Checked By: Dain E
Approved By: Dain E

EASEMENT EXHIBIT "A"

Parcel 8S
(Temporary Easement)

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

The North 30.00 feet of the East 40.00 feet of the West 90.00 feet of said Lot 5.

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



CERTIFICATION

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

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

Date 8/11/2023



TEMPORARY EASEMENT - PARCEL 8S
32ND AVE S RECONSTRUCTION
LOT 5, BLOCK 1, SOUTHGATE PLAZA ADD.
SECTION 25, T139N, R49W
FARGO, NORTH DAKOTA

Apex Project #: 22.103.0151
Date: 08/11/2023
Drawn By: Mike J
Checked By: Dain E
Approved By: Dain E



M E M O R A N D U M

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING *DF*
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 31, 2024

**RE: PURCHASE OF SERVICE AGREEMENT WITH THE ND
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
BEHAVIORAL HEALTH DIVISION.
FUNDS: \$225,000
PRJ: HED001
EXPIRES: 03/31/2025**

The purchase of service agreement with ND Department of Health and Human Services, Behavioral Health Division is for providing funding for staffing the withdrawal management program 24 hours per day, seven days per week. A budget adjustment is pending.

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

Suggested Motion:

Move to approve the purchase of service agreement with ND Department of Health and Human Services, Behavioral Health Division.

DF/ls
Attachment

PURCHASE OF SERVICE AGREEMENT

The state of North Dakota, acting through its North Dakota Department of Health and Human Services, Behavioral Health Division (State), has determined the services identified in the Scope of Service paragraph below should be purchased.

City of Fargo (Vendor), 1240 25th St S, Fargo, ND 58103, proposes to provide those services.

State and Vendor therefore enter into the following:

1. TERM OF THE AGREEMENT

This Agreement runs from January 1, 2024, through March 31, 2025. This Agreement will not automatically renew.

2. SCOPE OF SERVICE

Vendor shall provide staffing for the withdrawal management program 24 hours per day, seven days per week. Vendor shall ensure staff are trained in addiction treatment services and withdrawal management. Vendor shall provide monthly reports for funding regarding capacity of program and the number of unduplicated individuals served per month. Vendor shall provide a monthly report to State regarding long term sustainability of providing the withdrawal management program or any other planning for the services following the end of this Agreement.

3. COMPENSATION

State, upon receipt and approval of SFN 1763 Request for Reimbursement, monthly reports, and any additional information requested by State, shall pay Vendor \$17,000 per month for completing the scope of service. Total payment under this Agreement may not exceed \$255,000. Vendor shall submit its request for reimbursement to State monthly. Vendor shall submit its final payment request to State no later than 10 days after the expiration or termination of this Agreement.

4. TERMINATION

a. Termination by Mutual Agreement or Notice

This Agreement may be terminated at any time by mutual consent of both parties executed in writing, or upon 30-days' written notice by either party, with or without cause.

b. Early Termination in the Public Interest

State is entering into this Agreement for the purpose of carrying out the public policy of the state of North Dakota, as determined by its Governor, Legislative Assembly, and Courts. If this Agreement ceases to further the public policy of the state of North Dakota, State, in its sole discretion, by written notice to Vendor, may terminate this Agreement in whole or in part.

c. Termination for Lack of Funding or Authority

State may terminate the whole or any part of this Agreement, effective upon delivery of written notice to Vendor or on any later date stated in the notice, under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Agreement under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

d. Termination for Cause

State may terminate this Agreement effective upon delivery of written notice to Vendor, or any later date stated in the notice:

- 1) If Vendor fails to provide services required by this Agreement within the time specified or any extension agreed to by State; or
- 2) If Vendor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

The rights and remedies of State provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

5. NONPERFORMANCE

Failure by Vendor to perform the terms of this Agreement constitutes a breach of contract and will result in the termination of the Agreement. If a breach by Vendor renders the Agreement impossible of performance by Vendor and is caused by circumstances beyond the control of Vendor, and through no fault of Vendor, the Agreement will be terminated and State may set off, against any liability or obligations owed to Vendor under this Agreement or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach.

6. FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, flood, riot, terrorism, pandemics, acts of God, or war if the event is beyond the party's reasonable control, and the affected party gives notice to the other party immediately upon occurrence of the event that caused, or is reasonably expected to cause, the delay or default.

7. VENDOR'S UNDERSTANDING OF TERM OF FUNDING

Vendor understands that this Agreement is a one-time agreement, and acknowledges that it has received no assurances that this Agreement may be extended beyond its expiration date.

8. VENDOR ASSURANCES

This Agreement will be construed according to the laws of the state of North Dakota. In connection with furnishing supplies or performing work under this Agreement, persons who contract with or receive funds to provide services to State are obligated and agree to comply with all local, state, and federal laws, regulations, and executive orders related to the performance of this Agreement, including the following: Fair Labor Standards Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the North Dakota Human Rights Act, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, the Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1970, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Drug-Free Workplace Act of 1988, the Americans with Disabilities Act of 1990, Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act of 1992, the Pro-Children Act of 1994, Title IX of the Education Amendments of 1972, and Section 1557 of the Affordable Care Act.

By signing this Agreement Vendor certifies that neither Vendor, Subcontractor, nor their principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with the state or federal government by any department or agency of the state or federal government.

Vendor must be an approved vendor with the Office of Management and Budget within the state of North Dakota as required by North Dakota Century Code § 54-44.4-09.

9. AUTHORITY TO CONTRACT

Vendor may subcontract with qualified vendors of services, provided that any subcontract acknowledges the binding nature of this Agreement, and incorporates this Agreement, together with its attachments, as appropriate. Vendor is solely responsible for the performance of any subcontractor. Vendor may not contract for or on behalf of or incur obligations on behalf of State. Vendor may not assign or otherwise transfer or delegate any right or duty without State's express written consent.

10. INDEPENDENT ENTITY

Vendor is an independent entity under this Agreement. Vendor, its employees, agents, or representatives are not employees of State for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this Agreement may be construed to represent the creation of an employer/employee relationship between State and Vendor. Vendor retains sole and absolute discretion in the manner and means of carrying out Vendor's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.

11. INDEMNITY

State and Vendor each agree to assume their own liability for any and all claims of any nature, including all costs, expenses, and attorneys' fees which may in any manner result from or arise out of this Agreement.

12. INSURANCE

a. Vendor 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, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
- 3) Workers' compensation coverage meeting all statutory requirements.

b. The insurance coverages listed above must meet the following additional requirements:

- 1) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 2) Vendor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this Agreement.
- 3) Failure to provide insurance as required in this Agreement is a material breach of contract entitling State to terminate this Agreement immediately.
- 4) Vendor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

13. NOTICE

Any notice or other communication required under this Agreement must be given by registered or certified mail and is complete on the date mailed when addressed to the parties at the following addresses:

City of Fargo
1240 25th St S
Fargo, ND 58103

OR

ND Department of Health and
Human Services
Behavioral Health Division
600 E Boulevard Ave, Dept. 325
Bismarck, ND 58505-0250

Notice provided under this provision does not meet the notice requirements for monetary claims against State found at North Dakota Century Code § 32-12.2-04.

14. INTEGRATION, MODIFICATION, AND CONFLICT IN DOCUMENTS

This Agreement constitutes the entire Agreement between Vendor and State. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement. No alteration, amendment, or modification of this Agreement is effective unless it is reduced to writing, signed by the parties, and attached to the Agreement.

All terms and conditions contained in any end user agreements (e.g., automated click-throughs, shrink wrap, or browse wrap) are specifically excluded and null and void, and shall not alter the terms of this Agreement. Clicking shall not represent acknowledgement or agreement to any terms or conditions contained in those agreements.

If any inconsistency exists between this Agreement and other provisions of collateral contractual agreements, which are made a part of this Agreement by reference or otherwise, the provisions of this Agreement control.

15. SEVERABILITY

If any term of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement does not contain the illegal or unenforceable term.

16. APPLICABLE LAW AND VENUE

This Agreement is governed by and construed according to the laws of the state of North Dakota. Any action to enforce this Agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

17. ASSIGNMENT

Vendor may not assign this Agreement without State's express written consent, provided, however, that Vendor may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Agreement, whether by merger, reorganization, operation of law, or otherwise. Should the assignee be a business or entity with whom State is prohibited from conducting business, State shall have the right to terminate without cause. This Agreement is equally binding on the respective parties and their successors and assigns.

18. SPOILIATION – PRESERVATION OF EVIDENCE

Vendor shall promptly notify State of all potential claims that arise or result from this Agreement. Vendor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to State the opportunity to review and inspect the evidence, including the scene of an accident.

19. WORKS FOR HIRE

Vendor acknowledges that all work(s) under this Agreement is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to State all rights and interests Vendor may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by Vendor in performance of this Agreement for State shall be the sole property of State, and Vendor hereby assigns and transfers all its right, title, and interest therein to State. Vendor shall execute all necessary documents to enable State to protect State's intellectual property rights under this section.

20. WORK PRODUCT, EQUIPMENT, AND MATERIALS

All work product, equipment, and materials created for State or purchased by State under this Agreement belong to State and must be delivered to State at State's request upon expiration or termination of this Agreement.

21. CONFIDENTIAL INFORMATION

Vendor shall not use or disclose any information it receives from State under this Agreement that State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by State. State shall not disclose any information it receives from Vendor that Vendor has previously identified as confidential and that State determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law found in North Dakota Century Code chapter 44-04. The duty of State and Vendor to maintain confidentiality of information under this section continues beyond the term of this Agreement, including any extensions or renewals.

22. COMPLIANCE WITH PUBLIC RECORDS LAWS

Vendor understands that, in accordance with this Agreement's Confidential Information section, State must disclose to the public upon request any records it receives from Vendor. Vendor further understands that any records obtained or generated by Vendor under this Agreement, except for records that are confidential under this Agreement, may, under certain circumstances, be open to the public upon request under certain circumstances under the North Dakota open records law. Vendor agrees to contact State immediately upon receiving a request for information under the open records law and to comply with State's instructions on how to respond to the request.

23. ATTORNEY FEES

If a lawsuit is filed by State to obtain performance due under this Agreement, and State is the prevailing party, Vendor shall pay State's reasonable attorney fees and costs in connection with the lawsuit, except when prohibited by North Dakota Century Code § 28-26-04.

24. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties may enforce their rights and remedies in judicial proceedings. State does not waive any right to a jury trial.

25. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Vendor shall comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

Vendor shall timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums. Vendor also shall have and keep current at all times during the term of this Agreement all licenses and permits required by law.

Vendor is prohibited from boycotting Israel for the duration of this Agreement. (See N.D.C.C § 54-44.4-15.) Vendor represents that it does not and will not engage in a boycotting Israel during the term of this Agreement. If State receives evidence that Vendor boycotts Israel, State shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if Vendor has fewer than ten full-time employees.

Vendor's failure to comply with this section may be deemed a material breach by Vendor entitling State to terminate in accordance with the Termination for Cause section of this Agreement.

26. ACCESS TO BOOKS AND RECORDS

Vendor shall provide State, the federal government, and their duly authorized representatives access to the books, documents, papers, and records of Vendor, which are pertinent to the services provided under this Agreement, for the purpose of making an audit or examination, or for making excerpts and transcripts. All records, regardless of physical form, and the accounting practices and procedures of Vendor relevant to this Agreement are subject to examination by the North Dakota State Auditor, the Auditor's designee, or federal auditors. Vendor shall maintain all of these records for at least three years following completion of this Agreement and be able to provide them at any reasonable time. State, State Auditor, or Auditor's designee shall provide reasonable notice.

CITY OF FARGO

By Desi Fleming

Desi Fleming, Director of Public Health

By _____ DATE

Timothy J. Mahoney, Mayor, City of Fargo

DATE 01/31/2024

45-6002069
Vendor's Federal Taxpayer Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HEALTH AND
HUMAN SERVICES


By _____ DATE
SARA STOLT
DEPUTY COMMISSIONER

By _____ DATE
KYLE J. NELSON
CONTRACT OFFICER
Approved for form and content



MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 30, 2024

**RE: PURCHASE OF SERVICE AGREEMENT WITH FARGO-
MOORHEAD METROPOLITAN COUNCIL OF GOVERNMENTS.
FUNDS: MAXIMUM OF \$6000
PRJ: HE103
EXPIRES: 09/30/2024**

For Fargo-Moorhead Metropolitan Council of Governments to work with Cass Clay Food Partners Steering Committee to implement and conduct the Cass Clay Food Commission meetings, provide guidance, and oversee the Metropolitan Food Systems Plan updates.

No Budget Adjustment.

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

Suggested Motion:

Move to approve the purchase of service agreement with Fargo-Moorhead Metropolitan Council of Governments.

DF/lis
Attachment



Fargo Cass Public Health Prevent. Promote. Protect.

PURCHASE OF SERVICE AGREEMENT WITH FM METROPOLITAN COUNCIL OF GOVERNMENTS

HEALTH PROTECTION PROMOTION – MICHELLE DRAXTEN TERM: 01/22/2024 TO 09/30/2024 Page 1 of 1

THIS AGREEMENT, effective the 22nd day of January 2024, by and between Fargo Cass Public Health ("FCPH") and Fargo-Moorhead Metropolitan Council of Governments (Independent Contracting Consultant).

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

- A. Term of Agreement: The parties entered into a written agreement for the period of January 22, 2024, through September 30, 2024.
B. Services to be provided by independent contractor: Independent contractor will work closely with the Cass Clay Food Partners Steering Committee to implement and conduct the Cass Clay Food Commission meetings (minimum 4x/year) according to the Joint Powers Agreement guidelines; continue to provide guidance and administrative support for the Commission (keep minutes, compile, and send out agenda packets, arrange room and technology for meetings, etc.). Oversee the Metropolitan Food Systems Plan updates and network with local jurisdictions to incorporate food systems in city/county comprehensive and land development plans. Additional activities include education, resource development and collaboration, emergency planning (food access related), community engagement and awareness. Coalition building and collaboration advisement on how to ensure residents have equitable access to safe, nutritious, and affordable foods.
C. Reimbursement: The independent contracting consultant shall be reimbursed \$6000 for services and will submit an invoice quarterly.
D. Termination: This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
E. Confidentiality: The independent contracting consultant agrees to not, directly, or indirectly, disclose, make known, divulge, publish, or communicate any individually identifiable health information or other confidential information to any person, firm, or corporation without consent unless that disclosure is authorized under North Dakota law.

Special Considerations:

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

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

Fargo Cass Public Health

FM Metropolitan Council of Governments

By Desi Fleming, Director of Public Health

By Ben Griffith, Executive Director

Date 01/22/2024

Date

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


Date



10

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 30, 2024

**RE: NOTICE OF GRANT AWARD AMENDMENT FROM ND
DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR
PHEP – EPR ALL HAZARDS ALLOCATION
FUNDS: NO CHANGE CFDA: 93.069
PRJ: HE67
EXPIRES: 06/30/2024**

The notice of grant award amendment from ND Department of Health and Human Services is for extended the expiration date of Grant G21.873A, PHEP-EPR All Hazards Allocation from December 31, 2023, to June 30, 2024.

No Budget Adjustment.

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

Suggested Motion:

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

DF/lls
Attachment



NOTICE OF GRANT AWARD

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

Grant Number G21.873B	CFDA Name Public Health Emergency Preparedness (PHEP)	CFDA Number 93.069	
FAIN Number NU90TP922054	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 7/1/2022	Grant End Date 6/30/2024
Federal Award Date 5/20/2022	Federal Awarding Agency Department of Health and Human Services		
This award is not effective, and expenditures related to this award should not be incurred until all parties have signed this document.			
Title of Project/Program PHEP – EPR All Hazards Allocation		North Dakota Department of Health and Human Services (NDDHHS) Project Code 6611HLH5273-11	
Grantee Name Fargo – Cass Public Health		Project Director Tim Wiedrich	
Address 1240 – 25 th Street South		Address 1720 Burlington Drive, Suite A	
City/State/ZIP Code Fargo, ND 58103-2367		City/State/ZIP Code Bismarck, ND 58504	
Contact Name Desi Fleming		Contact Name Juli Sickler	
Telephone Number 701-241-1360		Telephone Number 701-328-2293	
Email Address dfleming@fargond.gov		Email Address jsickler@nd.gov	
	NDDHHS Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$0	\$0	\$0
Previous Funds Awarded	\$17,232	\$0	\$17,232
Total Funds Awarded	\$0	\$0	\$0
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimus rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %
Scope of Service			
This amendment extends the end date from December 31, 2023, to June 30, 2024. All other scope of service elements of the original agreement remains the same.			
Reporting Requirements			
A year-end progress report, as prescribed by the NDDHHS, must be submitted by July 15, 2024. All other reporting requirements of the original agreement remain the same.			
Special Conditions			
All special conditions of the original agreement remain the same.			
This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDHHS as signed by Grantee for the period of July 1, 2023, to June 30, 2025 [Finance Use Only: <input type="checkbox"/> Requirements Received; <input type="checkbox"/> Questionnaire received] and (2) applicable State and Federal regulations.			
Evidence of Grantee's Acceptance		Evidence of NDDHHS Acceptance	
Date 01/25/2024	Signature <i>Desi Fleming</i>	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Tim Wiedrich, Section Director Health Response & Licensure	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, City of Fargo, Mayor		Typed Name/Title of Authorized Representative Dirk D. Wilke, J.D., M.B.A., Executive Director of Public Health	
If attachments are referenced, they must be returned with the signed award. If you did not receive attachments as indicated, contact the Program Director identified above.			



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

January 31, 2024

Honorable Board of
City Commissioners
City of Fargo
200 N 3rd St. S
Fargo, ND 58102

Dear Commissioners;

Under the Infrastructure Investment and Jobs Act (IIJA) framework, the Federal Government has allocated funds to each state to distribute in 2024. The grant is limited to unfunded cyber initiatives.

In the October 30, 2023 Commission, the Commission authorized IS applying for the g the FY23 State and Local Cybersecurity Grant Program under CFDA #97.137 managed by North Dakota Department of Emergency Services. Below is a list of what was applied for:

	<u>Grant Request</u>
PDQ Inventory and Deploy	\$9,000
SmartDeploy	\$7,524
Firewall - Sign and Signal	\$5,830
Firewall - Water Meters Firewall	\$5,830
Firewall - BCI Firewall	\$5,830
Firewall - Fire 5	\$5,830
Switches	\$70,000
Arcmail Data Classification Appliance	\$20,000
Veeam Immutable Backup Server	\$25,000
Tyler Detect - Comprehensive Preparedness	\$50,000
Threatlocker - Servers only	\$46,080
Phosphorus.io	<u>\$420,000</u>
	\$670,924

Below is the cost share breakdown for the grant requests:

80%	Federal	\$536,739
4.50%	State	\$30,192
15.50%	Local	\$103,993

Our grant application was fully authorized. Attached are the Award Letter and the Notice and Conditions letter from DES.

Finance assigned Project Code IS2401 to these expenses.

Below is what our anticipated expenditures will be.

	<u>Est Cost</u> <u>2024</u>	<u>Est Cost</u> <u>2025</u>	<u>Est Cost</u> <u>2026</u>	<u>Total:</u>
0520-409-34-15 Computer Services	\$50,000	\$0	\$0	
0520-409-43-50 Maintenance Service Contracts	\$425,508	\$5,508	\$5,508	
0520-409-74-11 Computer Equipment	\$164,400	\$0	\$0	
0520-409-74-12 Computer Software	\$20,000	\$0	\$0	
	<u>\$659,908</u>	<u>\$5,508</u>	<u>\$5,508</u>	<u>\$670,924</u>

Suggested Motion:

Move to approve the award from ND Department of Emergency Services for \$670,924 under CFDA #97.137 and to make the appropriate budget adjustments to allocate the funds to the Information Services accounts.

Thank you,



Ron Gronneberg
CIO

January 29, 2024

Fargo
 Nick Lindhag
 225 4th St N
 Fargo, ND 58102

Dear Network Services Manager Nick Lindhag:

Congratulations on behalf of the North Dakota Department of Emergency Services (NDDDES) Division of Homeland Security, your grant application submitted for the FY 2023 State and Local Cybersecurity Grant Program (SLCGP) has been approved for award in the amount of \$567,863.17 (\$537,304.00 Federal Amount + \$30,559.17 State Contribution). This award requires a local non-federal match in the amount of \$103,766.83 for a total project cost of \$671.630.00.

To accept the award and the terms and conditions complete the following steps **within 10 days** from the date of this letter:

- Step 1: Print or download the Notice of Grant Award and Special Conditions
- Step 2: Sign page 1 of the Notice of Grant Award
- Step 3: Initial all pages of the Special Conditions
- Step 4: Upload the signed Notice of Grant Award and Special Conditions pages into the NDDDES Grants System (<https://grants.des.nd.gov>) to the Project page. (See directions at the end of this letter.)
- Step 5: Upload a copy of your jurisdiction's/entity's procurement policy to the Project page. (Note: A documented procurement policy is required per 2 CFR §200.318.)

Do NOT begin any portion of your project including obligating or expending funds until the following requirement is met:

- FY 2023 National Cybersecurity Risk Assessment (NCSR) completion. The NCSR is located at <https://www.cisecurity.org/ms-isac/services/ncsr/>. The NCSR is required of all subrecipients. It is open only until February 29th. See the NCSR Instructions attachment in the NDDDES grants management system for additional information and instructions. Once you have completed the NCSR, upload a copy of the FY 2023 Completion Certificate to the Project page and send a note to drice@nd.gov so that NDDDES can document completion.
 - Failure to complete the NCSR by the date noted above will result in a hold being placed on your project until the NCSR re-opens in October and is completed.

Procurement Requirements

Federal 2 CFR §200.318-200.326 **Procurement Standards** as well as applicable state and local procurement laws and regulations must be followed when purchasing goods (example: equipment) and services (example: planning, training, or exercise activities).

Projects with an **aggregate** cost of \$10,000 or more **must** obtain a **minimum** of **three** quotes (each from a different vendor). Subrecipients must accept the quote from the vendor providing the **lowest aggregate** cost of the goods or services. Quotes must be obtained within the project period of performance. Quotes obtained prior to the project period of performance, or after the work has already been completed will not be accepted.



Doug
 Burgum
 GOVERNOR

Major General
 Alan S. Dohrmann
 DIRECTOR - DEPARTMENT
 OF EMERGENCY SERVICES

Darin
 Hanson
 DIRECTOR - DIVISION
 OF HOMELAND SECURITY

Darin
 Anderson
 DIRECTOR - DIVISION
 OF STATE RADIO

Ensuring a safe and secure homeland for all North Dakotans

NORTH
Dakota | Emergency Services
Be Legendary.™

To aid subrecipients NDDes has provided the [Quote \(Informal\) Request Form](#) at grants.des.nd.gov. It is recommended that subrecipients use this form or a similar jurisdiction/entity specific form when requesting quotes to ensure that all vendors are quoting on the same specifications.

Please contact our office at 701-328-8250 or at drice@nd.gov for any questions about procurement. Upon request, NDDes prior to you accepting a quote will review the quotes for compliance with federal procurement standards and provide feedback.

NOTE: If your application included a name brand or a particular contractor/vendor, the award is **NOT** an approval of that brand name or contractor/vendor. All procurement transactions must be conducted in a manner providing full and open competition (2 CFR §200.319). Please see the *NDDes Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs* as well as the Reimbursement Processing checklist at [HSGP - grants.des.nd.gov](#) for more information on the types of documentation you will need to provide to NDDes to show compliance.

Finally, the North Dakota State Procurement Office has cooperative purchasing contracts that can be used by eligible entities, including cities, counties, townships, public education, and tribal entities. See [CooperativePurchasing.pdf \(nd.gov\)](#) for more information. A current list of State Contracts can be found at [ND State Contracts](#). If under the column entitled **CP** there is a **Y** then it has a cooperative purchasing contract.

Restrictions

SLCGP grant funds may **not** be used for construction, renovation, remodel or to perform alterations of buildings or physical facilities. Therefore, you **cannot** use SLCGP funds to:

- Install or replace racks that involve attaching racks to floors and/or walls
- Install new equipment cabling where new holes are made through walls, floors, or ceilings.
- Install new conduit onto existing walls, ceilings, or floors.
- Install electrical outlets
- Install uninterrupted power supply units (UPS) that involve attaching to floors or walls.
- Any activities (grant funded or not) that are connected to the grant funded project that involve the building utility infrastructure such as installing new electrical.
- Any installation that modifies existing buildings or structures or requires ground disturbance.

Project Reporting

Project status reports are required quarterly, with a final report due at closeout. Quarterly reports are due fifteen (15) days after the end of the reporting period of each quarter. Reports should show a steady progression of the project. If there is no progression during a quarter and explanation as to why the project is not progressing is required. Failure to complete the reports will result in delays to reimbursement requests being processed. Reports are completed in the grants management system at <https://grants.des.nd.gov> on the Project page under Progress Monitoring tab.

Reporting Period	Report Due Date
October 1 – December 31	due by January 15
January 1 – March 31	due by April 15
April 1 – June 30	due by July 15
July 1 – September 30	due by October 15



Doug
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OF HOMELAND SECURITY

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OF STATE RADIO

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DES Grants System Document Upload Instructions

1. Log in at <https://grants.des.nd.gov/>
2. On your home page click on **FY 2023 SLCGP** - this takes you to a screen with a **red** banner at the top.
3. On the left-hand side, click on **Projects**, then click on the project that shows to the right – this takes you to a screen with a **blue** banner at the top.
4. Toward the bottom of the page on the right, click on **Add Document** – follow the directions on your screen and click **Upload** to upload your documents.

Please contact Karen Hilfer or Dave Rice at 701-328-8100 with any questions.

Sincerely,



Debbie LaCombe
Preparedness Chief



Doug
Burgum
GOVERNOR


Major General
Alan S. Dohrmann
DIRECTOR – DEPARTMENT
OF EMERGENCY SERVICES

Darin
Hanson
DIRECTOR – DIVISION
OF HOMELAND SECURITY

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OF STATE RADIO

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NOTICE OF GRANT AWARD		
Recipient Contact Name: Debbie LaCombe		Recipient Contact #: 701-328-8119
Title of Grant Program: 2023 State and Local Cybersecurity Grant Program		
Federal Award Identification Number: EMW-2023-CY-000001		Federal Award Date: January 24, 2024
Federal Awarding Agency: U.S. Department of Homeland Security		
CFDA No. 97.137 SLCGP		
Subrecipient Name and Address Fargo 225 4th St N Fargo, ND 58102		Subrecipient Contact Name: Nick Lindhag Telephone: 701-476-4052 Email: nlindhag@FargoND.gov
Subrecipient UEI: K2QJQZVH5PM6	Grant Number: S49	County/Tribe: Cass
Performance Period	From: January 29, 2024	Through: November 30, 2026
Grant Amount: \$567,863.17	Subrecipient Cost Share: \$103,766.83	Total Project Cost: \$671,630.00
Scope of Service: The intent of this award is to provide funding for subrecipient to address cybersecurity risks and cybersecurity threats to the subrecipient's owned or operated information systems in accordance with the federal Notice of Funding Opportunity for this grant program, the approved application scope of work and cost line items located in the NDDes grant portal.		
Reporting Requirements: Progress reports on the status of the project must be submitted to NDDes quarterly through the NDDes grant portal. Reports are due January 15, April 15, July 15, and October 15 for the life of the grant. A final report is due with the final reimbursement request.		
Special Conditions: The above grant project is approved subject to the special conditions or limitations as indicated on the attached page.		
Terms and Conditions: This award is subject to the terms and conditions incorporated directly or by reference in the following: 1) Fiscal Requirements and Other Program Rules, Regulations, Laws, and Polices for Federal Programs which can be found at https://grants/des/nd.gov/site/HSGP.cfm . 2) Applicable Federal and State laws and regulations. 3) The recipient agrees by signing this document that all allocations and use of funds under this grant will be in accordance with the Federal/State Notice of Funding Opportunity & FEMA Preparedness Grants Manual for this grant program.		
This contract is not effective until fully executed by both parties. By signing below, you are accepting the terms and conditions of the award. Please make sure you read and understand these documents before signing. Maintain a copy of these documents in your official file for this award.		
Evidence of Subrecipient's Acceptance		Evidence of NDDes Approval
Signature	Date	 Signature
Typed Name and Title of Authorized Representative Nick Lindhag Network Services Manager		1/29/2024 Date Typed Name and Title of Authorized Representative Darin Hanson Director, Division of Homeland Security



SPECIAL CONDITIONS

State and Local Cybersecurity Grant Program (SLCGP)

1. DHS Standard Terms and Conditions Generally

The Fiscal Year (FY) 2023 DHS Standard Terms and Conditions apply to all new federal financial assistance awards funded in FY 2023. These terms and conditions flow down to subrecipients unless an award term or condition specifically indicates otherwise. The United States has the right to seek judicial enforcement of these obligations. They FY 2023 DHS Standard Terms and Conditions are at www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions.

2. Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

- DHS financial assistance sub-recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R. Part 3002.
- By accepting this agreement, sub-recipients, and their executives, as defined in 2 C.F.R. section 170.315, certify that their policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

3. General Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

- Sub-recipients must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS.
- Sub-recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities or personnel.
- Sub-recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
- Sub-recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law, or detailed in program guidance.

4. Acknowledgement of Federal Funding from DHS

Sub-recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

5. Age Discrimination Act of 1975

Sub-recipients must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (1975) (codified as amended at Title 42, U.S. Code, section 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

6. Americans with Disabilities Act of 1990

Sub-recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101 - 12213), which prohibits sub-recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Initial



7. Best Practices for Collection and Use of Personally Identifiable Information

Sub-recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Sub-recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.

8. Civil Rights Act of 1964 - Title VI

Sub-recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

9. Civil Rights Act of 1968

Sub-recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100.

10. Copyright

Sub-recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

11. Debarment and Suspension

Sub-recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

12. Drug-Free Workplace Regulations

Sub-recipients must comply with drug-free workplace requirements in Subpart B of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

13. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude sub-recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

14. Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

Sub-recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Initial



15. Energy Policy and Conservation Act

Sub-recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94-163 (1975) (codified as amended at 42 U.S.C. section 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

16. False Claims Act and Program Fraud Civil Remedies

Sub-recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

17. Federal Debt Status

All sub-recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

18. Federal Leadership on Reducing Text Messaging while Driving

Sub-recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the Federal Government.

19. Hotel and Motel Fire Safety Act of 1990

Sub-recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a.

20. John S. McCain National Defense Authorization Act of Fiscal Year 2019

Sub-recipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. sections 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute - as it applies to DHS sub-recipients, and their contractors and subcontractors - prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

21. Limited English Proficiency (Civil Rights Act of 1964 - Title VI)

Sub-recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

22. Lobbying Prohibitions

Sub-recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Initial



23. National Environmental Policy Act

Sub-recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require sub-recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

24. Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

25. Non-Supplanting Requirement

Sub-recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

26. Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

27. Patents and Intellectual Property Rights

Sub-recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq, unless otherwise provided by law. Sub-recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

28. Procurement of Recovered Materials

States, political subdivisions of states (i.e., sub-recipients), and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

29. Rehabilitation Act of 1973

Sub-recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973) (codified as amended at 29 U.S.C. section 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Initial



30. Reporting of Matters Related to Recipient Integrity and Performance

General Reporting Requirements:

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the sub-recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

31. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Sub-recipients must comply with the Build America, Buy America Act (BABAA), which was enacted as part of the Infrastructure Investment and Jobs Act Sections 70901-70927, Pub. L. No. 117-58 (2021); and Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers. See also Office of Management and Budget (OMB), Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

32. SAFECOM

Sub-recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

33. Terrorist Financing

Sub-recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Sub-recipients are legally responsible to ensure compliance with the Order and laws.

34. Trafficking Victims Protection Act of 2000 (TVPA)

Trafficking in Persons:

Sub-recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106 (g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

35. Universal Identifier and System of Award Management

Requirements for System for Award Management and Unique Entity Identifier

Sub-recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.

36. USA PATRIOT Act of 2001

Sub-recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. sections 175-175c.

37. Use of DHS Seal, Logo and Flags

Sub-recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

Initial



38. Whistleblower Protection Act

Sub-recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C section 2409, 41 U.S.C. section 4712, and 10 U.S.C. section 2324, 41 U.S.C. sections 4304 and 4310.

39. Environmental Planning and Historic Preservation (EHP) Review

Any SLCGP project that would require an Environmental & Historic (EHP) review is not an allowable cost.

SLCGP grant funds may **not** be used for construction, renovation, remodel or to perform alterations of buildings or physical facilities. Therefore, you **cannot** use SLCGP funds to:

- Install or replace racks that involve attaching racks to floors and/or walls
- Install new equipment cabling where new holes are made through walls, floors, or ceilings.
- Install new conduit onto existing walls, ceilings, or floors.
- Install electrical outlets
- Install uninterrupt power supply units (UPS) that involve attaching to floors or walls.
- Any activities (grant funded or not) that are connected to the grant funded project that involve the building utility infrastructure such as installing new electrical.
- Any installation that modifies existing buildings or structures or requires ground disturbance.

40. Applicability of DHS Standard Terms and Conditions to Tribes

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to subrecipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

41. Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, sub-recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate sub-recipient acceptance of the changes to the award.

42. Disposition of Equipment Acquired Under the Federal Award

For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state subrecipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313. State recipients and state subrecipients must follow the disposition requirements in accordance with state laws and procedures.

43. Prior Approval for Modification of Approved Budget

Before making any change to the approved budget for this award, you must request prior written approval from NDDes. NDDes may be required by 2 C.F.R. section 200.308 to request FEMA approval of any budget modifications.

Initial

44. National Cybersecurity Review



Sub-recipients are required to complete the Nationwide Cybersecurity Review (NCSR) yearly to benchmark and measure their progress of improving their cybersecurity posture. The NCSR can be found at <https://www.cisecurity.org/ms-isac/services/ncsr>.

45. NDDDES Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs

Sub-recipient is required to also follow the applicable provisions of the NDDDES Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs as well as State or local provisions that may be stricter than Federal or State laws, regulations, or policies. This document can be found under the HSGP tab on the NDDDES Grants website at <https://grants.des.nd.gov>.

46. Reimbursements, Quarterly Status Reports, Time Extension Requests, Scope Changes, and Project Closeout

Sub-recipient must submit all reimbursement requests, quarterly reports, time extension requests, scope change requests, and project closeouts along with required documentation in the NDDDES Grants Management System at <https://grants.des.nd.gov>.

47. Un-expended Funds

At the conclusion of the period of performance as noted on the Notice of Grant Award, upon completion of the project, or withdrawal of the project by the sub-recipient; whichever comes first, unexpended funds will be de-obligated. By signing the Notice of Grant Award, the sub-recipient is authorizing NDDDES, as a Memorandum of Agreement, to expend the de-obligated funds on program costs.

48. Award Acceptance


The Notice of Grant Award and these Special Conditions constitute the operative document obligating and reserving the Federal funds for use by the sub-recipient. By signing the Notice of Grant Award sub-recipients is certifying acceptance of the terms and conditions of the award.

Initial

MEMORANDUM

12

TO: Board of City Commissioners

FROM: Jim Gilmour, Director of Strategic Planning and Research 

DATE: January 31, 2024

SUBJECT: In-Kind Commitment for Corvent Medical Project

Corvent Medical is using the New Industry property tax exemption to help finance a business expansion. The City of Fargo already approved a property tax exemption for the project.

Corvent Medical is applying for loans through Comstock Services LLC, JGC Leasing LLC and Kjos Investments LLC. The three LLCs are applying for a buy down of their interest rate from the Bank of North Dakota. This requires community match, which can be an in-kind contribution of the property tax exemption.

Attached are agreements the City needs to approve for the in-kind contribution of the already approved property tax exemptions. Fargo is not providing any cash or loan guarantee. The Bank of North Dakota will provide a lower interest rate if this interest buy down is approved.

Recommended Motion

Approve agreements to provide in-kind contributions of property tax exemptions to Comstock Services LLC, JGC Leasing LLC and Kjos Investments LLC.

OFFICE USE ONLY	Return SIGNED Documents to BND
Borrower:	COMSTOCK SERVICES LLC AND JGC LEASING LLC AND KJOS INVESTMENTS LLC
Program Option:	PACE

**INTEREST BUYDOWN AGREEMENT
PACE PROGRAM**

This Interest Buydown Agreement is made between **CITY OF FARGO & GROWTH INITIATIVE FUND INC** (the "Community"), and the **Bank of North Dakota** ("BND") acting on behalf of the PACE Program ("PACE") for the purpose of a buydown on the interest for the loan (the "Loan") received by COMSTOCK SERVICES LLC AND JGC LEASING LLC AND KJOS INVESTMENTS LLC (the "Borrower") from BELL BANK (the "Originating Lender") pursuant to a promissory note dated _____. The attached payment schedule labeled Exhibit A details the Loan amount and terms and may be modified from time to time. The Borrower, Community, and BND agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Defined Terms. Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in the Note and Related Documents. As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

Addendum to the Promissory Note – means the Addendum to the Promissory Note entered into by the Borrower and Originating Lender. The addendum to the Promissory Note addresses specific terms and conditions with respect to the Borrower's participation of their Loan in PACE Program offered by BND.

Agreement - means this Interest Buydown Agreement, as amended, supplemented, or modified from time to time.

Affiliate - means any Person (1) which directly or indirectly controls, or is controlled by, or is under common control with the Originating Lender or Borrower; (2) which directly or indirectly beneficially owns or holds five (5%) or more of any class of voting stock of the Originating Lender or Borrower; or (3) five percent (5%) or more of the voting stock of which is directly or indirectly beneficially owned or held by the Originating Lender or Borrower. The term control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

BND Buydown Amount - means the portion of the Interest Buydown Amount to be paid by BND as set forth on the attached payment schedule labeled Exhibit A.

Borrowing Rate - means the interest rate to be paid by the Borrower as set forth on the payment schedule labeled Exhibit A. If the terms of the Note provide for a variable or adjustable rate structure, the Borrowing Rate may vary over the term of the Note, but in no event will it be less than 1.00%.

Business Day - means any day other than a Saturday, Sunday, or other day on which commercial banks in North Dakota are authorized or required to close under the laws of the State of North Dakota, unless otherwise provided for in the Note.

Buydown Documents means this Agreement, the Escrow Agreement and any related documents, attachments or schedules incorporated therein.

Community Buydown Amount - means the portion of the Interest Buydown Amount to be paid by the Community and set forth on the attached payment schedule labeled Exhibit A.

Community In-kind Commitment Amount - means the amount of "in-kind" commitment made by the Community, if any, to match the BND Buydown Amount to be paid by BND as provided by the PACE Program. The "in-kind" Community Commitment Amount is provided by the Community in lieu of its cash portion of the Interest Buydown Amount; and is a contribution towards total costs of the Borrower's project in a form acceptable to BND. The payment schedule labeled Exhibit A specifies the Community

OFFICE USE ONLY	Return SIGNED Documents to BND
Borrower:	COMSTOCK SERVICES LLC AND JGC LEASING LLC AND KJOS INVESTMENTS LLC
Program Option:	PACE

commitment amount, if any.

Escrow Agent – means Bank of North Dakota acting through its Trust Department.

Escrow Agreement – means Agreement by which the payments to disburse the Interest Buydown Amount is to be administered by the Escrow Agent.

Flex PACE Program – means the program option within the PACE Program which provides an interest buydown to borrowers that do not meet the states definition of a primary sector business but does meet other needs as determined appropriate by the Community.

Flex PACE Affordable Housing Program – means the program option within the PACE Program which provides an interest buydown to borrowers for the permanent financing of new affordable multi-family housing units within the Community.

Interest Buydown Amount – means the actual amount to be paid by the Escrow Agent on behalf of the Borrower over the life of the Note to buy down the Yield Rate to the Borrowing Rate as set forth in the payment schedule labeled Exhibit A.

The Interest Buydown Amount includes the BND Buydown Amount and the Community Buydown Amount unless all or any portion of the Community's cash portion is made in the form of an "in-kind" Community Commitment Amount, then the Interest Buydown Amount may only consist of the BND Buydown Amount. The Interest Buydown Amount shall not exceed the Interest Buydown Amount per the payment schedule labeled Exhibit A.

The Interest Buydown Amount has been based upon the Yield Rate at the time of closing, unless otherwise agreed to in writing by the Originating Lender, BND, and the Borrower. The Interest Buydown Amount shall not vary, and subject to the terms and conditions of the PACE Program it shall be paid on the basis of a set stream of payments as defined under the column entitled INTEREST EXPENSE DIFF. DUE TO BUYDOWN as listed on the payment schedule labeled Exhibit A.

Interest Rate Reduction - means each scheduled payment to be paid by Escrow Agent from Escrow Account as set forth in the payment schedule labeled Exhibit A.

Investment – Total costs of equipment, real estate and/or improvements to real property associated with the PACE loan request.

Note - may refer to a promissory note, credit agreement, loan agreement, or any other document that states the terms of the indebtedness between the Originating Lender and the Borrower.

PACE Program – means the "Partnership in Assisting Community Expansion Program" and includes loans approved under PACE Program options for PACE, Flex PACE or Flex PACE for Affordable Housing.

Participation Agreement – means the agreement between the Originating Lender and BND in connection with the Loan.

Payment Schedule - means Exhibit A which may be updated and supplemented from time to time by BND.

Person - means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

Related Documents - means all supporting documents related to the Loan.

Yield Rate - means the interest rate on the Note which, at any point in time when there is a default, may include the default rate as that term is defined in the Note.

OFFICE USE ONLY	Return SIGNED Documents to BND
Borrower:	COMSTOCK SERVICES LLC AND JGC LEASING LLC AND KJOS INVESTMENTS LLC
Program Option:	PACE

ARTICLE II

TERMS OF THE INTEREST RATE BUYDOWN

SECTION 2.01. Interest Buydown Amount. BND and the Community agree on the terms and conditions set forth in this Agreement to buy down the interest from the Yield Rate to the Borrowing Rate for the Loan.

1. Interest Payments. BND and the Community shall make Interest Buydown Amount payments to the Escrow Agent as provided for in the attached payment schedule labeled Exhibit A.
2. Method of Payment. BND and the Community shall make each payment to the Escrow Agent as provided by the Buydown Documents no later than the date when due as defined by the Note in lawful money of the United States in immediately available funds unless otherwise expressly provided for. Whenever any payment to be made under the Buydown Documents shall be stated to be due on a Saturday, Sunday, or a public holiday, or the equivalent for banks generally under the laws of the State of North Dakota, the payment shall be made on the next succeeding Business Day.
3. Disbursement of the Interest Buydown Amount. The Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out and described in the payment schedule labeled Exhibit A subject to the Note.
4. Default by the Borrower. In the event of a default by the Borrower, as defined in the Note, or a Default as defined in the Addendum to Promissory Note Pace Program given for the Note, the Escrow Agent shall discontinue any payments required under the Buydown Documents until such time as the Default is cured.
5. Late or Partial Payments by the Borrower. If the Borrower makes a late payment or a partial payment, the Interest Rate Reduction payment will not be made and the interest rate from the period of the payment date of the payment until the payment is received will be the Yield Rate, including any default rate provided for in the Note. If the late or partial payments are paid by the Borrower, Escrow Agent will resume making Interest Buydown Amount on the next scheduled payment date, unless otherwise agreed to by BND.
6. Prepayments and Adjustment to Payment Schedule. In the event the Borrower makes a prepayment under the terms of the Note, BND may re-amortize the payment schedule labeled Exhibit A but such re-amortization shall not be effective unless received in writing by the Originating Lender fifteen (15) days prior to the next payment due date under Note. Any replacement payment schedule labeled Exhibit A received by Originating Lender shall replace the existing payment schedule with no further action or consent required by Borrower.
7. Partial Payment or Termination by the Community. In the event the Community makes a payment to the Escrow Agent which results in insufficient funding of the Community Buydown Amount or terminates its participation in PACE for the loan to the Borrower, the Community shall provide notice in writing to the Borrower, the Originating Lender and BND no less than fifteen (15) days prior to the next scheduled payment due date under the Note.

Upon receipt of notice from the Community and until such time as the deficiency is cured, the following shall occur:

- The Escrow Agent shall discontinue to make Interest Rate Reduction payments.
- To the extent the Interest Buydown Amount paid by the Escrow Agreement does not reduce the interest expense to the interest expense calculated at the Borrowing Rate then

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Program Option:	PACE

the Borrower shall remit the difference to Originating Lender.

- The Borrower shall be responsible for the entire interest payment at the Yield Rate effective on the date of the next scheduled payment. From that point forward, this Addendum shall have no force or effect and any of the rights and obligations created herein shall be terminated and the Note and Related Documents, without regard to this Addendum or the Buydown Documents, shall govern the relationship between the Originating Lender and the Borrower.
8. Termination of PACE Program. In the event that funding under the PACE Program is terminated for any reason, this Agreement shall have no force or effect and any obligation of BND, the Community and the Escrow Agent to pay the Interest Buydown Amount shall cease.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

SECTION 3.01. The Community represents and warrants to the Borrower and BND that:

1. Good Standing, and Due Qualification. The Community is in good standing under the laws of the State of North Dakota. The execution, delivery, and performance of this Agreement by the Community has been duly authorized by all necessary Persons.
2. Other Agreements. The Community is not a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or corporate restriction which could have a material adverse effect on the business, properties, assets, operations, or conditions, financial or otherwise, of the Borrower, Originating Lender or their Affiliates, or the ability of the Borrower, Originating Lender or their Affiliates to carry out the Borrower's and the Originating Lender's obligations under the Note and Related Documents. The Community and the Community's Affiliates are not in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to the performance of the Note and Related Documents.
3. Sufficient Funds. The Community has or will make available sufficient funds to finance the Community Buydown Amount or Community In-kind Commitment Amount. This includes pledging revenue producing mechanisms which the Community is statutorily authorized to pledge or impose. Revenue producing mechanisms include but are not limited to any bond or mill levy or other tax which may be pledged or imposed for the purpose of economic development.
4. Source of Funds. The Community Buydown Amount or Community In-kind Commitment Amount does not nor will it ever be derived directly or indirectly from a loan, grant or gift from the Borrower or the Borrower's Affiliate or a contribution from Originating Lender or Originating Lender's Affiliate which is greater than the Originating Lender or its Affiliate would normally contribute to the Community's economic development efforts. The Community Buydown Amount may be in the form of a loan. Interest may begin to accrue, however, no repayment of principal or interest on the Community loan may commence until the PACE interest buydown amount has been fully expended.
5. Litigation. There is no pending or threatened action or proceeding against or affecting the Community before any court, governmental agency, or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the ability of the Community to perform its obligation under the Note and Related Documents to which it is a party.
6. No Defaults on Outstanding Judgments or Orders. The Community has satisfied all judgments, and is not in default with respect to any judgment, writ, injunction, decree, rule, or regulation or any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign, which materially adversely affects

OFFICE USE ONLY	Return SIGNED Documents to BND
Borrower:	COMSTOCK SERVICES LLC AND JGC LEASING LLC AND KJOS INVESTMENTS LLC
Program Option:	PACE

the ability of the Community to perform its obligation under the Note and Related Documents to which it is a party.

ARTICLE IV

AFFIRMATIVE COVENANTS

SECTION 4.01. Notice of Adverse Actions. So long as the Loan remains unpaid, all parties to this Agreement shall promptly after the commencement thereof, provide all parties notice of all actions, suits, and proceedings before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, affecting the parties which could have a material adverse effect on the Community's ability to perform under the Note and Related Documents.

SECTION 4.02. Obligation to Resolve Disputes. It is the intent of all parties to this Agreement that conflicts or potential conflicts and circumstances or situations which arise which are not considered herein, be resolved at the most informal level possible and to the mutual benefit of each party to the extent possible.

SECTION 4.03. Program Requirements. So long as the Note is participating in the PACE Program:

1. Job Creation: - Job creation is not necessarily a requirement of the Flex PACE or Flex PACE for Affordable Housing Programs, but will be tracked for informational purposes. The Borrower will show evidence of the level of employment created and maintained in North Dakota for the duration of this Agreement. At the request of the BND, the Borrower shall complete a recipient report to verify employment levels, and such other evidence as BND may request from the Borrower.
2. Donations, Gifts or Loans. The Borrower has not nor will it ever make directly or indirectly a loan, grant or gift to the Originating Lender, Community, or their Affiliates, which will be used to secure, promote or otherwise influence, the Originating Lender's or Community's ability or desire to make available Loan funds under the PACE Program.

ARTICLE V

CONDITIONS PRECEDENT

SECTION 5.01. Condition Precedent to this Agreement. The obligation of BND under this Agreement is subject to the condition precedent that BND shall have received on or before the day of the Loan each of the following, in form and substance satisfactory to BND and its counsel:

1. Evidence of all Corporate Action by the Community. BND may request certified copies of all corporate action taken by the Community, including resolutions of its Board of Directors, or certified copies of the official minutes of the appropriate governing body, or the equivalent thereof, authorizing the execution, delivery, and performance of the Buydown Documents to which it is a party and each other document to be delivered pursuant to this Agreement.
2. Opinion of Counsel for the Community. A favorable opinion of counsel for the Community in substantially the form of Exhibit B and as to such other matters as BND may reasonably request. Exhibit B shall also certify the names and true signatures of the officers of the Community authorized to sign the Buydown Documents to which it is a party and each other document to be delivered by the Community under this Agreement.
3. Buydown Documents as required by the PACE Program from all parties to this Agreement.

SECTION 5.02. Notification to Originating Lender. Upon satisfaction of the conditions, BND shall notify the Originating Lender in writing that all conditions have been satisfied for the Loan's participation in the PACE Program.

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Borrower:	COMSTOCK SERVICES LLC AND JGC LEASING LLC AND KJOS INVESTMENTS LLC
Program Option:	PACE

ARTICLE VI

MISCELLANEOUS

SECTION 6.01. Amendments, Etc. No amendment, modification, termination, or waiver of any provision, nor consent to any departure from this Agreement, shall in any event be effective unless such is in writing and signed by BND and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 6.02. Notices, Etc. All notices and other communications provided for under this Agreement shall be in writing and shall be effective upon the earlier of (a) when actually delivered, (b) when deposited with a nationally recognized overnight courier or (c) if mailed, when deposited in the United State mail, as first class, certified or registered mail postage prepaid, directed to the applicable party at the address specified below, except that notices to BND pursuant to the provisions of Article II shall not be effective until received by BND.

Community:	CITY OF FARGO 225 4TH ST N FARGO ND 58102-4809
Community:	GROWTH INITIATIVE FUND INC 51 BROADWAY STE 500 FARGO ND 58102-4970
BND:	BANK OF NORTH DAKOTA PO BOX 5509 BISMARCK, ND 58506-5509 Attention: Commercial Loan Department
Borrower:	COMSTOCK SERVICES LLC AND JGC LEASING LLC AND KJOS INVESTMENTS LLC

Any party may change its address for notices by giving formal written notice to the other parties and specifying that the purpose of the notice is to change the party's address.

SECTION 6.03. No Waiver; Remedies. No failure on BND's part to exercise, and no delay in exercising, any right, power, or remedy under any Buydown Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Buydown Documents preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Buydown Documents are cumulative and not exclusive of any remedies provided by law.

SECTION 6.04. Successors and Assigns. This Agreement may not be assigned or transferred by either party without the prior consent of BND.

SECTION 6.05. Costs, Expenses, and Attorney Fees. The Community and BND agree to indemnify each other for reasonable fees and out-of-pocket expenses, including attorney fees, in connection with the enforcement of any portion of this Agreement.

SECTION 6.06. Indemnification for Misrepresentation. The Community and BND agree to indemnify each other for any and all loss, payment and additional expense resulting from any misrepresentation or breach of warranty made herein, including any expense and legal fees that might be incurred because of any such misrepresentation or breach of warranty.

SECTION 6.07. Disclosure of Information. The Community hereby consents to the disclosure of all financial, business, and other information about the Community which BND may possess at any time to other

OFFICE USE ONLY	Return SIGNED Documents to BND
Borrower:	COMSTOCK SERVICES LLC AND JGC LEASING LLC AND KJOS INVESTMENTS LLC
Program Option:	PACE

lenders participating in the Loan.

SECTION 6.08. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

SECTION 6.09. Severability of Provisions. Any provision of any Buydown Document which is prohibited, unenforceable, or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability, or lack of authorization without invalidating the remaining provisions of the Buydown Documents or affecting the validity, enforceability, or legality of such provision in any other jurisdiction.

SECTION 6.10. Headings. Article and Section headings in the Buydown Documents are included for the convenience of reference only and shall not constitute a part of the applicable Buydown Documents for any other purpose.

SECTION 6.11. Third Party Beneficiary. The parties acknowledge that the Borrower is an intended third party beneficiary of this agreement and, to the extent that funds are available and no determination has been made by a court of competent jurisdiction that this agreement is unenforceable, is entitled to enforce the agreement as provided by N.D.C.C. § 9-02-04.

SECTION 6.12 Document Imaging and Electronic Transactions. All parties hereby acknowledge the receipt of a copy of this Agreement and all other loan documents. BND may, on behalf of parties, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the loan documents. BND may store the electronic image of this Agreement and loan documents in its electronic form and then destroy the paper original as part of BND's normal business practices, with the electronic image deemed to be an original.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, as of the date first above written.

CITY OF FARGO & GROWTH INITIATIVE FUND INC

By: _____

Its: Mayor _____

By: _____

Its: _____

BANK OF NORTH DAKOTA

By: Rodney Heit _____

Rodney Heit
Its: Business Banker

COMSTOCK SERVICES LLC

By: _____

OFFICE USE ONLY	Return SIGNED Documents to BND
Borrower:	COMSTOCK SERVICES LLC AND JGC LEASING LLC AND KJOS INVESTMENTS LLC
Program Option:	PACE

Title: _____

JGC LEASING LLC

By: _____

Title: _____

KJOS INVESTMENTS LLC

By: _____

Title: _____

Exhibit A: Comstock Building - Covent Medical

LOAN NUMBER	
LOAN TYPE	
LEAD BANK	
PAGE	

NOTE: The borrower and originating lender should be aware that the loan will provide a set stream of subsidy payments (interest buydown) based from the buydown schedule below. The amount of the borrower's buydown, the amortization and all other terms of the loan shall be governed by the promissory note. The numbers shown here reflect that the schedule buydown amounts are intended for illustrative purposes only.

Buydown Account Details

INTEREST BUYDOWN AMOUNT	\$524,141.48
BND BUYDOWN AMOUNT	\$403,267.64
COMMUNITY BUYDOWN AMT	\$120,873.84
COMMUNITY IN-KIND COMMITMENT	\$96,270.00
PRESENT VALUE BND	\$359,127.21
PRESENT VALUE COMMUNITY	\$107,643.37
CREATED DATE	10/13/2023
PRINCIPAL	\$1,400,000.00
YIELD RATE	8.5000
BORROWING RATE	3.5000
AMORTIZATION	240
PAYMENT	\$12,259.59

Loan without buydown				Loan with buydown				Interest Buydown					
#	Payment	Principal	Interest	Balance	#	Payment	Principal	Interest	Balance	#	Int. Buydown	BND (76.94%)	Comm. (23.06%)
1	\$12,259.59	\$2,342.92	\$9,916.67	\$1,397,657.08	1	\$6,426.25	\$2,342.92	\$4,083.33	\$1,397,657.08	1	\$5,833.34	\$4,488.10	\$1,345.24
2	\$12,259.59	\$2,029.52	\$10,230.07	\$1,385,627.56	2	\$6,241.90	\$2,029.52	\$4,212.38	\$1,385,627.56	2	\$6,017.69	\$4,629.93	\$1,387.76
3	\$12,259.59	\$2,044.37	\$10,215.22	\$1,393,583.19	3	\$6,250.64	\$2,044.37	\$4,206.27	\$1,393,583.19	3	\$6,008.95	\$4,623.21	\$1,385.74
4	\$12,259.59	\$2,117.42	\$9,542.17	\$1,390,865.77	4	\$6,646.65	\$2,117.42	\$3,929.13	\$1,390,865.77	4	\$5,613.04	\$4,316.60	\$1,294.44
5	\$12,259.59	\$2,079.23	\$10,180.36	\$1,388,786.54	5	\$6,271.14	\$2,079.23	\$4,191.91	\$1,388,786.54	5	\$5,988.45	\$4,607.44	\$1,381.01
6	\$12,259.59	\$2,422.35	\$9,837.24	\$1,386,364.19	6	\$6,472.98	\$2,422.35	\$4,050.63	\$1,386,364.19	6	\$5,786.61	\$4,452.14	\$1,334.47
7	\$12,259.59	\$2,112.17	\$10,141.42	\$1,384,252.02	7	\$6,240.32	\$2,112.17	\$4,170.36	\$1,384,252.02	7	\$5,969.07	\$4,592.52	\$1,376.55
8	\$12,259.59	\$2,454.47	\$9,805.12	\$1,381,797.55	8	\$6,491.87	\$2,454.47	\$4,037.40	\$1,381,797.55	8	\$5,767.72	\$4,437.61	\$1,330.11
9	\$12,259.59	\$2,145.60	\$10,113.99	\$1,379,651.95	9	\$6,310.18	\$2,145.60	\$4,164.58	\$1,379,651.95	9	\$5,949.41	\$4,577.40	\$1,372.01
10	\$12,259.59	\$2,161.30	\$10,098.29	\$1,377,490.65	10	\$6,319.42	\$2,161.30	\$4,158.12	\$1,377,490.65	10	\$5,940.17	\$4,570.29	\$1,369.88
11	\$12,259.59	\$2,502.36	\$9,757.23	\$1,374,966.29	11	\$6,520.04	\$2,502.36	\$4,017.68	\$1,374,966.29	11	\$5,739.55	\$4,415.94	\$1,323.61
12	\$12,259.59	\$2,195.44	\$10,064.15	\$1,372,792.85	12	\$6,339.50	\$2,195.44	\$4,144.06	\$1,372,792.85	12	\$5,950.09	\$4,554.84	\$1,365.25
13	\$12,259.59	\$2,535.64	\$9,723.95	\$1,370,257.21	13	\$6,539.62	\$2,535.64	\$4,003.96	\$1,370,257.21	13	\$5,719.97	\$4,400.87	\$1,319.10
14	\$12,259.59	\$2,230.07	\$10,029.52	\$1,368,027.14	14	\$6,359.67	\$2,230.07	\$4,128.80	\$1,368,027.14	14	\$5,888.72	\$4,539.17	\$1,360.55
15	\$12,259.59	\$2,246.39	\$10,013.20	\$1,365,780.75	15	\$6,369.47	\$2,246.39	\$4,123.08	\$1,365,780.75	15	\$5,890.12	\$4,531.78	\$1,358.34
16	\$12,259.59	\$3,230.26	\$9,029.33	\$1,362,550.49	16	\$6,946.22	\$3,230.26	\$3,717.98	\$1,362,550.49	16	\$5,311.37	\$4,086.50	\$1,224.87
17	\$12,259.59	\$2,286.48	\$9,973.11	\$1,360,264.01	17	\$6,393.05	\$2,286.48	\$4,106.57	\$1,360,264.01	17	\$5,866.54	\$4,513.64	\$1,352.90
18	\$12,259.59	\$2,624.39	\$9,635.20	\$1,357,639.62	18	\$6,591.65	\$2,624.39	\$3,967.44	\$1,357,639.62	18	\$5,667.76	\$4,360.70	\$1,307.06
19	\$12,259.59	\$2,322.42	\$9,937.17	\$1,355,317.20	19	\$6,414.20	\$2,322.42	\$4,091.75	\$1,355,317.20	19	\$5,845.39	\$4,497.37	\$1,348.02

20	\$12,259.59	\$9,600.16	\$1,352,657.77	\$9,600.16	\$2,559.43	\$3,955.01	\$1,352,657.77	\$5,647.15	\$4,344.84	\$1,302.31
21	\$12,259.59	\$9,900.70	\$1,350,298.88	\$9,900.70	\$2,358.89	\$4,076.76	\$1,350,298.88	\$5,853.94	\$4,480.66	\$1,343.08
22	\$12,259.59	\$9,063.44	\$1,347,922.73	\$9,063.44	\$2,376.15	\$4,069.66	\$1,347,922.73	\$5,813.79	\$4,473.05	\$1,340.74
23	\$12,259.59	\$9,547.79	\$1,345,210.93	\$9,547.79	\$2,711.80	\$3,931.44	\$1,345,210.93	\$5,616.35	\$4,321.15	\$1,295.20
24	\$12,259.59	\$9,846.20	\$1,342,797.54	\$9,846.20	\$2,413.39	\$4,054.32	\$1,342,797.54	\$5,791.68	\$4,456.20	\$1,355.68
25	\$12,259.59	\$9,511.48	\$1,340,049.43	\$9,511.48	\$2,748.11	\$3,916.49	\$1,340,049.43	\$5,564.99	\$4,304.71	\$1,290.28
26	\$12,259.59	\$9,808.42	\$1,337,598.26	\$9,808.42	\$2,451.17	\$4,048.76	\$1,337,598.26	\$5,769.66	\$4,439.10	\$1,330.56
27	\$12,259.59	\$9,790.48	\$1,335,129.15	\$9,790.48	\$2,469.11	\$4,001.37	\$1,335,129.15	\$5,749.11	\$4,430.98	\$1,328.13
28	\$12,259.59	\$8,826.69	\$1,331,696.25	\$8,826.69	\$2,432.90	\$4,634.92	\$1,331,696.25	\$5,192.17	\$3,994.79	\$1,197.38
29	\$12,259.59	\$9,747.28	\$1,329,183.94	\$9,747.28	\$2,512.31	\$4,013.59	\$1,329,183.94	\$5,773.69	\$4,411.43	\$1,322.26
30	\$12,259.59	\$9,415.05	\$1,326,339.40	\$9,415.05	\$2,844.54	\$3,076.79	\$1,326,339.40	\$5,539.26	\$4,261.07	\$1,277.19
31	\$12,259.59	\$9,708.07	\$1,323,781.88	\$9,708.07	\$2,581.32	\$3,987.44	\$1,323,781.88	\$5,710.63	\$4,353.68	\$1,316.95
32	\$12,259.59	\$9,376.83	\$1,320,905.12	\$9,376.83	\$2,842.76	\$3,886.10	\$1,320,905.12	\$5,515.78	\$4,243.77	\$1,272.01
33	\$12,259.59	\$9,669.29	\$1,318,313.82	\$9,669.29	\$2,591.30	\$3,981.08	\$1,318,313.82	\$5,687.23	\$4,375.68	\$1,311.55
34	\$12,259.59	\$9,649.32	\$1,315,703.55	\$9,649.32	\$2,610.27	\$3,973.25	\$1,315,703.55	\$5,676.07	\$4,367.09	\$1,308.98
35	\$12,259.59	\$9,319.57	\$1,312,769.59	\$9,319.57	\$2,777.49	\$3,837.47	\$1,312,769.59	\$5,482.10	\$4,271.86	\$1,264.24
36	\$12,259.59	\$9,608.70	\$1,310,112.64	\$9,608.70	\$2,650.89	\$3,956.52	\$1,310,112.64	\$5,652.18	\$4,348.71	\$1,303.47
37	\$12,259.59	\$9,279.96	\$1,307,133.01	\$9,279.96	\$2,979.63	\$3,621.16	\$1,307,133.01	\$5,498.90	\$4,199.93	\$1,259.87
38	\$12,259.59	\$9,567.49	\$1,304,440.91	\$9,567.49	\$2,692.10	\$3,909.55	\$1,304,440.91	\$5,627.94	\$4,330.06	\$1,297.08
39	\$12,259.59	\$9,547.78	\$1,301,729.10	\$9,547.78	\$2,711.81	\$3,931.44	\$1,301,729.10	\$5,616.34	\$4,321.14	\$1,295.20
40	\$12,259.59	\$8,603.88	\$1,298,075.59	\$8,603.88	\$3,653.71	\$3,543.60	\$1,298,075.59	\$5,062.28	\$3,994.65	\$1,167.43
41	\$12,259.59	\$9,501.19	\$1,295,316.99	\$9,501.19	\$2,758.40	\$3,912.25	\$1,295,316.99	\$5,588.94	\$4,300.06	\$1,268.88
42	\$12,259.59	\$9,175.16	\$1,292,232.56	\$9,175.16	\$2,862.44	\$3,778.01	\$1,292,232.56	\$5,397.15	\$4,152.50	\$1,244.65
43	\$12,259.59	\$9,458.42	\$1,289,431.39	\$9,458.42	\$2,801.17	\$3,894.64	\$1,289,431.39	\$5,563.70	\$4,280.70	\$1,283.08
44	\$12,259.59	\$9,138.47	\$1,286,305.27	\$9,138.47	\$3,126.12	\$3,750.84	\$1,286,305.27	\$5,372.63	\$4,133.63	\$1,239.00
45	\$12,259.59	\$9,415.04	\$1,283,460.72	\$9,415.04	\$2,844.56	\$3,876.78	\$1,283,460.72	\$5,538.26	\$4,261.07	\$1,277.19
46	\$12,259.59	\$8,384.22	\$1,280,595.35	\$8,384.22	\$2,865.37	\$3,868.21	\$1,280,595.35	\$5,526.01	\$4,251.64	\$1,274.37
47	\$12,259.59	\$9,169.11	\$1,277,406.64	\$9,169.11	\$3,188.71	\$3,735.07	\$1,277,406.64	\$5,355.81	\$4,105.90	\$1,200.51
48	\$12,259.59	\$9,349.91	\$1,274,456.96	\$9,349.91	\$2,909.68	\$3,849.96	\$1,274,456.96	\$5,498.95	\$4,231.58	\$1,266.36
49	\$12,259.59	\$9,027.69	\$1,271,265.66	\$9,027.69	\$3,231.90	\$3,717.28	\$1,271,265.66	\$5,310.41	\$4,095.76	\$1,224.65
50	\$12,259.59	\$9,304.95	\$1,268,910.42	\$9,304.95	\$2,954.64	\$3,831.45	\$1,268,910.42	\$5,473.50	\$4,211.24	\$1,262.35
51	\$12,259.59	\$9,287.26	\$1,265,334.16	\$9,287.26	\$2,976.26	\$3,822.56	\$1,265,334.16	\$5,460.78	\$4,201.45	\$1,269.33
52	\$12,259.59	\$8,664.02	\$1,261,739.59	\$8,664.02	\$3,505.57	\$3,587.54	\$1,261,739.59	\$5,096.48	\$3,921.17	\$1,175.31
53	\$12,259.59	\$9,235.23	\$1,258,714.73	\$9,235.23	\$3,044.36	\$3,802.74	\$1,258,714.73	\$5,432.49	\$4,179.69	\$1,262.80
54	\$12,259.59	\$8,915.89	\$1,255,370.53	\$8,915.89	\$3,443.70	\$3,671.25	\$1,255,370.53	\$5,244.64	\$4,035.16	\$1,209.48
55	\$12,259.59	\$9,184.51	\$1,252,299.55	\$9,184.51	\$3,070.16	\$3,783.55	\$1,252,299.55	\$5,405.66	\$4,158.59	\$1,246.48
56	\$12,259.59	\$8,870.46	\$1,248,910.42	\$8,870.46	\$3,389.13	\$3,652.54	\$1,248,910.42	\$5,217.92	\$4,014.66	\$1,203.32
57	\$12,259.59	\$9,141.33	\$1,245,792.16	\$9,141.33	\$3,118.26	\$3,764.08	\$1,245,792.16	\$5,377.25	\$4,137.19	\$1,240.06
58	\$12,259.59	\$9,119.51	\$1,242,651.08	\$9,119.51	\$3,454.48	\$3,764.68	\$1,242,651.08	\$5,363.83	\$4,126.85	\$1,236.97
59	\$12,259.59	\$8,802.11	\$1,239,150.80	\$8,802.11	\$3,081.88	\$3,824.40	\$1,239,150.80	\$5,177.71	\$3,983.66	\$1,194.05
60	\$12,259.59	\$9,070.21	\$1,236,004.22	\$9,070.21	\$3,189.38	\$3,734.79	\$1,236,004.22	\$5,355.42	\$4,105.00	\$1,230.42
61	\$12,259.59	\$8,755.03	\$1,232,439.56	\$8,755.03	\$3,504.56	\$3,605.01	\$1,232,439.56	\$5,150.02	\$3,962.36	\$1,187.66
62	\$12,259.59	\$9,021.21	\$1,229,261.28	\$9,021.21	\$3,238.38	\$3,714.62	\$1,229,261.28	\$5,306.59	\$4,082.82	\$1,223.77
63	\$12,259.59	\$8,997.51	\$1,225,999.20	\$8,997.51	\$3,262.08	\$3,704.86	\$1,225,999.20	\$5,292.65	\$4,072.10	\$1,220.55
64	\$12,259.59	\$8,105.22	\$1,221,944.83	\$8,105.22	\$4,164.37	\$3,337.44	\$1,221,944.83	\$4,767.78	\$3,689.27	\$1,099.51
65	\$12,259.59	\$8,943.23	\$1,218,528.47	\$8,943.23	\$3,316.36	\$3,682.51	\$1,218,528.47	\$5,260.72	\$4,047.53	\$1,213.19
66	\$12,259.59	\$8,631.24	\$1,214,900.12	\$8,631.24	\$3,628.35	\$3,554.04	\$1,214,900.12	\$5,070.20	\$3,906.33	\$1,170.87
67	\$12,259.59	\$8,892.39	\$1,211,542.92	\$8,892.39	\$3,367.20	\$3,661.57	\$1,211,542.92	\$5,240.82	\$4,024.52	\$1,206.30
68	\$12,259.59	\$8,581.69	\$1,207,855.02	\$8,581.69	\$3,677.90	\$3,533.64	\$1,207,855.02	\$5,048.05	\$3,883.90	\$1,164.15
69	\$12,259.59	\$8,418.76	\$1,204,436.26	\$8,418.76	\$3,418.76	\$3,640.34	\$1,204,436.26	\$5,200.19	\$4,001.19	\$1,199.30
70	\$12,259.59	\$8,811.80	\$1,200,392.47	\$8,811.80	\$3,443.79	\$3,630.04	\$1,200,392.47	\$5,185.76	\$3,989.96	\$1,195.90

71	\$12,259.59	\$3,752.56	\$8,507.03	\$1,197,239.91	\$7,259.45	\$3,752.56	\$3,502.89	\$1,197,239.91	\$5,004.14	\$3,850.12	\$1,154.02
72	\$12,259.59	\$3,496.46	\$8,763.13	\$1,193,743.45	\$7,104.81	\$3,496.46	\$3,608.35	\$1,193,743.45	\$5,164.76	\$3,966.02	\$1,188.76
73	\$12,259.59	\$3,803.91	\$8,456.68	\$1,189,939.54	\$7,285.66	\$3,803.91	\$3,481.75	\$1,189,939.54	\$4,973.93	\$3,826.86	\$1,147.05
74	\$12,259.59	\$3,549.89	\$8,709.70	\$1,186,389.65	\$7,136.24	\$3,549.89	\$3,586.35	\$1,186,389.65	\$5,123.35	\$3,941.84	\$1,181.51
75	\$12,259.59	\$3,675.88	\$8,583.71	\$1,182,813.77	\$7,151.53	\$3,675.88	\$3,575.65	\$1,182,813.77	\$5,108.08	\$3,930.07	\$1,177.99
76	\$12,259.59	\$4,439.88	\$7,819.71	\$1,176,373.89	\$7,659.76	\$4,439.88	\$3,219.88	\$1,176,373.89	\$4,589.83	\$3,539.05	\$1,060.78
77	\$12,259.59	\$3,936.52	\$8,625.04	\$1,174,739.34	\$7,186.04	\$3,936.52	\$3,634.55	\$1,174,739.34	\$5,073.55	\$3,963.52	\$1,170.03
78	\$12,259.59	\$3,936.52	\$8,321.07	\$1,170,800.82	\$7,363.84	\$3,936.52	\$3,426.32	\$1,170,800.82	\$4,894.75	\$3,785.96	\$1,128.79
79	\$12,259.59	\$3,689.98	\$8,569.81	\$1,167,110.84	\$7,218.84	\$3,689.98	\$3,528.66	\$1,167,110.84	\$5,140.95	\$3,879.44	\$1,162.51
80	\$12,259.59	\$3,892.55	\$8,267.04	\$1,163,118.29	\$7,396.63	\$3,892.55	\$3,404.08	\$1,163,118.29	\$4,862.96	\$3,741.50	\$1,121.48
81	\$12,259.59	\$3,746.21	\$8,513.38	\$1,159,372.08	\$7,251.72	\$3,746.21	\$3,505.51	\$1,159,372.08	\$5,007.87	\$3,852.99	\$1,154.88
82	\$12,259.59	\$3,773.63	\$8,485.96	\$1,155,598.45	\$7,267.85	\$3,773.63	\$3,494.22	\$1,155,598.45	\$4,981.74	\$3,840.58	\$1,151.16
83	\$12,259.59	\$4,074.10	\$8,185.49	\$1,151,824.35	\$7,444.60	\$4,074.10	\$3,370.50	\$1,151,824.35	\$4,814.99	\$3,704.59	\$1,110.40
84	\$12,259.59	\$3,831.07	\$8,428.52	\$1,147,693.28	\$7,301.64	\$3,831.07	\$3,470.57	\$1,147,693.28	\$4,957.95	\$3,814.58	\$1,143.37
85	\$12,259.59	\$4,130.10	\$8,129.49	\$1,143,563.18	\$7,477.54	\$4,130.10	\$3,347.44	\$1,143,563.18	\$4,782.05	\$3,679.25	\$1,102.80
86	\$12,259.59	\$3,889.34	\$8,370.25	\$1,139,673.84	\$7,335.91	\$3,889.34	\$3,446.57	\$1,139,673.84	\$4,923.68	\$3,788.22	\$1,135.46
87	\$12,259.59	\$3,917.81	\$8,341.78	\$1,135,756.03	\$7,362.66	\$3,917.81	\$3,434.85	\$1,135,756.03	\$4,906.93	\$3,775.33	\$1,131.60
88	\$12,259.59	\$4,750.98	\$7,508.81	\$1,131,005.05	\$7,942.76	\$4,750.98	\$3,081.78	\$1,131,005.05	\$4,416.83	\$3,398.25	\$1,016.58
89	\$12,259.59	\$3,981.26	\$8,278.43	\$1,127,023.79	\$7,389.98	\$3,981.26	\$3,408.72	\$1,127,023.79	\$4,869.81	\$3,746.61	\$1,123.00
90	\$12,259.59	\$4,276.50	\$7,983.09	\$1,122,747.29	\$7,563.65	\$4,276.50	\$3,287.15	\$1,122,747.29	\$4,895.94	\$3,613.00	\$1,082.94
91	\$12,259.59	\$4,041.70	\$8,217.89	\$1,118,705.59	\$7,425.59	\$4,041.70	\$3,383.84	\$1,118,705.59	\$4,834.03	\$3,719.25	\$1,114.79
92	\$12,259.59	\$4,346.43	\$7,924.16	\$1,114,370.16	\$7,869.32	\$4,346.43	\$3,282.89	\$1,114,370.16	\$4,661.27	\$3,586.32	\$1,074.95
93	\$12,259.59	\$4,103.02	\$8,156.57	\$1,110,267.14	\$7,481.61	\$4,103.02	\$3,458.59	\$1,110,267.14	\$4,797.98	\$3,691.50	\$1,106.48
94	\$12,259.59	\$4,133.05	\$8,126.54	\$1,106,134.09	\$7,479.27	\$4,133.05	\$3,346.22	\$1,106,134.09	\$4,780.32	\$3,677.92	\$1,102.40
95	\$12,259.59	\$4,424.47	\$7,835.12	\$1,101,099.82	\$7,660.70	\$4,424.47	\$3,226.23	\$1,101,099.82	\$4,608.89	\$3,546.02	\$1,082.87
96	\$12,259.59	\$4,195.69	\$8,063.90	\$1,097,513.93	\$7,510.12	\$4,195.69	\$3,320.43	\$1,097,513.93	\$4,743.47	\$3,649.56	\$1,093.91
97	\$12,259.59	\$4,485.53	\$7,774.06	\$1,093,028.40	\$7,886.61	\$4,485.53	\$3,201.08	\$1,093,028.40	\$4,572.98	\$3,518.39	\$1,064.59
98	\$12,259.59	\$4,259.23	\$8,000.36	\$1,088,769.17	\$7,554.50	\$4,259.23	\$3,294.27	\$1,088,769.17	\$4,705.09	\$3,620.80	\$1,085.29
99	\$12,259.59	\$4,290.40	\$7,969.19	\$1,084,478.77	\$7,571.83	\$4,290.40	\$3,281.43	\$1,084,478.77	\$4,693.14	\$3,763.34	\$1,128.80
	\$12,213,699.41	\$315,521.23	\$686,359.31	\$315,521.23	\$686,359.31	\$315,521.23	\$369,838.08	\$315,521.23	\$524,141.48	\$403,267.64	\$120,873.84

**ESCROW AGREEMENT
PACE PROGRAM**

This Escrow Agreement (the "Agreement") is made between the **BANK OF NORTH DAKOTA** acting on behalf of the PACE program ("BND"), **CITY OF FARGO & GROWTH INITIATIVE FUND INC** (the "Community"), and the **BANK OF NORTH DAKOTA** acting through its Trust Department as Escrow Agent (the "Escrow Agent") for the purpose of receiving and disbursing the Interest Buydown Amount in connection with the loan (the "Loan") made to **COMSTOCK SERVICES LLC AND JGC LEASING LLC (AND KJOS INVESTMENTS LLC** (the "Borrower") by **BELL BANK** (the "Originating Lender") pursuant to a promissory note dated _____ (the "Note").

BND, the Community and the Escrow Agent hereby agree as follows:

Section 1. **Defined Terms.** Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in the Interest Buydown Agreement. As used in this Agreement, the following terms have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

Agreement - means this Escrow Agreement, as amended, supplemented, or modified from time to time.

Borrowing Rate - means the interest rate to be paid by the Borrower after subtracting the Interest Buydown Amount from the interest expense which will accrue at the initial Yield Rate over the life of the PACE commitment as set forth on the payment schedule labeled Exhibit A. If the terms of the Note provide for a variable or adjustable rate structure, the Borrowing Rate may vary over the term of the Note depending upon the periodic adjustment of the rate index over the term of the Loan, but in no event will it be less than the minimum rate set forth in the Note.

BND Buydown Amount - means the portion of the Interest Buydown Amount to be paid by BND as set forth on the payment schedule labeled Exhibit A.

Buydown Documents - means this Agreement, the Interest Buydown Agreement, Addendum to Promissory Note PACE Program, and any related documents, attachments or schedules incorporated therein.

Community Buydown Amount - means the portion of the Interest Buydown Amount to be paid by the Community and set forth on the attached payment schedule labeled Exhibit A.

Community In-kind Commitment Amount - means the amount of "in-kind" commitment made by the Community, if any, to match the BND Buydown Amount to be paid by BND as provided by the PACE Program. The "in-kind" Community Commitment Amount is provided by the Community in lieu of its cash portion of the Interest Buydown Amount, and is a contribution towards total costs of the Borrower's project in a form acceptable to BND. The payment schedule labeled Exhibit A specifies the Community Commitment Amount, if any.

Escrow Agent - means Bank of North Dakota acting through its Trust Department.

Escrow Agreement - Agreement by which the payments to retire the Interest Buydown Amount is to be administered by the Escrow Agent.

Flex PACE Program - means the program option within the PACE Program which provides an interest buydown to borrowers that do not meet the states definition of a primary sector business but does meet other needs as determined appropriate by the Community.

Flex PACE Affordable Housing Program - means the program option within the PACE Program which provides an interest buydown to borrowers for the permanent financing of affordable multi-family housing units within the Community.

Interest Buydown Amount - means the actual amount to be paid by the Escrow Agent on behalf

of the Borrower over the life of the Note to buy down the Yield Rate to the Borrowing Rate as set forth in the payment schedule labeled Exhibit A.

The Interest Buydown Amount includes the BND Buydown Amount and the Community Buydown Amount unless all or any portion of the Community's cash portion is made in the form of an "in-kind" Community Commitment Amount, then the Interest Buydown Amount may only consist of the BND Buydown Amount. The Interest Buydown Amount shall not exceed the Interest Buydown Amount per the payment schedule labeled Exhibit A.

The Interest Buydown Amount has been based upon the Yield Rate at the time of closing, unless otherwise agreed to in writing by Originating Lender, BND, and the Borrower. The Interest Buydown Amount shall not vary, and subject to the terms and conditions of the PACE Program it shall be paid on the basis of a set stream of payments as defined under the column entitled INTEREST EXPENSE DIFF. DUE TO BUYDOWN as listed on the payment schedule labeled Exhibit A.

Interest Rate Reduction - means each scheduled payment to be paid by Escrow Agent from Escrow Account as set forth in the payment schedule labeled Exhibit A.

PACE Program - means the "Partnership in Assisting Community Expansion Program" and includes loans approved under PACE Program options for PACE, Flex PACE or Flex PACE for Affordable Housing.

Payment Schedule - means Exhibit A which may be updated and supplemented from time to time by BND.

Yield Rate - means the interest rate on the Note which, at any point in time when there is a default, may include the default rate as that term is defined in the Note.

Section 2. **Receipt of Interest Buydown**. BND and the Community agree to deliver to the Escrow Agent the amount as set out and described in the payment schedule -labeled Exhibit A in the amounts and on the dates indicated, subject to this Agreement.

Section 3. **Disbursement of the Interest Buydown Amount**. The Escrow Agent agrees to disburse the Interest Buydown Amount to Originating Lender in the amounts and on the dates as set out and described in the payment schedule labeled Exhibit A, subject to this Agreement.

Section 4. **Notice from BND**. Upon notice of receipt of Loan payment according to the terms of the Note, notice from BND, the Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out in the payment schedule labeled Exhibit A. If on the date the Loan payment is received by BND, the Escrow Agent has not received all or any part of the Community's share of the Interest Buydown Amount as indicated on the payment schedule labeled Exhibit A, the Escrow Agent shall not disburse either the BND Buydown Amount or and the Community Buydown Amount, to the Originating Lender.

In the event that all parties to this Agreement have consented that the Community will provide a Community In-Kind Commitment Amount in lieu of all or some part of its cash portion of the Interest Buydown Amount, the Escrow Agent shall disburse the Interest Buydown Amount to the Originating Lender in the amounts as set out in the payment schedule labeled Exhibit A.

Section 5. **Notice of Suspension of Disbursement of Interest Buydown Amount**. Upon notice by BND to the Escrow Agent that payments of the Interest Buydown Amount are to be suspended, the Escrow Agent will not make any further disbursements of the Interest Buydown Amount to the Originating Lender, until the Escrow Agent receives notice from BND, directing the Escrow Agent to resume disbursing the Interest Buydown Amount upon receipt of a notice for payment.

Section 6. **Notice of Final Disbursal and Termination**. Upon final Interest Rate Reduction disbursement or termination of the Interest Buydown Agreement, the Escrow Agent will disburse any remaining amounts held under this Agreement to the Community and the PACE Fund according to their respective shares of the remaining balance. This Agreement will be considered terminated upon return

of funds or final Interest Rate Reduction disbursement and shall have no further duties or obligations to any party other than, upon request, to provide a final accounting of receipts and disbursements.

Section 7. Duties of Escrow Agent, Reliance on Notices. The Escrow Agent shall not be liable as Escrow Agent except for the performance of such duties as are specifically set out in this Agreement to be performed by the Escrow Agent and the Escrow Agent may conclusively rely, as to the truth of the statements expressed in any notice, in the absence of bad faith on the part of the Escrow Agent, upon notices conforming to the requirements of this Agreement. No provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that the Escrow Agent shall at all times be protected from liability for any error or judgment made in good faith by a responsible officer or officers unless it shall be proved that the Escrow Agent was negligent in ascertaining the pertinent facts and the Escrow Agent shall at all times be protected with respect to any action taken or omitted to be taken by it in good faith and in accordance with the directions contained in a notice received by the Escrow Agent pursuant to this Agreement. The Escrow Agent shall also be protected when acting in good faith and upon advice of its counsel.

Section 8. Fees and Costs. The Escrow Agent shall be entitled to receive fees, in such amounts as it may establish from time to time, and to be reimbursed for its costs, including attorney's fees, for the performance of its duties under this Agreement.

Section 9. Notice. All notices, demands and requests to be given or made under this Agreement, if in writing, shall be properly made if sent by United States mail, postage prepaid, and addressed as follows:

Community:	CITY OF FARGO 225 4TH ST N FARGO ND 58102-4809
Community:	GROWTH INITIATIVE FUND INC 51 BROADWAY STE 500 FARGO ND 58102-4970
BNB:	BANK OF NORTH DAKOTA, Agent PO BOX 5509 BISMARCK, ND 58506-5509 Attention: Financial Institutions Market
Escrow Agent:	BANK OF NORTH DAKOTA, Escrow Agent PO BOX 5509 BISMARCK, ND 58506-5509 Attention: Trust Department
Lender:	BELL BANK PO BOX 10877 FARGO ND 58106-0877

Any of the above parties may change the address listed for it at any time upon written notice of such change sent by United States mail, postage prepaid, to each of the other parties.

Section 10. Amendments. No amendment, modification, termination, or waiver of any provision, nor consent to any departure from this Agreement shall in any event be effective unless in writing and signed by all parties and then such waiver, consent or amendment shall be effective only in the specific instance and for the specific purpose for which given.

Section 11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

Section 12. Severability of Provisions. Any provision of this Agreement which is prohibited or

unenforceable by law shall be deemed severable to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

Section 13. Headings. Article and Section headings in this Agreement are for the convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 14. No Waiver, Remedies. No failure on the part of the Escrow Agent to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

Section 15. Document Imaging and Electronic Transactions. All parties hereby acknowledge the receipt of a copy of this Agreement and all other loan documents. BND may, on behalf of parties, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the loan documents. BND may store the electronic image of this Agreement and loan documents in its electronic form and then destroy the paper original as part of BND's normal business practices, with the electronic image deemed to be an original.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized, as of the date first above written.

BANK OF NORTH DAKOTA, BND

CITY OF FARGO & GROWTH INITIATIVE FUND INC

By: *Rodney Heit*
Rodney Heit
Title: Business Banker

By: _____
Title: *Mayor*
By: _____
Title: _____

BANK OF NORTH DAKOTA, Escrow Agent

Carrie Willits
Title: ESCROW OFFICER

- Please select Community's preferred billing option:**
- One-Time Payment (PV) *Growth Initiative Fund*
 - Annually
 - Semi-Annually
 - Quarterly
 - Monthly
 - In-Kind *City of Fargo Tax exemption*

**COMMUNITY PACE
INTEREST BUYDOWN AUTHORIZATION**

The **CITY OF FARGO & GROWTH INITIATIVE FUND INC** (the Community) has approved its participation in the PACE Program for a loan to **COMSTOCK SERVICES LLC AND JGC LEASING LLC AND KJOS INVESTMENTS LLC** (the Borrower) and has made the necessary provisions to match the BND Buydown Amount to be paid by Bank of North Dakota (BND) as required by the program.

The total PACE benefit to the Borrower and the breakdown to the Community and BND are detailed in the payment schedule labeled Exhibit A.

The Borrower's rate will be bought down approximately **5.00** below the Yield Rate as defined in the Escrow Agreement Pace Program at the time of closing of the Loan to the Borrower, unless otherwise agreed to in writing.

The Community Authorized Representative signing this Authorization represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Authorization and that this Authorization is a valid, legal and binding on the Community and enforceable in accordance with its terms of this Authorization.

The Community shall provide an Opinion of Counsel in a form satisfactory to BND verifying the Community has taken appropriate action and has authority for its participation in the PACE Program.

Community Authorized Representative *Mayer*

Community Authorized Representative

(Please type or print name above)

February 5, 2024

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

Commissioners:

Through the RFP process, rates were secured for three (3) forestry related contracted services. These agreements - city commission previously approved along with the option to negotiate and extend additional seasons.

Agreement status:

1. Tree/Stump Removal - 2024 will be season 4 of a 5-year agreement (Cougar Tree Care, Inc.)
2. Landscape Maintenance Services – 2024 will be season 3 of a 5-year agreement (All-Terrain Grounds Maintenance)

<u>Activity/Service</u>	<u>2023 rate</u>	<u>2024 proposed rates</u>
Tree Removal	\$22.66 per diameter inch	\$23.33 per diameter inch
Stump Removal	\$176.49 per stump	\$181.78 per stump
Landscape Maintenance	\$2655 bi-weekly	no change

Based on 2023 numbers, the 3% increase would add approximately \$4,800.00. The 2024 forestry budget can support the proposed rate changes.

Recommended motion:

Move to approve 2024 contracted forestry services agreements with Cougar Tree Care, Inc. for tree and stump removal (RFP21023), and All-Terrain Grounds Maintenance for landscape bed maintenance (RFP22004).

Your approval of this request is appreciated.

Sincerely,



Scott Liudahl, City Forester

Cc: Ben Dow

Commission 2024 contract agreements.doc

Tree and Stump Removal Services - 2024

I. Agreement

This agreement is between the City of Fargo (City) and Cougar Tree Care, Inc. (Contractor) to provide tree and stump removal services for the City. This agreement shall commence upon signing by both parties and expire on December 31, 2024. The term of this agreement may be extended, if accepted and signed by the Contractor and City, for one (1) additional year, provided the negotiated extension is signed by both parties on or around January 1st of the contract year.

II. Scope of Services Summary

Work shall include all labor, materials, equipment, supplies and services required for the removal of trees and stumps in accordance with forestry department specifications. Contractor must comply with all State, Federal and Local laws, regulations and ordinances applicable to the operation of Contractor's equipment.

III. Responsibility of the City

City shall oversee the execution of this agreement and disbursing of funds.

IV. Contractor's Compensation and Method of Payment

Partial billing is acceptable at any time. Contractor may be subject to Liquidated Damages per the latest version of the City of Fargo Standard Specification for Construction for removals not completed within the allowed time frame.

V. Termination of the Agreement

This contract may be terminable at will by either party after giving ten (10) days written notice to the other party.

VI. Assignability

This agreement will not be assigned or transferred by Contractor to another party without the prior written consent of the City.

VII. Hold Harmless and Insurance

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this contract. Contractor's employees must be covered by North Dakota's Workers Compensation. Contractor shall carry appropriate liability insurance coverage, including but not limited to Public Liability Insurance in the amount of \$1,000,000 per person, \$500,000 per accident, and property damage in the amount of \$300,000 per accident. Contractor shall provide City a Certificate of Insurance naming the City of Fargo as an additional insured, and such insurance must be maintained during the term of this Agreement and any extension agreed to thereafter.

VIII. Contractor Records

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. The City, or its authorized representatives, shall have access to any records of Contractor pertinent to the agreement.

IX. Monitoring and Evaluation

City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

X. Independence of Recipient

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

XI. Conflict of Interest

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

XII. Entire Agreement

This agreement constitutes the entire agreement between the parties.

XIII. Law

This Agreement shall be construed under and in accordance with the laws of the State of North Dakota.

XIV. Time of the Essence

Time is of the essence of all provisions of this Agreement except as may be otherwise specifically stated herein.

XV. Third Parties

There are no third-party beneficiaries of this Agreement and except by way of assignment, no third-party may acquire any rights or incur any liabilities hereunder.

XVI. Headings

The subject headings of the paragraphs of this agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 1-15-24

CONTRACTOR

Cougar Tree Care, Inc.



By (signature): James Danielson

Its: President

Date: _____

CITY OF FARGO, North Dakota, a North
Dakota Municipal Corporation

Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

Landscape Maintenance Services - 2024

I. Agreement

This agreement is between the City of Fargo (City) and All-Terrain Grounds Maintenance (Contractor) to provide landscape maintenance services for the City. This agreement shall commence upon signing by both parties and expire on approximately October 31, 2024. The term of this agreement may be extended for one-year periods for a maximum of two (2) additional years, if approved and accepted in writing by both the contractor and the city prior to the season start of the appropriate year.

II. Scope of Services Summary

Work shall include all labor, materials, equipment, supplies and services required for the maintenance of trees, shrubs, perennials, and planting beds. Services shall include keeping planting beds and mulch/rock areas weed free, and collecting and removing debris. Contractor must comply with all State, Federal and Local laws, regulations and ordinances applicable to the operation of Contractor's equipment.

III. Responsibility of the City

City shall oversee the execution of this agreement and disbursing of funds.

IV. Contractor's Compensation and Method of Payment

City will compensate Contractor per bi-weekly price. Invoices for each location shall be submitted monthly.

V. Termination of the Agreement

This contract may be terminable at will by either party after giving ten (10) days written notice to the other party.

VI. Assignability

This agreement will not be assigned or transferred by Contractor to another party without the prior written consent of the City.

VII. Hold Harmless and Insurance

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this contract. Contractor's employees must be covered by North Dakota's Workers Compensation. Contractor shall carry appropriate liability insurance coverage, including but not limited to Public Liability Insurance in the amount of \$1,000,000 per person, \$500,000 per accident, and property damage in the amount of \$300,000 per accident. Contractor shall provide City a Certificate of Insurance naming the City of Fargo as an additional insured, and such insurance must be maintained during the term of this Agreement and any extension agreed to thereafter.

VIII. Contractor Records

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. The City, or its authorized representatives, shall have access to any records of Contractor pertinent to the agreement.

IX. Monitoring and Evaluation

City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

X. Independence of Recipient

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

XI. Conflict of Interest

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

XII. Entire Agreement

This agreement constitutes the entire agreement between the parties.

XIII. Law

This Agreement shall be construed under and in accordance with the laws of the State of North Dakota.

XIV. Time of the Essence

Time is of the essence of all provisions of this Agreement except as may be otherwise specifically stated herein.

XV. Third Parties

There are no third-party beneficiaries of this Agreement and except by way of assignment, no third-party may acquire any rights or incur any liabilities hereunder.

XVI. Headings

The subject headings of the paragraphs of this agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 1/5/2024

CONTRACTOR

All-Terrain Grounds Maintenance



A handwritten signature in blue ink, appearing to read "Randy Gresh", is written over a horizontal line.

By: Randy Gresh

Its: *Director of Customer Experience*

Date: _____

CITY OF FARGO, North Dakota, a North
Dakota Municipal Corporation

Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor