

Executive Session at 4:00 p.m.

Roll call.

PLEASE NOTE: The City Commission will meet in an Executive Session to discuss strategy and to provide negotiating instructions to its negotiator, the Mayor, regarding the Airport Authority's proposed amendment to the January 14, 2020 MOU between the City and the Airport Authority, and regarding other alternative or additional terms for amendment of the MOU. The City Commission's discussion of such matters, if held in public, would undermine the City's negotiating position with the Airport Authority with respect to the proposed amendment and with respect to such other terms the City may wish to consider and such discussion, if held in public, would adversely affect the bargaining position of the City, and would have an adverse fiscal effect on the City. This Executive Session is authorized pursuant to N.D.C.C. Section 44-04-19.1(9).

Regular Meeting at 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, January 11, 2021).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 2nd reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in the Proposed Arcadia Park View Addition; 1st reading 1/11/21.
- 2. Findings of Fact and Order of the Board of City Commissioners of the City of Fargo for property located at 1021 10th Street North.
- 3. Pledged securities as of 12/31/20.
- 4. Applications for Games of Chance:
 - a. Outdoor Adventure Foundation for a raffle and raffle board on 3/20/21.
 - b. St. Joseph's School for a raffle on 3/20/21.
 - c. NDSU Saddle and Sirloin Club for a raffle on 4/21/21.
 - d. St. John Paul II Catholic Schools for a raffle on 4/24/21.
- 5. Negative Final Balancing Change Order No. 1 in the amount of -\$37,058.50 for Project No. PR-20-B1.
- 6. Task Order No. 7 with Houston Engineering in the amount of \$163,500.00 for Project No. FM-21-A0.

8. Speed limit reduction along 19th Avenue North from the I-29 east ramp to Dakota Drive from 50 mph to 40 mph, with an implementation date to be determined by the NDDOT.
9. Access Easement (Storm Sewer Easement) with Southeast Cass Water Resource District (Project No. UR-21-A1).
10. Memorandum of Understanding Regarding Construction and Maintenance with Park District of the City of Fargo.
11. Access Agreement with Southeast Cass Water Resource District (Project No. BN-20-A0).
12. Bid advertisement for Project Nos. PR-21-A and PR-21-B.
13. Permanent Easement (Fire Service Surface Access Easement) with Craig Enclave OG, LLC.
14. Purchase of Service Agreement – Restricted Funding with the ND Department of Health for HIV.HCV Counseling, Testing and Referral (CFDA #93.940).
15. Contract Agreement with CoSchedule.
16. Purchase of Service Agreement with the ND Department of Human Services to promote Parents Lead in the community.
17. Benefit Plan Agreement with BCBSND and Group Insurance Policy for Dental Benefits.
18. Reallocation of \$20,000.00 in recaptured Red River Task Force COVID-19 funds to process final requests for housing assistance administered by SENDCAA.
19. Genfare Subscription and Services Agreement.
20. Amendment No. 6 with KLJ, Inc. in the amount of \$222,359.98 for the Ground Transportation Center Remodel.
21. Bid award for chlorine at the Water Treatment Plant (AFB21012).
22. Bills.
23. Change Order No. 2 for an increase of \$3,947.43 for Improvement District No. BN-20-C1.
24. Change Order No. 3 for an increase of \$15,624.06 for Improvement District No. BN-20-C1.
25. Final Balancing Change Order No. 1 in the amount of \$1,162.00 for Improvement District No. AN-20-A1.
26. Negative Final Balancing Change Order No. 3 in the amount of -\$155,786.24 for Improvement District No. PN-18-B1.
27. Negative Final Balancing Change Order No. 1 in the amount of -\$48,835.11 for Improvement District No. PR-20-E1.
28. Bid awards for Improvement District Nos. BR-21-A1 and BR-21-C1.

REGULAR AGENDA:

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29. Presentation of the Human Relations Commissions MLK Awards.
30. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
 - a. Hearing on a dangerous building located at 717 3rd Avenue North; continued from the 7/13/20 and 1/11/21 Regular Meetings.
 - b. Public Comment Period for the Community Development Block Grant (CDBG) and HOME Programs 2020-2024 Consolidated Plan including the 2020 Annual Action Plan and Budget.
 - c. Application filed by Midway Metals LLC for a property tax exemption for a project located at 3344 39th Street South which the applicant will use in the operation of manufacturing aluminum rain gutter accessories and components.
31. **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).**
32. COVID-19 Update:
 - a. Fargo Cass Public Health Update.
 - b. Commissioner Piepkorn would like to have a discussion about reducing the restrictions in the City of Fargo to match the State.
 - c. Commissioner Preston would like a report from the Liquor Control Board on final decisions made for non-compliant liquor establishments of the mask mandate.
33. Legislative Update.
 - a. Commissioner Gehrig would like to discuss staff advocating for certain bills at the State Legislature.
34. Application for Abatement or Refund of Taxes #4494 for the Fargo Doublewood Inn, LP at 3333 13th Avenue South requesting a reduction in value from \$7,990,500.00 to \$5,000,000.00 for the 2018 tax year; delayed from the 1/11/21 Regular Meeting.
35. Request for Tax Increment Financing (TIF) for the redevelopment of property at 2301 University Drive South.
36. Applications for property tax exemptions for improvements made to buildings:
 - a. Janice Knecht, 1539 14th Street South (5 year).
 - b. Allison Kenniger, 3701 Fairway Road North (5 year).
 - c. Audrey and Jordan Wermager, 2410 16th Street South (5 year).
 - d. Chelaine and Joshua Anderson, 3014 Elm Street North (5 year).
37. Recommendations for appointments and reappointments to the following Boards and Commissions:
 - a. Native American Commission.
 - b. Community Development Committee.

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

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

①

AN ORDINANCE REZONING CERTAIN
PARCELS OF LAND
LYING IN THE PROPOSED ARCADIA PARK VIEW ADDITION
TO THE CITY OF FARGO,
CASS COUNTY, NORTH DAKOTA

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

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on December 1, 2020; and,

WHEREAS, the rezoning changes were approved by the City Commission on January 11, 2021,

NOW, THEREFORE,

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

Section 1. The following described property:

All of Arcadia Park View Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "SR-3", Single-Dwelling Residential, District to "SR-4", Single-Residential, District.

Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

(SEAL)

Attest:

Timothy J. Mahoney, M.D., Mayor

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

January 21, 2021

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

RE: Dangerous Building located at 1021 10th Street North, Fargo, North Dakota

Dear Commissioners,

Enclosed for your review and approval are proposed Findings of Fact and an Order regarding the dangerous building proceeding for the property at 1021 10th Street North. At its January 11th, 2021 meeting, the report presented by Bruce Taralson, city of Fargo Building Official, was approved by the Board. As such, the City Attorney's Office was directed to prepare the appropriate Findings of Fact and Order.

Suggested Motion: I move to approve the Findings of Fact and Order as presented.

Sincerely,



Alissa R. Farol
Assistant City Attorney

Enclosure

cc: Bruce Taralson

FINDINGS OF FACT AND ORDER
of the
BOARD OF CITY COMMISSIONERS
OF THE CITY OF FARGO

Property Address: 1021 10th Street North, Fargo, North Dakota

Owners: Jesse and Ivette Lugo

A hearing was held before the Board of City Commissioners of the City of Fargo on the 11th of January, 2021 regarding property located at 1021 10th Street North, Fargo, North Dakota.

Bruce Taralson, Building Official, appeared on behalf of the city of Fargo Inspections Department and provided testimony as to the condition of the property. Craig Richie, a North Dakota attorney, appeared and testified on behalf of his client, Select Portfolio Servicing, Inc. (SPS, Inc.).

The Board heard the testimony, considered the reports, evidence and other information presented, and hereby makes the following Findings of Fact:

FINDINGS OF FACT

1. That Jesse and Ivette Lugo are the owners of the following described real property located in the City of Fargo, County of Cass and State of North Dakota:

South Fifty-five (55) Feet of Lot E, Block Thirteen (13) of Chapin's Addition to the city of Fargo.

The street address for which is: 1021 10th Street North, Fargo, North Dakota, 58102.

2. That on October 4th, 2019, Steve Eickhoff, Building Inspector for the city of Fargo, inspected the property and found the building, consisting of a story and one-half, wood-framed structure to be a dangerous building within the standards set forth in Article 21-04 of the Fargo Municipal Code and Section 108.1.5 of the International Property Maintenance Code concerning

dangerous structures.

3. That on September 23rd, 2020, James Haley, Deputy Assessor for the city of Fargo, performed an inspection on the property and determined that the estimated cost to repair the property would exceed fifty percent (50%) of the building value as established by the Fargo Assessment Department.

4. That the building is unsafe and is a dangerous building in the following respects:
(a) concrete block foundation is buckling; (b) concrete and wood exterior steps are deteriorating; (c) basement pier is leaning; (d) signs of squatters; (e) significant roof deterioration; (f) interior water damage; (g) unsecured doors and windows; (h) chimney is crumbling; (i) rear stairs built without a permit and do not meet current code standards; (j) exterior rubbish and volunteer growth.

5. Further, the City Commission finds that the following conditions exist with respect to the subject property:

- a. The structure has been damaged or deteriorated for more than fifty percent (50%) of its original value;
- b. The building is unsafe, fails to provide the amenities essential to decent living, and is unfit for human habitation; and
- c. The building it is unsafe or dangerous to the health, moral safety or general welfare of the people of the city of Fargo.

6. That the information in the files of the Inspection Department and the City Assessor's Office stemming from various inspections of the property on or before October 4th, 2019 and September 23rd, 2020, with respect to the subject property are hereby accepted as true and correct.

7. That the building located at 1021 10th Street North, Fargo, North Dakota 58102, is hereby found to be a "dangerous building."

8. Notice of Dangerous Building was posted on the property on or about October 8th, 2019, in accordance with Municipal Code § 21-0404. The Notice of Dangerous Building informed

the owners, occupants, mortgagees, lessees, and all other persons having an interest in said property according to the records at the Office of the Recorder, that the “dangerous building” must be vacated and the building demolished within 30 days from the date of the notice.

9. Despite being ordered that the building on the subject property should be demolished or necessary permits be obtained within 30 days of the notice, the owners or anyone claiming to have an ownership interest in said building have failed to do so.

10. It was later discovered that a Judgment was filed in Cass County District Court on July 7th, 2020 against the owners for mortgage indebtedness (Case No. 09-2019-CV-02840).

11. That pursuant to the Court’s Order, a Sheriff’s sale was to occur, which said sale of the property did occur on December 16th, 2020 and was purchased by “U.S. Bank National Association, Successor Trustee to Bank of America N.A. Successor Trustee to LaSalle Bank N.A. Trustee for the Holders of the Merrill Lynch First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2006-FF18.” U.S. Bank National Association acts as Trustee on a residential mortgage-backed securitization trust (the “RMBS” Trust), which is serviced by SPS, Inc.

12. That pursuant to North Dakota Century Code § 32-19-18, the owners, Jesse and Ivette Lugo, may “redeem” the property from the foreclosure sale within sixty (60) days after the sale by paying the amount bid at the Sheriff’s sale plus interest on that amount at the same rate as the obligation secured by the mortgage. Jesse and Ivette Lugo retain ownership of the property until the 60-day redemption period has expired. If the property has not been redeemed within 60-days, the purchaser at the Sheriff’s sale receives a Sheriff’s deed which completes the formal transfer of the property.

13. The owners or anyone claiming to have an ownership interest in said building have not sufficiently presented cause why the “dangerous building” should not be demolished.

14. That Inspections Department may secure the removal of this building if the owners or anyone claiming to have an ownership interest in said building fail to comply with city ordinances and demolish the property on or before March 11th, 2021.

15. Any cost of demolition shall be assessed against the subject property in accordance with Fargo Municipal Code §21-0405(E).

ORDER

Based on the foregoing Findings of Fact, it is hereby ORDERED that Jesse and Ivette Lugo, or anyone else claiming an ownership interest in said building, shall demolish the “dangerous building” located at 1021 10th Street North, Fargo, North Dakota by March 11th, 2021.

It is further ordered that if the owners or anyone else claiming an ownership interest in said building fail to demolish said “dangerous building,” the City Auditor, Building Inspector and City Attorney are directed to act on behalf of the city of Fargo to cause the “dangerous building” to be demolished, and the cost of said demolition to be assessed against the subject property as provided in Section 21-0405 of the Fargo Municipal Code.

DATED this _____ day of January, 2021.

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

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

ATTEST:

Steven Sprague, City Auditor

NOTICE OF ENTRY OF ORDER

TO: JESSE AND IVETTE LUGO AND ALL OTHER PERSONS HAVING AN OWNERSHIP
INTEREST IN THIS PROPERTY

RE: PROPERTY AT 1021 10TH AVENUE SOUTH, FARGO, NORTH DAKOTA 58102

YOU ARE HEREBY GIVEN NOTICE that you shall have 30 days from the date of service of Findings of Fact and Order of the Board of City Commissioners of the City of Fargo ("Order") upon you in which to appeal the Order to the District Court of Cass County, North Dakota, or to take such other legal action to enjoin the enforcement of this Order as you deem proper, all in accordance with the appeal procedure set forth in Fargo Municipal Code § 21-0412. You are further given notice that the "dangerous building" on the subject property may be demolished by the city of Fargo at any time on or after March 11th, 2021.

DATED this ____ day of January, 2021.

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

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

ATTEST:

Steven Sprague, City Auditor

3

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Approval of Pledged Securities

DATE: January 14, 2021

North Dakota Century Code section 21-04-11 requires the approval of securities pledged as collateral for City funds deposited in various financial institutions if the deposited funds exceed the FDIC insurance limit of \$250,000. NDCC calls for re-approval on a semi-annual basis.

At this time, I would request City Commission approval of securities pledged as collateral. Amounts are summarized by financial institution as follows:

First International Bank & Trust	\$ 7,458,907
Wells Fargo BNY Mellon	\$ 244,968
US Bank (Letter of Credit)	\$ <u>5,000,000</u>
Total Pledged Collateral	\$ <u>12,703,875</u>

Detailed pledge security reports are attached for your review.

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

Recommended Motion:

Approve the listing of pledged securities as of December 31, 2020.

Pledged By Location
FIRST INTL. BANK & TRUST - FARGO, ND
 FROM 12/01/2020 TO 12/31/2020

01/13/2021
 8:15:29AM

Code Receipt#	FAS 115	CUSIP Trade #	Description Maturity	Prerefund	Pool/Type Coupon	Moody S&P	Original Face Pledged Percent	Pledged Original Face	Pledged Par Value	Pledged Book Value	Pledged Market Value
65 CITY OF FARGO (CTFG)											
BND	SALE	115158DU8 100015	BROWERVILLE MINN INDPT SCH 02/01/2029		3.000		620,000.00 100.00%	620,000.00	620,000.00	626,239.38	684,746.60
BND	SALE	3128MEBL4 466	FGCI G15243 3.000 11/01/27 11/01/2027		3.000		5,000,000.00 100.00%	5,000,000.00	1,151,402.05	1,183,764.62	1,209,881.76
BND	SALE	3138E7TW4 1023	FNCI AK3264 3.000 02/01/27 02/01/2027		3.000		7,100,000.00 100.00%	7,100,000.00	936,602.22	948,260.48	984,490.69
BND	SALE	502606RW8 1910	LA CROSSE CNTY WIS 04/01/2025		4.000		900,000.00 100.00%	900,000.00	900,000.00	900,760.39	908,172.00
BND	SALE	527860FY1 1930	LEWIS CNTY WASH SCH DIST NO 30 12/01/2037		4.500		1,000,000.00 100.00%	1,000,000.00	1,000,000.00	1,073,731.41	1,200,820.00
BND	SALE	610100VV8 2084	MONONA WIS 10/01/2023		2.000		600,000.00 100.00%	600,000.00	600,000.00	603,913.23	616,890.00
BND	SALE	717021HY8 2260	PEWAUKEE WIS SCH DIST 03/01/2025		4.000		1,155,000.00 100.00%	1,155,000.00	1,155,000.00	1,156,121.34	1,161,930.00
BND	SALE	820123UM7 100137	SHARYLAND TEX INDPT SCH DIST 02/15/2031		4.500		500,000.00 100.00%	500,000.00	500,000.00	556,428.48	614,050.00
BND	SALE	864165BS3 2722	STUTSMAN CNTY N D 10/01/2033		3.750		395,000.00 100.00%	395,000.00	395,000.00	409,687.76	431,975.95
TOTAL 65 CITY OF FARGO (CTFG)								17,270,000.00	7,258,004.27	7,458,907.09	7,812,957.00

Mortgage-backed securities display the expected maturity date (stated maturity date + days delay).
 The information contained herein, while believed to be reliable, is not guaranteed.



BNY MELLON

Broker/Dealer Services
101 Barclay Street, 4th Floor East
New York, NY 10286

Date: 12/31/20

ATTN: STEVEN SPRAGUE
CITY OF FARGO
200 3RD STREET
FARGO, ND 58012

Account Id: WUB366

Tax Id Number: 456002069

This advice is supplied as part of the Tri-Party Collateral agreement among the Customer, Wells Fargo Bank, N.A. and The Bank of New York Mellon. Any questions should be directed to Vinnette Frater, Senior Associate, BDS/Tri-Party Services, (973) 569-2411.

As agent we confirm the following collateralized deposit information received from Wells Fargo Bank, N.A. as of close of business the last business day of the month.

Date: 12/31/20

The collateral segregated on your behalf on 12/31/20 is as follows:

CUSIP	DESCRIPTION	QUANTITY	MARKET VALUE
3140KFGN9	FNMA FNMS 2.000% 10/01/50	235,903.00	244,967.91
TOTAL MKT VALUE			244,967.91



BNY MELLON

Unless otherwise agreed in writing, financial assets held as collateral may include financial assets issued by your transaction counterparty or its subsidiaries or affiliates.

Average Traded Volume data is obtained from primary or secondary securities exchanges.

Market data, which is subject to availability, may or may not be current.

The information reported or reflected herein is proprietary to its suppliers and is for your internal use only. It may not be copied, reproduced, published, posted, transmitted, displayed, stored, modified, sublicensed, transferred, disclosed or distributed or used for any purpose without BNYM's express written permission or that of its vendors or other third parties, as applicable.

REPORTED PRICES, WHETHER PROVIDED BY VENDORS OR OTHERWISE OBTAINED AS DESCRIBED HEREIN, MAY NOT REFLECT THE ACTUAL AMOUNT THAT CAN BE REALIZED UPON THE SALE OF PARTICULAR FINANCIAL ASSETS.

**BNY MELLON****BROKER DEALER SERVICES DIVISION
PRICING, INDICATIVE DATA AND OTHER DISCLOSURES**

The prices of financial assets and indicative data reported or reflected in reports furnished by the Broker Dealer Services Division (BDS) of The Bank of New York Mellon (BNYM) generally are provided by data providers and ratings agencies ("vendors") used by BDS in the ordinary course of business. Trust receipts will be valued based on the face amount of the underlying financial assets, as set forth therein. Prices and indicative data are not independently verified, and may contain errors or omissions.

With respect to certain newly issued financial assets, if vendors do not provide prices, such financial assets will be valued at par or the new issue price for up to three business days. Thereafter, such financial assets will be valued at zero.

With respect to certain financial assets other than new issues, vendors may not provide prices and may not update prices previously provided on a regular basis. If vendors do not provide prices or update previously reported prices within three business days, such financial assets will be valued at zero, unless other arrangements are agreed in writing.

Notwithstanding the foregoing, certain hard-to-price, thinly traded or illiquid financial assets are valued monthly with no adjustment during the interim period (details are available upon request by contacting BDS).

Although BNYM will not utilize prices obtained from brokers or dealers in providing services, BNYM may obtain from any broker or dealer prices and other information and data such as offering memoranda, observable and non-observable information and assumptions in order to assist BNYM's vendors in determining prices of particular financial assets.

With respect to certain financial assets that are not widely held or regularly traded, vendors may report prices based on valuation models which reflect underlying non-observable assumptions that may not be accurate or complete and such models and/or prices may not be regularly adjusted.

The prices reported by BDS may differ from the prices reported or used by other divisions of BNYM or its subsidiaries or affiliates, and such differences may or may not be material. Margin values reported in connection with triparty transactions may differ from margin values used by BNYM for its own account or for the account of its subsidiaries, affiliates or other clients.

Unless otherwise agreed in writing, financial assets held as collateral may include financial assets in default, provided that the prices of such financial assets are made available to BNYM by a vendor which BNYM uses generally for valuing such financial assets.



Issue Date: November 2, 2020

LOC No.: 552332

Beneficiary: City of Fargo
225 4th St. N
Fargo, ND 58102-4817

Ladies and Gentlemen:

For the account of U.S. Bank National Association, CINCINNATI, OH, we hereby authorize you to draw on us at sight up to an amount of \$5,000,000.00.

This letter of credit is irrevocable, unconditional and nontransferable.

Drafts drawn under this letter of credit must be accompanied by the original letter of credit and be presented in substantially the form attached as Exhibit A, at the office identified below by an authorized officer of the beneficiary no later than 2:00 P.M., Cincinnati time, on Monday, May 03, 2021.

This letter of credit sets forth in full the terms of our obligations to you, and such undertaking shall not in any way be modified or amplified by any agreement in which this letter is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any agreement.

We engage with you that multiple drafts drawn under and in compliance with the terms of this letter of credit will be duly honored at the Credit Department of the Federal Home Loan Bank of Cincinnati, 221 East Fourth Street, Cincinnati, Ohio 45202.

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication 600.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeff Berryman".

Jeff Berryman
Vice President

A handwritten signature in dark ink, appearing to read "Lisa Wishart".

Lisa Wishart
Assistant Vice President

c: Patricia Finnemore
U.S. Bank National Association



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

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

Name of Nonprofit Organization or group of people permit is issued to Outdoor Adventure Foundation		Date(s) of Activity 3-20-21	
Person Responsible for the Gaming Operation and Disbursement of Net Income BRIAN SOLUM		Title PRESIDENT	
Business Address 415 38th St. S. Suite E		City FARGO	State ND
Mailing Address (if different)		City	State
Name of Site Where Game(s) will be Conducted HILTON GARDEN INN CONVENTION CENTER		Site Address 4351 17th Ave. S.	
City FARGO	State ND	Zip Code 58103	County CASS
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit. <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input checked="" type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffle	POLARIS ATV	7,995.00	Raffle	GUN SAFE	800.00
Raffle	Ice House	495.00	Raffle	Mini Snowmobile	2,000.00
General Raffle	Sporting Goods	2,495.00	Raffle	Shotguns	900.00
Raffle Board	Guns	900.00			
Raffle Board	Custom Rifle	1,600.00			
Raffle Board	Wild life Prints	750.00			
Raffle	Gun Cabinet	675.00			
Raffle	Hunting Blind	950.00			
Raffle Board	Custom Rifle	1,200.00			
			Total: (Limit \$40,000 per year)		
			\$ 21,260.00		

Intended uses of gaming proceeds: Provide hunting, fishing, Disneyworld + more for youth's diagnosed with CANCER + other life threatening illnesses. Also for Combat Disabled Veterans.

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

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

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

Signature of Organization or Group's Top Official Brian Solum	Date 1-18-21	Title PRESIDENT	Business Phone Number 701 361-1888
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SFN 9338 (08/2019)

* ☐ Restricted Event Permit (one event per year)

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Intended uses of gaming proceeds: To support the operational costs associated with running our non-profit

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

Signature of Organization or Group's Top Official 	Date 1-21-21	Title Principal	Business Phone Number 218-733-0553
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APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

12072
25.00

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

Name of Nonprofit Organization or group of people permit is issued to Ndsu Saddle And Sirloin Club		Date(s) of Activity 4/21/2021 to 4/21/2021		For a raffle, provide drawing date(s): 4/21/2021	
Person Responsible for the Gaming Operation and Disbursement of Net Income Hailey Bichler		Title Fundraising		Business Phone Number (701) 220-3984	
Business Address 1350 Albrecht Blvd		City Fargo		State ND	Zip Code 58105-5769
Mailing Address (if different) 1300 Albrecht Blvd		City Fargo		State ND	Zip Code 58105-5769
Name of Site Where Game(s) will be Conducted Sheppard Arena		Site Address 1350 Albrecht Blvd			
City Fargo		State ND	Zip Code 58105-5769	County Cass	
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.					
<input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *					

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffle	Money	\$1,000.00			
			Total: (Limit \$40,000 per year)		
			\$ 1,000.00		

Intended uses of gaming proceeds: The proceeds of the raffle will be 50/50. fifty percent will go to a family or organization in need. The other fifty percent will be given to the winner of the raffle.

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

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

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

Signature of Organization or Group's Top Official 	Date 1/20/2021	Title Professor	Business Phone Number 701/231-6271
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APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

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

Name of Nonprofit Organization or group of people permit is issued to St. John Paul II Catholic Schools	Date(s) of Activity to	For a raffle, provide drawing date(s): April 24, 2021	
Person Responsible for the Gaming Operation and Disbursement of Net Income Lee Noedi	Title Auction Director	Business Phone Number 701-306-266	
Business Address 5800 25th Street South	City Fargo	State ND	Zip Code 58104
Mailing Address (if different)	City	State	Zip Code
Name of Site Where Game(s) will be Conducted Fargo Holiday Inn	Site Address 3803 13th Avenue South		
City Fargo	State ND	Zip Code 58103	County Cass
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit. <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffle	\$250 Hornbachers Gift Card				
Raffle	\$100 West Acres Gift Card				
Paddle Game	\$1000 Cash Prize				
Paddle Game	\$1000 Cash Prize				
Raffle	\$250 Scheels Gift Card				
Total:			(Limit \$40,000 per year) \$ 2350		

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

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

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

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? ☐ No ☒ Yes-If "Yes," indicate the total value of all prizes previously awarded: \$ **8000**. This amount is part of the total prize limit of \$40,000 per year.

Signature of Organization or Group's Top Official 	Date 01.12.21	Title Auction Director	Business Phone Number 701-306-1266
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(5)

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. PR-20-B1

Type: Negative Final Balancing Change Order #1

Location: Citywide

Date of Hearing: 1/19/2021

Routing

City Commission

Date

1/25/2021

PWPEC File

X

Project File

Jeremy Engquist

The Committee reviewed the accompanying correspondence from Project Manager, Jeremy Engquist, for Negative Final Balancing Change Order #1 in the amount of -\$37,058.50, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #1 in the amount of -\$37,058.50, bringing the total contract amount to \$579,851.50.

On a motion by Steve Sprague, seconded by Ben Dow, the Committee voted to recommend approval of Negative Final Balancing Change Order #1 to Ti-Zack Concrete Inc.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Negative Final Balancing Change Order #1 in the amount of -\$37,058.50, bringing the total contract amount to \$579,851.50 to Ti-Zack Concrete Inc.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: Infrastructure Sales Tax Funds

Developer meets City policy for payment of delinquent specials

Agreement for payment of specials required of developer

Letter of Credit required (per policy approved 5-28-13)

Yes No

N/A

N/A

N/A

COMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☒☒☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☐☐☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

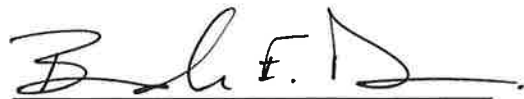
Brenda Derrig, City Engineer

☒☒☐

Kent Costin, Finance Director

☐☐☐

ATTEST:



Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

Project No	PR-20-B1	Change Order No	1
Project Name	Concrete Spot Repair & Incidentals		
Date Entered	12/8/2020	For	Ti-Zack Concrete Inc

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

EXPLANATION OF CHANGE: Final Balancing Change Order

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Paving	1	Remove Pavement All Thicknesses All Types	SY	3,044.00	0.00	3,044.00	-165.00	2,879.00	20.00	-3,300.00
	2	Remove Curb & Gutter	LF	865.00	0.00	865.00	-141.00	724.00	8.00	-1,128.00
	3	Remove Sidewalk All Thicknesses All Types	SY	334.00	0.00	334.00	-16.00	318.00	20.00	-320.00
	4	F&I Curb & Gutter Standard (Type II)	LF	865.00	0.00	865.00	-141.00	724.00	42.00	-5,922.00
	5	F&I Pavement 10" Thick Doweled Conc	SY	3,044.00	0.00	3,044.00	-165.00	2,879.00	125.00	-20,625.00
	6	Repair Pavement - Partial Depth Conc	SF	50.00	0.00	50.00	-2.00	48.00	65.00	-130.00
	7	F&I Sidewalk 4" Thick Reinf Conc	SY	179.00	0.00	179.00	13.00	192.00	50.00	650.00
	8	F&I Sidewalk 6" Thick Reinf Conc	SY	119.00	0.00	119.00	-9.00	110.00	80.00	-720.00
	9	F&I Impressioned 6" Thick Reinf Conc	SY	40.00	0.00	40.00	-23.00	17.00	150.00	-3,450.00
	10	F&I Det Warn Panels Cast Iron	SF	152.00	0.00	152.00	7.50	159.50	35.00	262.50
	11	F&I Casting - Inlet	EA	3.00	0.00	3.00	-1.00	2.00	750.00	-750.00
	12	F&I Casting - Std Manhole	EA	2.00	0.00	2.00	-2.00	0.00	1,200.00	-2,400.00
	13	F&I Casting - Floating Manhole	EA	3.00	0.00	3.00	-2.00	1.00	1,400.00	-2,800.00
	15	GV Box to Grade - w/Conc	EA	10.00	0.00	10.00	-3.00	7.00	500.00	-1,500.00
	16	Mulching Type 1 - Hydro	SY	420.00	0.00	420.00	-220.00	200.00	3.00	-660.00
	17	Seeding Type C	SY	420.00	0.00	420.00	-220.00	200.00	3.00	-660.00
	18	Inlet Protection - Existing Inlet	EA	18.00	0.00	18.00	-8.00	10.00	150.00	-1,200.00

Paving	19	Construction Signing	SF	50.00	0.00	50.00	-50.00	0.00	17.00	-850.00	
	21	Traffic Control - Type 2	LS	5.00	0.00	5.00	-1.00	4.00	3,000.00	-3,000.00	
	22	Flagging	MHR	150.00	0.00	150.00	-130.00	20.00	40.00	-5,200.00	
	23	Relocate Sign Assembly	EA	3.00	0.00	3.00	-3.00	0.00	150.00	-450.00	
	24	F&I Sidewalk Curb	LF	15.00	0.00	15.00	-15.00	0.00	40.00	-600.00	
Pavement Markings	Paving Sub Total (\$)										-54,752.50
	25	F&I Grooved Contrast Film 7" Wide	LF	80.00	0.00	80.00	1,163.00	1,243.00	11.00	12,793.00	
	26	F&I Grooved Plastic Film 4" Wide	LF	380.00	0.00	380.00	-380.00	0.00	6.50	-2,470.00	
	27	F&I Grooved Plastic Film 6" Wide	LF	100.00	0.00	100.00	-100.00	0.00	9.00	-900.00	
	28	F&I Grooved Plastic Film 8" Wide	LF	160.00	0.00	160.00	377.00	537.00	13.00	4,901.00	
Traffic Signals	29	F&I Grooved Plastic Film 16" Wide	LF	150.00	0.00	150.00	31.00	181.00	30.00	930.00	
	30	F&I Grooved Plastic Film 24" Wide	LF	234.00	0.00	234.00	136.00	370.00	40.00	5,440.00	
	Pavement Markings Sub Total (\$)										20,694.00
	31	F&I Detection Preformed Loop	EA	13.00	0.00	13.00	-3.00	10.00	1,000.00	-3,000.00	
	Traffic Signals Sub Total (\$)										-3,000.00

Summary



Source Of Funding

Net Amount Change Order # 1 (\$)	-37,058.50
Previous Change Orders (\$)	0.00
Original Contract Amount (\$)	616,910.00
Total Contract Amount (\$)	579,851.50

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
10/30/2020		0.00	0.00	10/30/2020	
Description					

APPROVED		APPROVED DATE
For Contractor		
Title	President	
	Department Head Mayor	 1/20/24
	Attest	

REPORT OF ACTION

6

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-21-A0

Type: MSA Task Order #7

Location: University Drive & 52nd Avenue South

Date of Hearing: 1/19/2021

RoutingDate

City Commission

1/25/2021

PWPEC File

X

Project File

Roger Kluck

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, regarding approval of Task Order #7 with Houston Engineering for Project Development, Construction Administration, Inspection, and Surveying.

Engineering developed a Project Scoping Request to solicit engineering proposals for Red River erosion protection and bank stabilization along University Drive near 52nd Avenue South and 52nd Avenue South east of University Drive.

Staff is recommending approval of the Task Order #7 with Houston Engineering for Project Development, Construction Administration, Inspection and Survey in the amount of \$163,500 for Project No. FM-21-A0.

On a motion by Brenda Derrig, seconded by Tim Mahoney, the committee voted to recommend approval of Task Order #7 with Houston Engineering for Project Development, Construction Administration, Inspection and Survey in the amount of \$163,500 for Project No. FM-21-A0.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Task Order #7 with Houston Engineering for Project Development, Construction Administration, Inspection and Survey in the amount of \$163,500 for Project No. FM-21-A0.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: Flood Sales Tax

Developer meets City policy for payment of delinquent specials

Agreement for payment of specials required of developer

Letter of Credit required (per policy approved 5-28-13)

Yes No

N/AN/AN/ACOMMITTEE

Present Yes No Unanimous

✓

Tim Mahoney, Mayor

✓✓✓

Nicole Crutchfield, Director of Planning

✓✓✓

Steve Dirksen, Fire Chief

✓✓✓

Bruce Grubb, City Administrator

✓✓✓

Ben Dow, Director of Operations

✓✓✓

Steve Sprague, City Auditor

✓✓✓

Brenda Derrig, City Engineer

✓✓✓

Kent Costin, Finance Director

✓✓✓

ATTEST:



Brenda E. Derrig, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Roger E. Kluck, PE, CFM, Engineer II Storm Sewer/Floodplain
Date: January 4, 2021
Re: Project #FM-21-A0 Red River Erosion Protection & Bank Stabilization

As previously discussed with PWPEC, staff has been working with various engineering consultants to review the unanticipated settlement that has occurred along the floodwall adjacent to University Drive South. Upon completion of the review, this group of engineering consultants developed a report providing several repair options for the floodwall as well as a determination that the current condition of the floodwall would be able to handle a flood prior to the completion of any repairs. As a result of these findings and the estimated cost of repairs, it has been determined that repair of this floodwall does not need to happen immediately but instead will be programmed in a future year's Capital Improvements Plan. This fall Engineering received word from Public Works that there is a possible settlement also occurring on the north lane of 52nd Avenue South east of University Drive. Subsequently, we received authorization from PWPEC and the Commission to expand the geotechnical evaluation scope for Braun Intertec to review the movement of 52nd Avenue South and their investigation is underway.

In the interim though, staff is recommending to complete a project in 2021 that would place riprap along the outside meander of the river at these failure points. This proposed project is intended to work as part of the larger repair improvements for the failure locations and was identified by Braun as part of their recommendations from the investigative evaluation. Engineering developed a Project Scoping Request to solicit engineering proposals from already pre-qualified engineering firms. Five firms were invited to submit proposals and two firms actually submitted proposals. Engineering reviewed the two submitted proposals and selected Houston Engineering as the firm with "more site specific experience and more identified current experience doing erosion protection and bank stabilization on a major river prone to recent flooding and lessons learned from those projects". The Houston Engineering submittal was for a "not to exceed" fee for: Project Development: \$68,500.00; Construction Administration, Inspection, & Survey: \$95,000.00; Total: \$163,500.00

Engineering believes the proposal is reasonable and recommends authorization of the work. Funding will come from Sales Tax Funds-Flood Control-460.

Recommended Motion:

To approve a task order to Houston Engineering, Inc. for Project #FM-21-A0 Project Development, Construction Administration, Inspection, and Survey for a not to exceed amount of \$163,500.00 for Red River Erosion Protection and Bank Stabilization along University Drive South near 52nd Avenue and 52nd Avenue South east of University Drive.

In accordance with paragraph 1.1 of the Task Order Agreement between Owner and Engineer for Master Professional Services, dated February 14, 2019 ("Agreement"), Owner and Engineer agree as follows:

1. Specific Project Data

- A. Project Title: FM-21-A0 Red River Erosion Protection & Bank Stabilization
- B. Description: This Task Order is for the design and construction engineering services for FM - 21-A0 which will include Red River Bank Stabilization and erosion protection in the area of South University Drive at 52 Avenue South.

2. Services of Engineer

Services to be completed by the Engineer are as specified in the proposal submitted by Houston dated December 16, 2020. Proposal is attachment A of this Task Order.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Master Services Agreement dated February 14, 2019.

4. Times for Rendering Services

Phase	Completion Date
Phase 1: 30% Design	March 5, 2021
Phase 2: 90% Plans	April 2, 2021
Phase 3: 100% Plans	May 7, 2021

5. Payments to Engineer

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

Phase	Compensation Method	Lump Sum, or Estimate of Compensation for Services
Phase 1: Project Development	Hourly Not to Exceed	\$68,500.00
Phase 2: Construction Administration, Inspection, & Survey	Hourly Not to Exceed	\$95,000.00
		Total Services= \$163,500.00

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

6. Attachments

Attachment A- Proposal submitted by Houston dated December 16, 2020.
 Attachment B - Project scoping request created by City of Fargo dated November 17, 2020 and Addendum Dated December 2, 2020.
 Attachment C - Commission ROA dated January 25, 2021

MS-19-A0 Task Order No. 7

Houston Engineering, Inc.

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

The Effective Date of this Task Order is January 26, 2021.

Owner:

Engineer:

By: _____

By: Name: Dr. Tim MahoneyName: Jerry Bents, PETitle: MayorTitle: Vice President, Principal-In-Charge

Designated Representative for Task Order :

Designated Representative for Task Order:

Name: Roger E. Kluck, PE, CFMName: Michael P. Love, PETitle: Engineer IITitle: Project ManagerApproval Requirements

\$15,000 or less - City Engineer

\$15,001 - \$150,000 - PWPEC

Over \$150,000 - PWPEC & Commission



Fargo Office	701.237.5065
1401 21st Avenue North, Fargo, ND 58102	

VIA Email: rkluck@fargoND.gov

December 16, 2020

Roger E. Kluck, PE, CFM
City of Fargo
225 4th Street North
Fargo, ND 58102

Subject: City of Fargo Project #FM-21-A0 – Engineering Services for Red River Erosion Protection and Bank Stabilization

Dear Mr. Kluck:

Thank you for the opportunity to submit our proposal for Project #FM-21-A0 – Engineering Services for Erosion Protection and Bank Stabilization Along the Red River. Houston Engineering, Inc. (HEI) has extensive experience in these types of projects. We will draw from this experience to provide valuable engineering services for your erosion protection and bank stabilization projects.

As you know, we assisted the City in determining the underlying causes of the bank failure at the University Drive floodwall as well as developing a repair approach for the initial problem. This phased repair will begin with armoring and stabilizing the existing riverbank. Over the past four years, we have assisted the City of Minot with three similar repairs along the Mouse River. The most recent project, which is nearing completion, includes more than 2,500 feet of riverbank that was resloped and stabilized with more than 25,000 tons of aggregate bedding and rock riprap (more details on this project have been attached for reference in **Appendix C – Similar Experience**).

Based on our past experience with these types of projects, we know that there are three critical components to a riverbank stabilization project:

1. Accurate Survey Data—A detailed and accurate survey of the river channel bathymetry, especially the toe of the bank, is essential to developing the proposed repair section and accurately estimating quantities for the project. Failure to obtain this survey data can result in costly overruns of the bedding and riprap quantities. If HEI is selected to complete this work, we would complete a bathymetric survey of the river channel in the winter by drilling holes through the ice in multiple locations along the repair area and taking depth measurements. We have used this method in the past with great success. Completing the bathymetric survey in this way will allow for a more accurate plan set and estimate early on. This will also remove the potential of delays due to spring flooding.

2. Geotechnical Stability—The proposed design must provide adequate erosion protection to prevent further riverbank degradation while ensuring that the existing bank's stability is not compromised by improper rock riprap installation. With the assistance of Braun Intertec, we will develop a repair section consisting of aggregate bedding material and rock riprap that is consistent with US Army Corps of Engineers (USACE) Engineering Manual (EM) 1110-2-1601. In accordance with this EM, we will incorporate launchable riprap in the repair section to mitigate future toe scour at the repair location. As mentioned earlier, we have recently completed three projects that included river bank stabilizations similar to this proposed effort. All of those projects required USACE 408 permitting, which included a design review by the USACE. Through our work on these projects, we learned that in certain situations the recommended 50% increase in riprap thickness below the normal water level can be reduced by managing uncertainties during construction by requiring the contractor to use GPS machine control

Roger E. Kluck, PE, CFM
December 16, 2020
Page 2



when placing riprap below the water. This in turn reduces the amount of rock needed to achieve the desired erosion protection, which then reduces the overall construction costs.

3. Permitting—This component is key because it could cause significant delays. Since this project will include work below the ordinary high water level (OHWL) of the Red River, it will require both a Sovereign Lands Permit from the North Dakota State Water Commission (NDSWC) as well as a USACE 404 permit. A NDSWC Construction Permit will also be required for this project. The proposed repair work will be in the FEMA floodway and will require a hydraulic analysis to ensure the proposed repairs do not result in an increase to the 100-year flood elevation on the river. It is assumed that a cultural resource investigation and wetland delineation will be required as part of these permit submittals.

Our project team will be led by Mike Love as Project Manager. Jerry Bents will serve as the Principal-in-Charge. Brady Wall will operate as Design Engineer for the project while project survey will be completed by one of HEI's many qualified survey crews. HEI will contract Braun Intertec as our subconsultant to assist in developing the proposed repair options and ensuring the project meets the bank stabilization. Wetland delineation, if required, will be completed by HEI and led by Mark Aanenson in HEI's Fargo office. HEI will work with Juniper Environmental Consulting as an additional subconsultant to complete cultural resource investigation, if required.

HEI will complete the services outlined the FM-21-A0 Project Scoping Request dated November 17, 2020 and modified as outlined in the project memorandum dated December 2, 2020. In preparing our cost proposal for this project, we have assumed five total meetings (four virtual and one on-site). We have budgeted for a complete site topographic survey of the riverbank as well as a bathymetric survey of the river channel adjacent to the repair area. In estimating the construction surveying for the project, we have assumed the contractor will use GPS machine control. As such, field survey will be limited to setting project control points for contractor site calibration, staking project limits, and marking tree removals.

This work will be completed in accordance with the City of Fargo Master Service Agreement for Professional Services MS-19-A0. The work will be completed and billed on an hourly basis in accordance with the 2021 Hourly Fee Schedule included in **Appendix B**, with a not-to-exceed estimated total price as outlined in the Cost Proposal included in **Appendix A**.

We feel that our existing knowledge of the project coupled with our recent experience completing riverbank stabilization projects in Minot will help ensure a successful outcome for this project. Thank you again for considering HEI; we look forward to assisting you with this critical project.

Sincerely,

HOUSTON ENGINEERING, INC.

A handwritten signature in blue ink, appearing to read 'Mike Love', written over a horizontal line.

Michael P. Love, PE
Project Manager
Direct: 701.499.2062
mlove@houstoneng.com

A handwritten signature in blue ink, appearing to read 'Jerry Bents', written over a horizontal line.

Jerry Bents, PE
Vice President, Principal-in-Charge
Direct: 701.499.2045
jbents@houstoneng.com



Appendix A - Cost Proposal

Project Scoping Request
Projects #FM-21-A0 Red River Erosion Protection & Bank Stabilization

COST PROPOSAL FORM

Project: FM-21-A0

Type: Red River Erosion Protection & Bank Stabilization

Location: University Drive S at 52nd Ave S & 52nd Ave S East of University

Cost Proposals shall be based on fixed fee lump sum and payment will be based on actual hourly rates. Attach basic fee structure.

Project Development Phase

Preliminary & Design Administration \$10,000

Preliminary Survey \$8,000

Permits Submission \$10,000

Wetlands Delineation \$4,000

Cultural Resource Investigation & Survey \$5,000

Preliminary Engineering (30%) \$13,500 (Includes Floodway Analysis)

Meetings with City \$2,500

Design, Plan Preparation, and Bid Documents \$15,500

Project Development Total Not to Exceed Proposal \$68,500

Construction Administration Phase

Construction Project Administration \$14,000

Construction Inspection (assume 3 months & inspection ave. 50 hrs/wk) \$60,000

Construction Surveying \$5,500

Quality Control Testing Estimate \$10,500

Project Closeout \$5,000

Construction Administration, Inspection & Survey \$95,000

Total Not to Exceed Proposal \$163,500

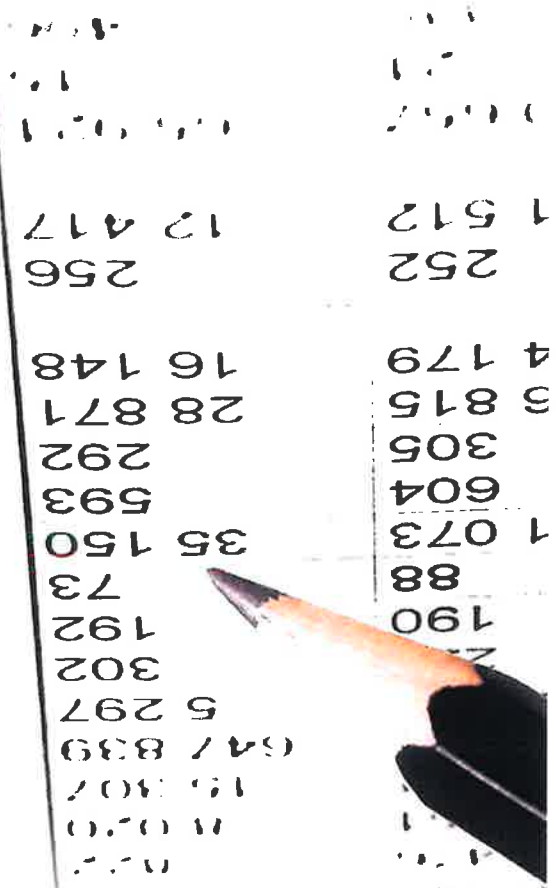
Firm: Houston Engineering, Inc.

Approved: Michael P. Love
Name

Project Manager
Title

12/16/20
Date

Appendix B - Fee Schedule





Houston Engineering Inc.

2021 FEE SCHEDULE

The following is a schedule of hourly rates and charges for engineering and surveying services offered by Houston Engineering, Inc. These rates are subject to a modest increase on January 1st of each year (typically no more than 5%).

Category	2021 Rates
Engineer I	\$129
Engineer II	142
Engineer III	161
Project Engineer	179
Project Manager	196
Sr Project Manager	215
Scientist I	\$129
Scientist II	142
Scientist III	162
Project Mgr – Environmental	190
Sr Project Mgr – Environmental	215
Hydrogeologist I	\$129
Hydrogeologist II	143
Hydrogeologist III	162
Sr Hydrogeologist	202
Construction Engineer	\$148
Sr Construction Engineer	175
Land Surveyor I	\$129
Land Surveyor II	148
Land Surveyor III	163
Project Mgr – Land Surveying	175
Sr Project Manager – Land Surveying	196
Survey Crews:	
1-Person Crew (+ equipment)	\$157
2-Person Crew (+ equipment)	191
3-Person Crew (+ equipment)	237
4-Person Crew (+ equipment)	265
Landscape Architect	\$137
CAD Technician I	\$88
CAD Technician II	101
CAD Supervisor	116
Designer I	\$135
Designer II	145
Sr Designer	156
Engineering Specialist	165
Technician Intern (all areas)	\$88
Technician I	\$101
Technician II	116
Sr Technician	129

Category	2021 Rates
Right-of-Way Technician	\$118
Right-of-Way Specialist	196
GIS Analyst I	\$96
GIS Analyst II	112
GIS Analyst III	129
Sr GIS Analyst	148
Project Manager – GIS	163
Sr Project Manager – GIS	190
Software Engineer I	\$112
Software Engineer II	129
Software Engineer III	148
Sr Software Engineer	162
Computer Technician	\$156
Communications Specialist	\$88
Sr Communications Specialist	98
Administrative Assistant	\$83
Sr Administrative Assistant	88
Planner	\$142
Senior Planner	196
Legislative/Grant Specialist	\$182
Expert Witness	236
Drone Pilot	\$137
Drone Visual Observer	54

Chargeable Expenses	Rate
Subsistence	Actual Cost
Mileage-Vehicles:	
2-Wheel Drive	IRS Standard Rate
4-Wheel Drive	IRS Standard Rate + \$0.20/Mile
GPS Equipment	\$25/hour/unit
Robotic Total Station	\$40/hour
ATV/Snowmobile/Boat	\$15/hour
ATV with Tracks	\$30/hour
Hydrone RCV	\$50/hour
Small UAS/Large UAS	\$25/hour / \$50/hour
Delivery, Postage, Printing	Actual Cost
Surveying Materials, Special Equipment, and other Materials required	Actual Cost
Subconsultants	Actual Cost + 10%

Appendix C - Similar Experience



SYSTEM-WIDE IMPROVEMENT FRAMEWORK – 2019 BANK REPAIRS AND OUTFALL PIPE REHABILITATION PROJECT, SWIF ACTION E, MINOT, NORTH DAKOTA



Background

The City of Minot was required to develop a system-wide improvement framework (SWIF) for the Minot levee systems located along the Souris River. The SWIF contained multiple actions that the City needed to complete to satisfy US Army Corps of Engineer (USACE) requirements. Several capital improvement projects (CIPs) to correct deficiencies within the flood control systems.

The Project

SWIF Action E is a CIP targeted at stabilizing five segments of the riverbank in Minot as well as rehabilitating two of the City's storm sewer outfalls to the river. The project will correct several deficiencies consisting of levee repairs, bank stabilization, and removing trees within the levees. Over 2,500 feet of

riverbank is being resloped and stabilized with more than 25,000 tons of aggregate bedding and rock riprap. A 60-inch reinforced concrete pipe (RCP) storm outfall is being replaced with a new 60-inch RCP and a cast-in-place concrete headwall structure with flap gate backflow prevention to provide improved drainage and flood protection for the City.

Houston Engineering, Inc. (HEI) prepared the projects for construction by coordinating Section 404 and Section 408 reviews with the USACE. HEI also led permitting efforts with the North Dakota State Water Commission and City of Minot Floodplain Development Permitting Department. With the proper permits secured, HEI prepared a bid package and assisted with the bidding process for the project.

Construction began in 2020 and is anticipated to be completed in 2021.

HEI is currently providing construction administration and observation, including review of contractor submittals and preparation of progress pay application, and coordinating construction materials testing with a subconsultant.

» Location

Minot, North Dakota

» Client

City of Minot

» Contact

Dan Jonasson
Director of Public Works
701.857.4112

» Client Benefits

- Construction administration and observation by local staff.
- Repair and stabilization of over 2,500 feet of riverbank with more than 25,000 tons of rock.
- Construction of a new 60-inch storm sewer outfall with backflow preventions to improve drainage and aid flood fighting.



Project Scoping Request

To: Prospective Consultants

From: Roger E. Kluck, PE, CFM

CC: Nathan Boerboom Division Engineer
Jody Bertrand Division Engineer

Date: November 17, 2020

Re: City of Fargo Project #FM-21-A0 – Engineering Services for Red River Erosion Protection & Bank Stabilization

Per the City of Fargo Master Services Agreement, the City is requesting quotes for Engineering Services of erosion protection and bank stabilization along the Red River. This request is for design and bid document preparation to mitigate erosion along the western bank of the Red River, northeast of the intersection of University Drive South and 52nd Avenue South as shown on the attached drawing. The proposal submitted shall be as defined and provide complete costs for the design, plans and specifications, and preparation of City bid documents following City of Fargo standard design and construction specifications as well as, construction administration, inspection and survey costs. The work will also include contract administration.

Overview

All responses to this scoping request must be submitted by **11:30 AM, December 16, 2020** at which time the submittals will be opened and reviewed. Late submittals cannot be accepted and will not be considered. All responses may be emailed or placed in an envelope securely sealed therein and labeled: **"City of Fargo Project #FM-21-A0 – Engineering Services for Red River Erosion Protection & Bank Stabilization"**. **Sealed bids will be received by the City Auditor in the blue, outside drop box located on the north side of City Hall (225 4th Street North, Fargo, ND).** The City reserves the right to reject any or all submittals or accept what is, in its judgment, the submittal that is in the City's best interest. The City further reserves the right, in the best interests of the City, to waive any technical defects or irregularities in any and all submittals. Discussion may be conducted with responsible Offerors who submit responses determined to be reasonably susceptible of being selected for award for purpose of classification to assure full understanding of, and responsiveness to the solicitation requirements. Scoping responses shall identify proposed staff assigned to the Project.

Background

Annual inspections by Fargo staff have noted movement in a floodwall along University Drive South just north of 52nd Avenue South, as well as movement in the sidewalk and north lane of 52nd Avenue South east of University Drive. The City has hired Braun Intertec to complete soil borings and install inclinometers to monitor any slope movement and complete a geotechnical report for the floodwall area. A preliminary report is complete and will be made available to the selected consultant. The monitoring is still ongoing. Braun Intertec has also been hired to investigate the road/sidewalk settlement occurring on 52nd Avenue South and plan to install

inclinometers to monitor that slope. This investigative work on 52nd Avenue is still taking place so no report or findings are available as of yet. Fargo is looking to develop an interim solution to stabilize the riverbank slope with rock riprap or other materials recommended by the consultant in order to have time to develop a long-term solution and appropriately budget for the permanent repairs of the floodwall and any repairs determined necessary along 52nd Avenue South. This riverbank stabilization project shall be designed to complement the long-term solution for this area.

Services

Services shall be provided in accordance with the "Consultant Guide for Project Development, Plan Development, and Bidding of Public Infrastructure Projects, City of Fargo Engineering Department, June 2013".

1. Project Administration

The consultant shall provide a qualified project manager. The project manager shall be responsible for coordinating all project activities including keeping the project on schedule. The project manager will coordinate all project activities between the City and other interested parties. If necessary, the Consultant will be responsible to contract with a geotechnical firm to assist in the design and construction of this project.

The project manager will be responsible for setting up a Project Review Committee consisting of representatives from Fargo and the consultant(s). The project manager will organize committee meetings at key points in the project development, conduct the meetings and prepare detailed minutes for distribution.

The project manager will provide the City's representative with progress reports once a month. As a minimum, the progress reports will recap activities completed to date, identify any problems that may delay the project, list date or decisions necessary to keep the project on time and identify any potential budget concerns. The City anticipates that the Consultant shall have the project ready for advertising for bid in mid-April 2021.

The following are some additional items that the project manager will be responsible for:

- a. Establish and implement ongoing project management strategies.
- b. Coordinate with the City Project Manager to discuss work products and project schedule.
- c. Meet with City of Fargo staff to discuss project status as deemed necessary by the Project Manager. At a minimum there will be a kickoff meeting, 30% plan review meeting and field review, a 90% plan review meeting, and two other meetings if deemed necessary through the life of the design project. The field meeting is weather permitting.
- d. Develop and submit a 30%, 90%, and 100% plan set along with an engineer's estimate of project costs and enter project bid items into the City of Fargo "Masterworks" program.

- e. Coordinate the work to be completed, time schedule, cost allowance and deliverables.
- f. Give technical direction to and coordinate the various disciplines and specialists required on the project.
- g. Coordinate the input-output between the various disciplines through periodic technical review of project activities with project staff.
- h. Assure the project work program is completed on time through the monitoring of task performance as compared to planned performance, within budget, through strict monitoring of total project expenditures against time phase budget.
- i. Review the products developed in each work task and recommend appropriate additions and corrections.
- j. Coordinate submission of appropriate permit applications (as needed).

2. Work to be completed under this request:

- a. Assemble data to be provided by the City.
- b. Provide two (2) technical options for stabilization of the riverbank at 30%.
- c. Prepare necessary design, plan preparation, and preparation of bid documents.
- d. Prepare any necessary permit applications necessary for project.
- e. Provide construction administration, inspection, and survey.
- f. Provide geotechnical testing and guidance as required.

3. Cost Proposal:

- a. The Consultant shall provide a brief proposal of the team assigned to the project. The team shall include a project manager that will serve as the primary contact with the City. The estimate will include hours and billable rate per individual with a total quote that will serve as an hourly not to exceed payment basis.

4. City-Provided Items:

- a. Record plans of any past projects that the City has completed.
- b. Geotechnical investigative reports performed to date.
- c. Electronic data of surveys done by City and KLJ. It is not anticipated that consultant will need to do further field surveys except to collect data for tree removal if deemed needed by design.
- d. Digital plat and parcel base maps.

- e. Digital Terrain Model (DTM) to 1" = 100' National Map Accuracy Standards (LiDAR compiled). 2020 captured DTM.
 - f. Municipal infrastructure information - paving, underground utilities (sewer, water, and storm) street lights, etc.
5. Consultant Software Requirements:
- a. AutoCAD Civil 3D (City prefers version 2020 but will allow 2018 or 2019)
6. Deliverables
- a. PDF of final plans, specifications, estimate
 - b. Submission of final AutoCAD files
 - c. Construction progress inspections and quantity submittal and final construction project documents including as-builts.

Questions and Answers:

All questions related to this engineering design services request shall be submitted by email to Roger E. Kluck, PE, CFM (rkluck@fargoND.gov) and Nathan Boerboom (nboerboom@fargond.gov). The question period shall expire December 1, 2020. Answers to questions will not be given after the date specified.

Project Timetable:

The City reserves the right to modify the timeline if necessary.

Scoping Request Sent Out	11/18/2020
Questions Due	12/01/2020 11:00 AM
Answers Due	12/02/2020 5:00 PM
Quotes Due	12/16/2020 11:30 AM
City Commission Approves Consultant	12/28/2020
Assignment of Task & Notice to Proceed	12/29/2020
Kick off meeting	Week of 1/04/2021
30% Design	03/05/2021
90% Plans	04/02/2021
100% Plans	05/07/2021

APPENDIX A

COST PROPOSAL FORMS

Project Scoping Request
Projects #FM-21-A0 Red River Erosion Protection & Bank Stabilization

Page 1

COST PROPOSAL FORM

Project: FM-21-A0

Type: Red River Erosion Protection & Bank Stabilization

Location: University Drive S at 52nd Ave S & 52nd Ave S East of University

Cost Proposals shall be based on fixed fee lump sum and payment will be based on actual hourly rates. Attach basic fee structure.

Project Development Phase

Preliminary & Design Administration

Preliminary Survey

Preliminary Engineering (30%)

Meetings with City

Design, Plan Preparation, and Bid Documents

Project Development Total Not to Exceed Proposal

Construction Administration Phase

Construction Project Administration

Construction Inspection (assume 3 months & inspection ave. 50 hrs/wk)

Construction Surveying

Quality Control Testing Estimate

Project Closeout

Construction Administration, Inspection & Survey

Total Not to Exceed Proposal

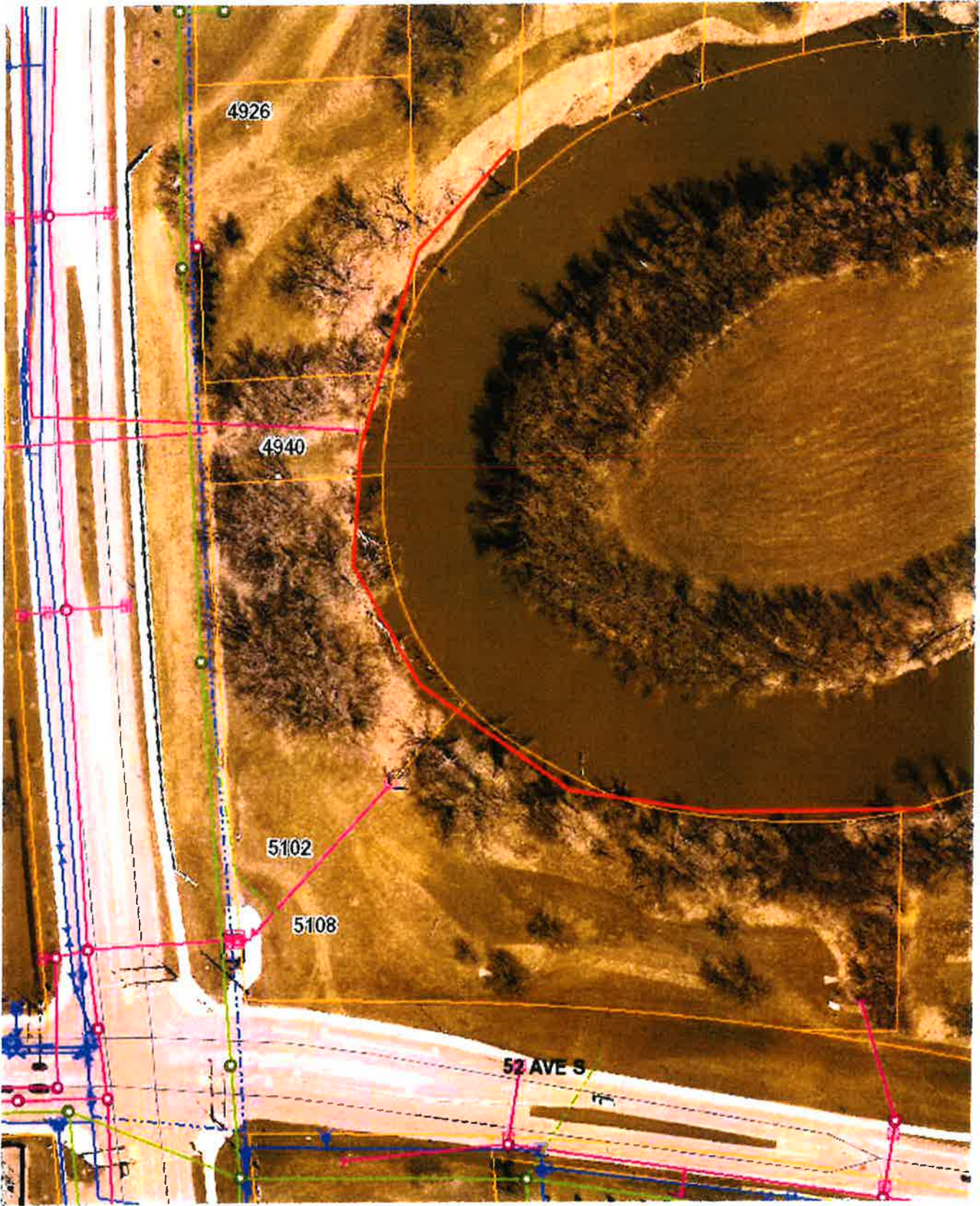
Firm: _____

Approved: _____

Name

Title

Date





Memorandum

To: Prospective Consultants
From: Roger E. Kluck, PE, CFM Civil Engineer II Storm Sewer & Floodplain
CC: Nathan Boerboom, Division Engineer
Jody Bertrand, Division Engineer
Date: December 2, 2020
Re: Project #FM-21-A0 Answers to questions on Project Scoping Request

On November 17, 2020, Fargo sent out a project-scoping request for project FM-21-A0. We have received the following questions and are providing the answers.

1. What survey information is available? The City has the 2020 Lidar collection data available as well as limited survey information taken for support of the geotechnical analysis by Braun. The Consultant should plan in the Project Development Phase, under the Preliminary Survey quote item, to do a complete site topographic survey, including private and public utility locates. The City will provide all data that they have available both in surveys and in public utility data.
2. Have you considered adjusting your request for proposal to just cover the alternative analysis (what I will typical refer to as the Study and Report) as a first step, then we can provide costs related to the design and construction administration of the chosen alternative? Fargo has considered this but feels that the proposal as outlined is the best route to construction for this project so we will not be changing the Project Scoping Request.
3. What type of useful life does the City hope to receive from the "interim" solution until the permanent solution is completed? Fargo intends that this project will complement the separate study going on to provide a permanent solution to the wall and slope movement. This project goal is to be built in 2021 to allow time to develop and fund a permanent solution that is expected to take several years to be funded and built. The work to be completed under the 2021 construction project shall remain in place as constructed even after the permanent solution is constructed.
4. Shall we assume the timeline within the "Project Timetable" is correct? The goal for 100% plans of May 7, 2021 is correct. The other date shown of March for April bid was missed in my clerical review and was incorrect. This date may be fluid depending on permit requirements but any delays in permits necessary for construction would affect the bid date and the construction schedule, and not the date for 100% plans.
5. Is there a cultural resources study/report already completed for this area? The City is checking into the previously completed studies for the original Federal Aid South University Drive project to determine if the previously completed work can be utilized for this project's permitting. This information may not be available at the time of the consultant selection. Therefore, Fargo has

Answers to PSR Questions

FM-21-A0

Page 2

added three cost proposal items to cover uncertainties. They are permit submission & coordination, wetland delineation, and cultural resource investigation. These cost proposal items will be utilized if deemed necessary by the City during the design of the project. Please use the revised form.

6. We're assuming the GIS map included in the RFQ only includes city utilities and magenta = storm, blue = water, and green = sewer? The drawing provided was only intended to be an introductory type view. See item 1 for description of survey needs.

RK/klo

APPENDIX A

COST PROPOSAL FORMS

Revision 1 December 2, 2020

Project Scoping Request
Projects #FM-21-A0 Red River Erosion Protection & Bank Stabilization

Page 1

COST PROPOSAL FORM

Project: FM-21-A0

Type: Red River Erosion Protection & Bank Stabilization

Location: University Drive S at 52nd Ave S & 52nd Ave S East of University

Cost Proposals shall be based on fixed fee lump sum and payment will be based on actual hourly rates. Attach basic fee structure.

Project Development Phase

Preliminary & Design Administration _____

Preliminary Survey _____

Permits Submission _____**Wetlands Delineation** _____**Cultural Resource Investigation & Survey** _____

Preliminary Engineering (30%) _____

Meetings with City _____

Design, Plan Preparation, and Bid Documents _____

Project Development Total Not to Exceed Proposal _____**Construction Administration Phase**

Construction Project Administration _____

Construction Inspection (assume 3 months & inspection ave. 50 hrs/wk) _____

Construction Surveying _____

Quality Control Testing Estimate _____

Project Closeout _____

Construction Administration, Inspection & Survey _____**Total Not to Exceed Proposal** _____

Firm: _____

Approved: _____

Name

Title

Date

REPORT OF ACTION**TRAFFIC TECHNICAL ADVISORY COMMITTEE**

(1)

Subject: Speed Limit reduction request on 40th Avenue N from Old Highway 81 to Cass County Highway 31

Meeting Date: January 6, 2021

Routing

City Commission

1-25-2021

TTAC File

Background

There has been increased development on 40th Avenue N, which has led the Engineering Department to reevaluate the posted speed limits on this road. The existing speed limits are 40mph west of Old Highway 81, 55mph between Old Highway 81 and Highway 31, and then goes back to 40mph east of Highway 31 to the Red River. Speed and volume data was collected at three points on 40th Avenue N. Please refer to the attachment for additional information.

This item was placed on the TTAC agenda on January 6, 2021 and the request was to reduce the posted speed limit from 55mph to 40mph from Old Highway 81 to Highway 31. 40th Avenue N would then have a consistent speed limit through Fargo. A motion came forward from Ben Dow, seconded by Aaron Nelson, and the motion passed unanimously.

Recommended Motion

Approve the speed limit reduction along 40th Avenue N from Old Highway 81 to Cass County Highway 31 from 55 mph to 40 mph, with an effective date of Monday, February 1, 2021.

COMMITTEE


Present Yes No Unanimous

X

John Strand, Commissioner
Brenda Derrig, City Engineer
Ryan Erickson, Fire Dept.
Jeremy Gorden, Engineering Dept.
Ross Renner, Police Dept.
Aaron Nelson, Planning Dept.
Ben Dow, Street Dept.

X	X		
X	X		
X	X		
X	X		
X	X		
X	X		

ATTEST:


Jeremy M. Gorden, P.E., PTOE
Transportation Division Engineer

Attachment

Memorandum

January 5, 2021

To: Traffic Technical Advisory Committee Members

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

Subject: Request for Speed Limit Reduction on 40th Avenue N from Old Highway 81 to Cass County Highway 31

40th Avenue N is a busy regional arterial roadway in the metro area. It connects Fargo and Moorhead with a straight roadway between Highway 75 in Moorhead to I-29 in Fargo, and it gets used by commuters, contractors, ag haulers, and road builders. It has a wide variety of users on a month-to-month basis. The daily traffic volume along this stretch of roadway is between 4,000 and 6,000. We installed a 4-way stop controlled intersection at University Drive five years ago based on driver feedback and safety concerns from nearby residents.

With industrial and commercial developments continuing to occur along and near this avenue, Traffic Engineering staff would like to reduce the posted speed limit between Old Highway 81 and County Highway 31 from 55 mph to 40 mph for safety purposes. The posted speed limit is 55mph in this stretch. Refer to the attached map for additional information. We collected traffic speed and volume data at three locations last month and the data revealed the following statistics:

Site #1 – Near 37th Street N
Average speed was 42 mph, with an 85th percentile speed of 50 mph.

Site #2 – Near 25th Street N
Average speed was 47 mph, with an 85th percentile speed of 55 mph.

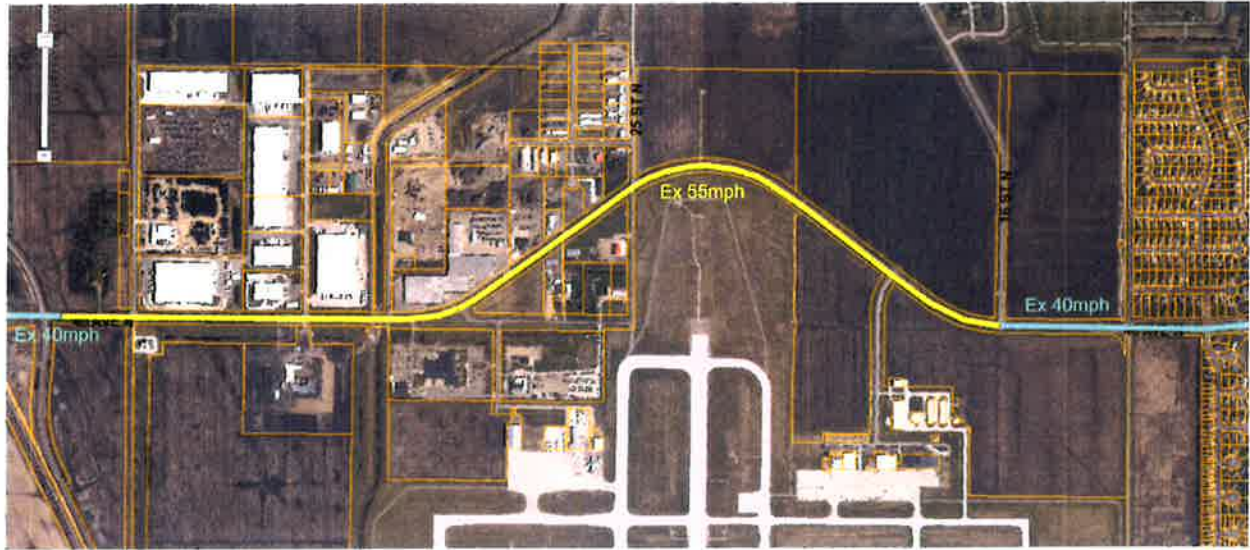
Site #3 – Near County Highway 31
Average speed was 47 mph, with an 85th percentile speed of 54 mph.

Recommended Motion

I would recommend we reduce the posted speed limit from 55 mph to 40 mph between Old Highway 81 to Cass County Highway 31, with final approval coming from the City Commission this month.

Attachment

40th Avenue N – Red River to I-29



REPORT OF ACTION

8

TRAFFIC TECHNICAL ADVISORY COMMITTEE

Subject: Speed Limit reduction request on 19th Avenue N from Dakota Drive to I-29 East Ramp Intersection

Meeting Date: January 6, 2021

Routing

City Commission
TTAC File

1-25-2021

Background

The Engineering Department has reevaluated the posted speed limits on 19th Avenue N, specifically east of I-29. The existing speed limits are 40mph west of I-29, 50mph between I-29 and Dakota Drive, and back to 40mph east of Dakota Drive to 18th St. Speed and volume data was collected on 19th Avenue N. Please review to the attachment for further details. Jeremy Gorden talked to the NDDOT about the speed limits on 19th Avenue N because the roadway is part of Business US Highway 81 and maintained by the NDDOT from I-29 to Dakota Drive. The NDDOT District Engineer supports the idea of reducing the speed limit. Any recommendation from us would be sent to the NDDOT Central Office for their review and official approval.

This item was placed on the TTAC agenda to reduce the posted speed limit from 50mph to 40mph from I-29 to Dakota Dr. 19th Avenue N would then have a consistent speed limit from 45th St to 18th St. A motion came forward from Brenda Derrig, seconded by Ryan Erickson, and the motion passed unanimously.

Recommended Motion

Approve the speed limit reduction along 19th Avenue N from I-29 east ramp to Dakota Drive from 50 mph to 40 mph, with an implementation date to be determined by the NDDOT.

COMMITTEE

John Strand, Commissioner
Brenda Derrig, City Engineer
Ryan Erickson, Fire Dept.
Jeremy Gorden, Engineering Dept.
Ross Renner, Police Dept.
Aaron Nelson, Planning Dept.
Ben Dow, Street Dept.

Present	Yes	No	Unanimous
			X
X	X		
X	X		
X	X		
X	X		
X	X		
X	X		

ATTEST:


Jeremy M. Gorden, P.E., PTOE
Transportation Division Engineer

Attachment

Memorandum

January 5, 2021

To: Traffic Technical Advisory Committee Members

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

Subject: Request for Speed Limit Reduction on 19th Avenue N from Dakota Drive to I-29 East Ramp intersection

19th Avenue N is a busy arterial roadway connecting I-29 to the heart of north Fargo. NDSU and Hector International Airport are the two biggest beneficiaries of the roadway, as is the Fargo Dome, the VA hospital, and all of the housing developments in north Fargo. The daily traffic volume along this stretch of roadway is between 18,000 and 20,000. This roadway also known as US Business 81, on the NDDOT system. Refer to the attached map for additional information.

The posted speed limit is 50 mph in the stretch between Dakota Drive & I-29. We collected speed data at this location in October of 2019 and the data revealed the following statistics:

Westbound direction – 85% speed was 47 mph, with the average speed 41 mph.
Eastbound direction – 85% speed was 49 mph, with an average speed of 44 mph.

In the attached map, you will see a highlighted 3-mile stretch of 19th Avenue N. We have three different speed limits in this 3-mile area. There is a 30 mph zone, a 40 mph zone, a 50 mph zone, and then it transitions back to a 40 mph zone. I would like to create a consistent 40 mph zone from 18th Street to 45th Street.

Recommended Motion

I would recommend that we reduce the posted speed limit from 50 mph to 40 mph between Dakota Drive and the I-29 East Ramp intersection, forward the recommendation to the City Commission, and ultimately send to the North Dakota Department of Transportation for their concurrence.

Attachment

19th Avenue N – University Drive to 45th Street



9

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. UR-21-A1

Type: Storm Sewer Easements

Location: Deer Creek Addition

Date of Hearing: 1/19/2021

<u>Routing</u>	<u>Date</u>
City Commission	<u>1/25/2021</u>
PWPEC File	<u>X</u>
Project File	<u>Rob Hasey</u>

The Committee reviewed the accompanying correspondence from Civil Engineer, Rob Hasey, regarding easement agreements with Southeast Cass Water Resource District located within Cass County Drain 27 Right of Way.

Residents along this stretch have complained of cattails and the land is not able to be mowed due to wet conditions. Project No. UR-21-A1 will extend storm sewer from existing inlets on the rear property line to the low area in Drain ROW and regrade to the inlets.

Staff is recommending approval of the easement agreements with SE Cass WRD.

On a motion by Bruce Grubb, seconded by Steve Sprague, the committee voted to recommend approval of the easement agreements with SE Cass WRD within Cass County Drain 27 Right of Way.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the easement agreements with SE Cass Water Resource District within Cass County Drain 27 Right of Way.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

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

COMMITTEE

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

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

ATTEST:


 Brenda E. Derrig, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Rob Hasey, Civil Engineer I, Storm Sewer Utility
Date: January 19, 2021
Re: Approval of Storm Sewer Easements in Drain Right of Way east of Deer Creek Addition

Background:

I am requesting the Public Works Project Evaluation Committee (PWPEC) approve, for the Mayor's signature, the following two documents (attached):

1. Easement (Storm Sewer) Lots 56-57
2. Easement (Storm Sewer) Lots 66-67

The subject easement areas are located within Cass County Drain 27 Right of Way. The area between the eastern lots in the Deer Creek addition between 55th & 58th Avenues South and drain right of way does not drain properly. Residents along this stretch have complained of cattails and the land is not able to be mowed due to the wet conditions. Project No. UR-21-A1 will extend storm sewer from existing inlets on the rear property line to the low area in Drain ROW and grading will be completed to drain the low areas to the inlets.



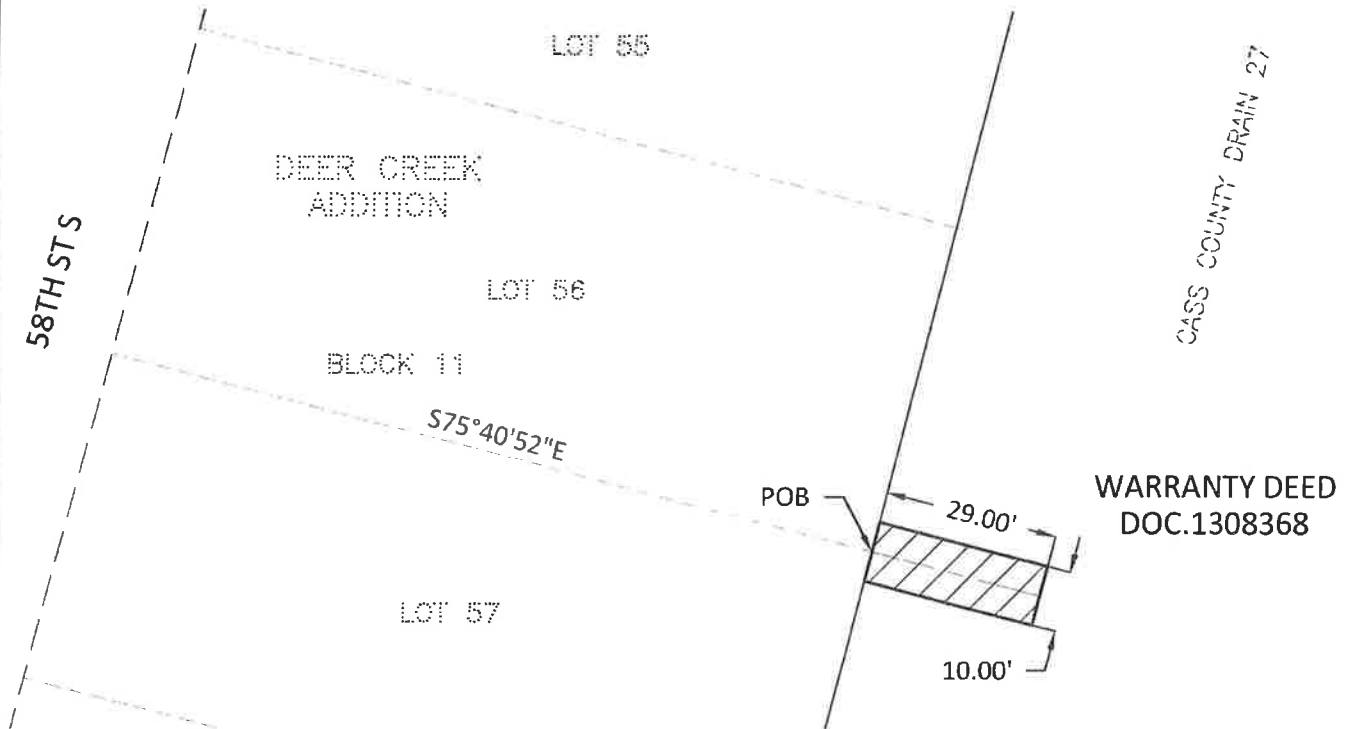
Recommended Motion:

Approve the two Storm Sewer Easements in Cass County Drain Right of Way.

RJH/klb

Attachments

EXHIBIT A



Description:

A tract of land in the Northeast Quarter of Section 5, Township 138 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota described as follows:

A tract of land lying 5 feet each side of the following described line:

Beginning at the southeast corner of Lot 56, Block 11, Deer Creek Addition, thence South 75°40'52" East, along the easterly extension of the south line of said Lot 56, a distance of 29.00 feet and there terminating.

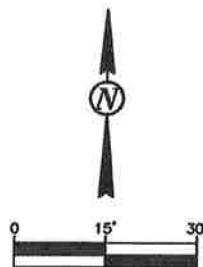
The sidelines of said easement shall be lengthened or shortened so as to terminate on the east line of Block 11, Deer Creek Addition.

Said tract contains 290 square feet, more or less.



LEGEND

NEW EASEMENT AREA



BEARINGS BASED ON
CITY OF FARGO GROUND CONTROL SYSTEM



ENGINEERING DEPT.

STORM SEWER EASEMENT

A TRACT OF LAND IN SECTION 5, T. 138 N., R. 49 W., FIFTH P.M.,
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

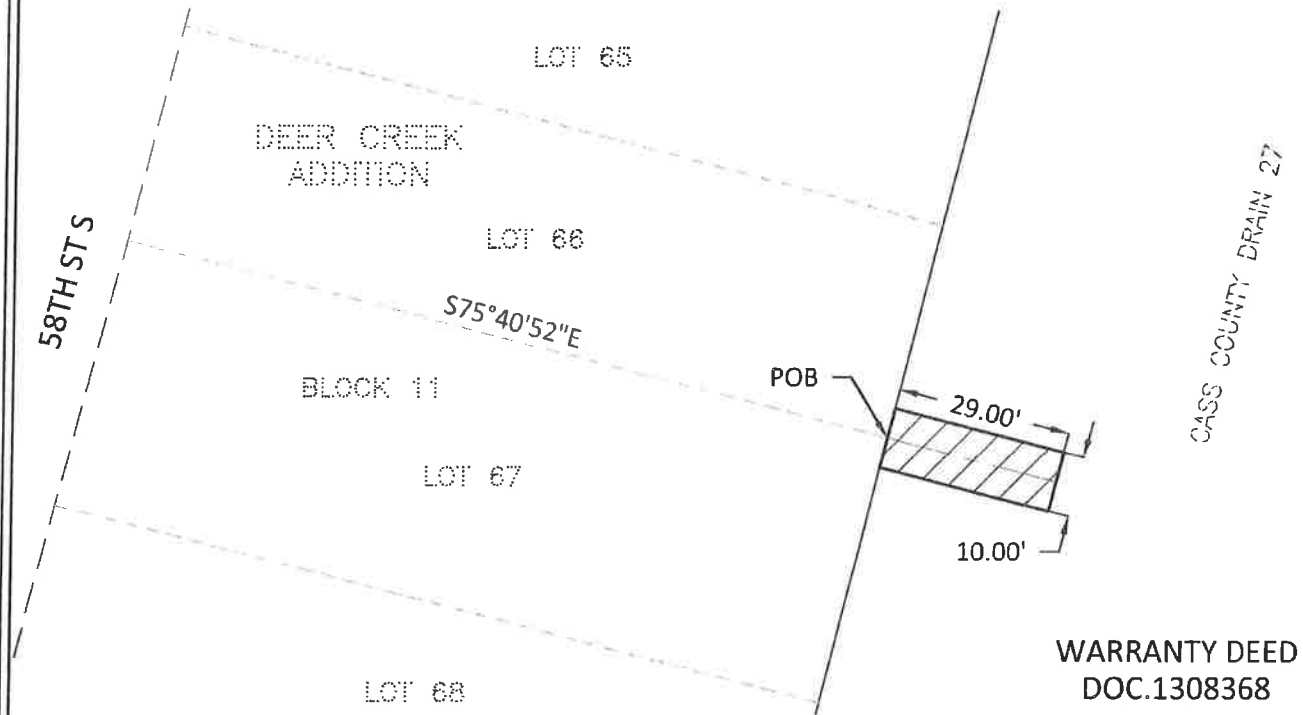
DRAWN BY: JWZ

APPROVED BY: BWW

DATE: NOVEMBER 13, 2020

SHEET 1 OF 1

EXHIBIT A



WARRANTY DEED
DOC.1308368

Description:

A tract of land in the Southeast Quarter of Section 5, Township 138 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota described as follows:

A tract of land lying 5 feet each side of the following described line:

Beginning at the southeast corner of Lot 66, Block 11, Deer Creek Addition, thence South 75°40'52" East, along the easterly extension of the south line of said Lot 66, a distance of 29.00 feet and there terminating.

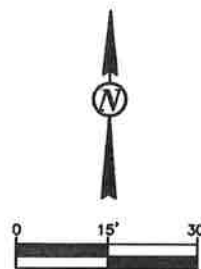
The sidelines of said easement shall be lengthened or shortened so as to terminate on the east line of Block 11, Deer Creek Addition.

Said tract contains 290 square feet, more or less.



LEGEND

NEW EASEMENT AREA



BEARINGS BASED ON
CITY OF FARGO GROUND CONTROL SYSTEM



ENGINEERING DEPT.

STORM SEWER EASEMENT

A TRACT OF LAND IN SECTION 5, T. 138 N., R. 49 W., FIFTH P.M.,
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: JWZ

APPROVED BY: BWW

DATE: NOVEMBER 13, 2020

SHEET 1 OF 1

ACCESS EASEMENT
(Storm Sewer Easement)

THIS EASEMENT is made this ____ day of _____, 2021, by the Southeast Cass Water Resource District, a North Dakota political subdivision, with a post office address of 1201 Main Avenue West, West Fargo, North Dakota 58078-1301 (the "District"); and the City of Fargo, a North Dakota municipal corporation, with a post office address of 225 - 4th Street North, Fargo, North Dakota 58102 (the "City").

RECITALS

A. The District owns, operates, and maintains Cass County Drain No. 27 ("Drain 27"), a legal assessment drain.

B. A portion of Drain 27 is located within a residential subdivision known as "Austin's Subdivision" within the City's municipal boundaries.

C. The City wishes to extend and construct two storm sewer pipelines and associated appurtenances and other storm sewer infrastructure (collectively, the "Storm Sewer Pipelines") onto property owned by the District.

D. The District has agreed to convey an easement to the City for purposes of the construction, operation, and maintenance of the Storm Sewer Pipelines, subject to the terms and conditions contained in this Easement.

In consideration of the mutual covenants contained in this Easement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 56-57)*

Page 2

AGREEMENT

1. **The Storm Sewer Easement Property.** The District grants and conveys to the City a non-exclusive, permanent easement, including the easement rights described in this Easement, upon, over, across, and through the following real property in Cass County, North Dakota:

See attached **Exhibit A.**

The property described above is the “Storm Sewer Easement Property.”

2. **Easement Rights.** Under this Easement, the District grants to the City, its officers, employees, agents, representatives, and contractors, a permanent and perpetual easement upon, over, in, under, across, and through the Storm Sewer Easement Property for the following purposes: installing, constructing, inspecting, maintaining, reconstructing, altering, repairing, replacing, operating, improving, modifying, and removing the Storm Sewer Pipelines and all associated appurtenances and other storm sewer infrastructure; excavating, piling, storing, depositing, spoiling, spreading, and removing excavated dirt, soil, clay, silt, or other materials; moving, storing, and removing equipment, materials, and supplies; removing trees, underbrush, obstructions, and any other vegetation, structures, or obstacles from the Storm Sewer Easement Property; and the right to perform any other work necessary and incident to the installation, construction, inspection, maintenance, reconstruction, alteration, repair, replacement, operation, improvement, modification, and removal of pipelines and all associated appurtenances and other storm sewer infrastructure, together with all necessary and reasonable rights of ingress and egress to and from the Storm Sewer Easement Property. The City is solely responsible for the installation, construction, inspection, maintenance, reconstruction, alteration, repair, replacement, operation, improvement, modification, and removal of the Storm Sewer Pipelines and all associated appurtenances and other storm sewer infrastructure at the City’s sole cost.

3. **Drainage Priority and Use.** The parties understand and agree that Drain 27 is a public facility that provides drainage benefits and other important public benefits to Cass County and its residents, including residents of the City, and further agree the District’s use of Drain 27, including the Storm Sewer Easement Property, as a drainage facility takes priority over any other use of the Storm Sewer Easement Property, including the City’s use of the Storm Sewer Easement Property for the Storm Sewer Pipelines.

4. **No Unreasonable Interference.** The District will not unreasonably interfere with the City’s easement rights under this Easement. However, the District’s priority use of Drain 27 for drainage, flood protection, or other emergency purposes may require and include temporary disruptions or interference with the City’s interest in the Storm Sewer Easement Property. The District will use reasonable care to avoid any damages to the Storm Sewer Pipelines, associated appurtenances, and other storm sewer infrastructure; however, the District will not be liable or responsible for any damages resulting from any construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of Drain 27 by the District, its officers, agents, representatives, employees, or contractors. In the event any reconstruction, modification, or improvement of Drain 27 requires any modifications to the Storm Sewer Pipelines, associated appurtenances, or other storm sewer infrastructure, the City will modify the

*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 56-57)*

Page 3

infrastructure at the City's expense and, if necessary, the parties will amend this Easement for purposes of redefining the "Storm Sewer Easement Property."

5. **Improvements and Repairs to the Storm Sewer Easement Property.** Any improvements or repairs to the Storm Sewer Easement Property are subject to the following:

a. Prior to the City's construction, reconstruction, or other improvements of the City's Storm Sewer Pipelines, the City must provide plans and specifications to the District, and the District must first give prior written consent to the design of any construction or improvements; the District will not unreasonably withhold consent.

b. The City will operate and maintain the Storm Sewer Pipelines and related appurtenances at its sole cost.

c. The City will obtain the District's prior written consent prior to commencing any structural repairs, modifications, or improvements to the Storm Sewer Pipelines on or adjacent to the Storm Sewer Easement Property that require excavation; the District will not unreasonably withhold consent.

d. The City will design and construct any and all improvements and required maintenance on the Storm Sewer Pipelines in a manner that ensures adequate drainage of the Storm Sewer Easement Property, with a finished grade that drains the Storm Sewer Easement Property, and that does not result in ponding in or on Drain 27.

e. With the exception of the Storm Sewer Pipelines and related appurtenances, the City will not construct any improvements in, upon, under, over, or across any portion of the Storm Sewer Easement Property; the City will not place any fixtures, equipment, or other personal property on any portion of the Storm Sewer Easement Property; the City will not construct or install, or allow construction or installation of, any utility facilities, lines, structures, or associated appurtenances on, over, in, under, through, or across the Storm Sewer Easement Property; the City will not encumber any portion of the Storm Sewer Easement Property; and the City will not otherwise alter any portion of the Storm Sewer Easement Property without prior consent from the District; the District will not unreasonably withhold consent.

f. The City will repair the Storm Sewer Easement Property and will repair or replace any of the District's structures, facilities, right of way, or any other property owned by the District damaged as a result of the City's construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, and removal of the Storm Sewer Pipelines or otherwise damaged as a result of the City's use, access, ingress, and egress granted under this Easement; the City will otherwise repair and return the Storm Sewer Easement Property as nearly as practicable to its original condition following any disturbance or damages, at the City's sole cost.

g. The City will promptly cease any activity and remove any structure or obstruction that interferes with Drain 27 or the District's use of the Storm Sewer Easement

*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 56-57)*

Page 4

Property, at the City's sole cost.

6. **Term.** The rights granted under this Easement are permanent and will only terminate if necessary to protect the integrity of Drain 27; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 27; or in the event of any default by the City not remedied within a reasonable time. In the event of any termination, the District will record an Affidavit of Termination with the Cass County Recorder's Office, and the City will remove any improvements to the City Street, at the City's sole cost.

7. **Liability.** The City will be solely responsible for all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, arising out of or as a result of the construction, inspection, maintenance, operation, alteration, repair, replacement, reconstruction, removal, or use of the Storm Sewer Pipelines by the City or the City's officers, consultants, contractors, agents, representatives, employees, or other invitees; any entry upon, use of, or access, ingress, and egress upon, over, or across the Storm Sewer Easement Property by the City or the City's officers, consultants, contractors, agents, representatives, employees, or other invitees; or any act, error, or omission of the City or the City's officers, consultants, contractors, agents, representatives, employees, or other invitees, including any failure to perform under this Easement.

8. **Compliance with Laws.** The City, at its own cost, is solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations, and obtaining all necessary licenses, permits, registrations, and/or approvals, from all applicable federal, state, county, and municipal governments and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers, regarding the Storm Sewer Pipelines or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the Storm Sewer Easement Property.

9. **Forbearance.** The failure or delay of either party to insist on the timely performance of any of the terms of this Easement, or the waiver of any particular breach of any of the terms of this Easement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

10. **Governing Law.** This Easement will be construed and enforced in accordance with North Dakota law.

11. **Interpretation.** This Easement will be construed as if prepared by both parties.

12. **Severability.** If any court of competent jurisdiction finds any provision or part of this Easement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Easement, and all remaining terms and provisions of this Easement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Easement is invalid, illegal, or unenforceable.

*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 56-57)*

Page 5

13. **Entire Agreement.** This Easement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Easement, and this Easement supersedes all other previous oral or written agreements between the parties.

14. **Assignment.** Neither party may transfer or assign this Easement, or any rights or obligations under this Easement, without the express written consent of the other party.

15. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Easement, or in any amendment, will be binding upon the parties' heirs, successors, and permitted assigns.

16. **Modifications.** Any modifications or amendments of this Easement must be in writing and signed by the District and the City and must be recorded in the Cass County Recorder's Office.

17. **Headings.** Headings in this Easement are for convenience only and will not be used to interpret or construe its provisions.

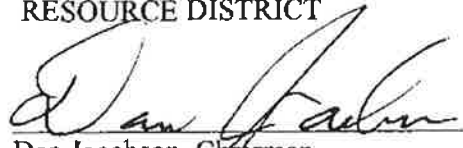
[Signatures appear on the following pages.]

*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 56-57)*


Page 6

SOUTHEAST CASS WATER
RESOURCE DISTRICT

By:

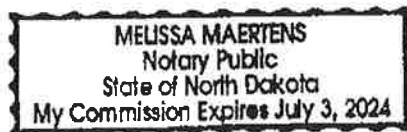

Dan Jacobson, Chairman

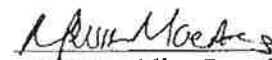
ATTEST:


Carol Harbeke Lewis
Secretary-Treasurer

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

On this 14th day of January, 2021, before me, a Notary Public in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Southeast Cass Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Southeast Cass Water Resource District.




Notary Public, Cass County, ND

(SEAL)

*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 56-57)*

Page 7

CITY OF FARGO

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

ATTEST:

Steven Sprague, City Auditor

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

On this ____ day of _____, 2021, 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, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

Notary Public, Cass County, ND

(SEAL)

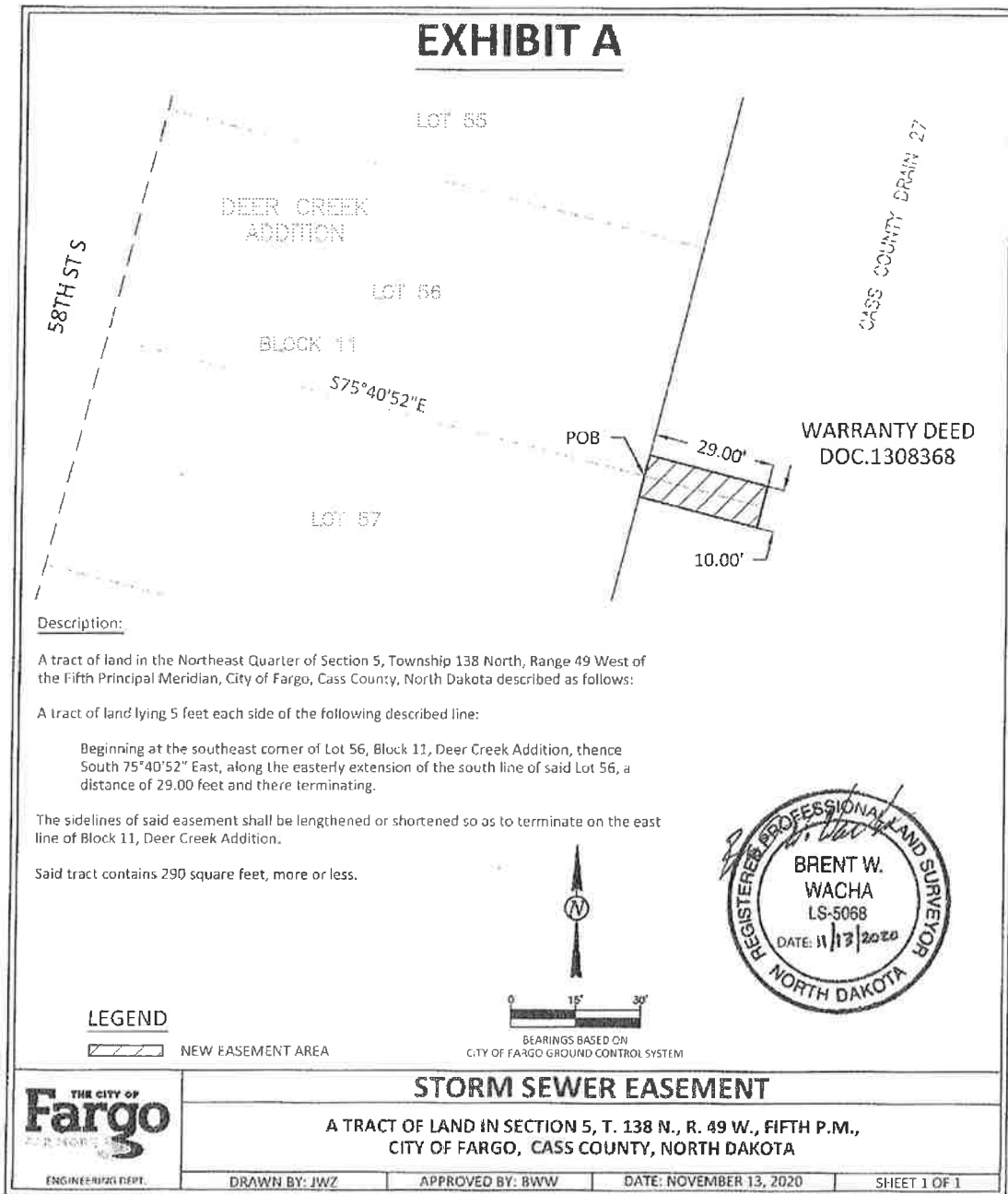
The legal description contained in this document was drafted by:

Brent W. Wacha, PLS
North Dakota License No. LS-5068
The City of Fargo Engineering Department
225 – 4th St. North
Fargo, ND 58102

*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 56-57)*

EXHIBIT A

Legal Description and Survey of the Storm Sewer Easement Property



ACCESS EASEMENT
(Storm Sewer Easement)

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C. The City wishes to extend and construct two storm sewer pipelines and associated appurtenances and other storm sewer infrastructure (collectively, the "Storm Sewer Pipelines") onto property owned by the District.

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*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 66-67)*

Page 2

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*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 66-67)*

Page 3

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e. With the exception of the Storm Sewer Pipelines and related appurtenances, the City will not construct any improvements in, upon, under, over, or across any portion of the Storm Sewer Easement Property; the City will not place any fixtures, equipment, or other personal property on any portion of the Storm Sewer Easement Property; the City will not construct or install, or allow construction or installation of, any utility facilities, lines, structures, or associated appurtenances on, over, in, under, through, or across the Storm Sewer Easement Property; the City will not encumber any portion of the Storm Sewer Easement Property; and the City will not otherwise alter any portion of the Storm Sewer Easement Property without prior consent from the District; the District will not unreasonably withhold consent.

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*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 66-67)*

Page 4

Property, at the City's sole cost.

6. **Term.** The rights granted under this Easement are permanent and will only terminate if necessary to protect the integrity of Drain 27; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 27; or in the event of any default by the City not remedied within a reasonable time. In the event of any termination, the District will record an Affidavit of Termination with the Cass County Recorder's Office, and the City will remove any improvements to the City Street, at the City's sole cost.

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*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 66-67)*

Page 5

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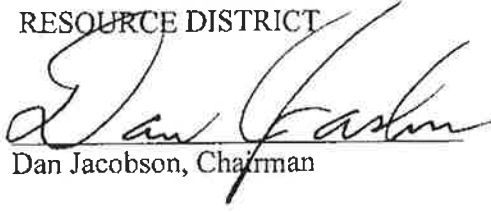
[Signatures appear on the following pages.]

*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 66-67)*


Page 6

SOUTHEAST CASS WATER
RESOURCE DISTRICT

By:

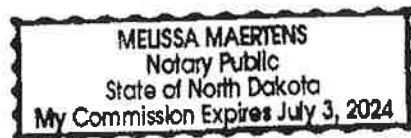

Dan Jacobson, Chairman

ATTEST:


Carol Harbeke Lewis
Secretary-Treasurer

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

On this 14th day of January, 2021, before me, a Notary Public in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Southeast Cass Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Southeast Cass Water Resource District.




Notary Public, Cass County, ND

(SEAL)

*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 66-67)*

Page 7

CITY OF FARGO

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

ATTEST:

Steven Sprague, City Auditor

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

On this ____ day of _____, 2021, 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, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

Notary Public, Cass County, ND

(SEAL)

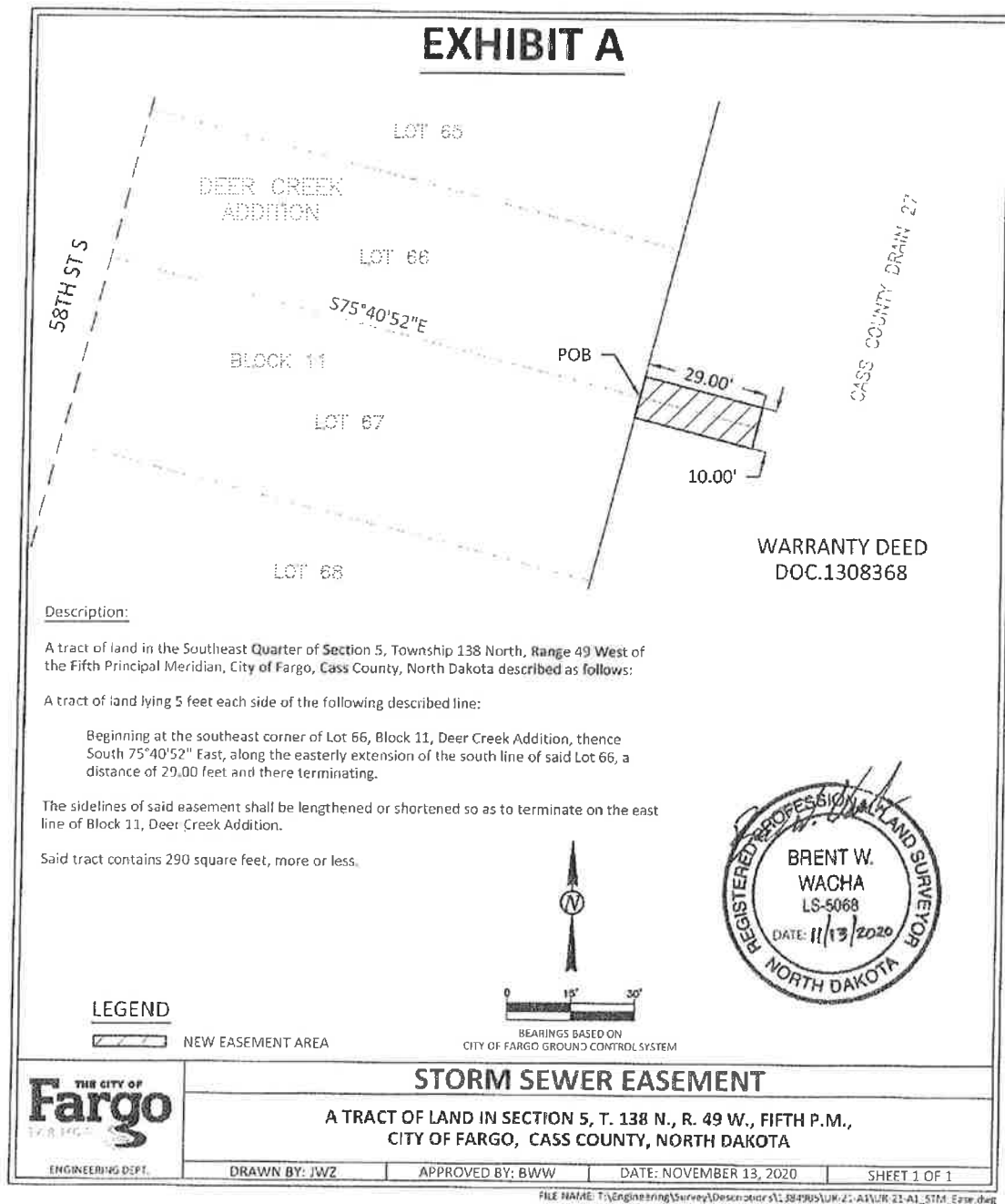
The legal description contained in this document was drafted by:

Brent W. Wacha, PLS
North Dakota License No. LS-5068
The City of Fargo Engineering Department
225 – 4th St. North
Fargo, ND 58102

*Southeast Cass Water Resource District
City of Fargo
Storm Sewer Pipeline Easement (Lots 66-67)*

EXHIBIT A

Legal Description and Survey of the Storm Sewer Easement Property



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(10)

Type: Memorandum of Understanding

Location: 64th Avenue South (Borrow Pit)

Date of Hearing: 1/19/2021

Routing

City Commission

Date

1/25/2021

PWPEC File

X

Project File

Nathan Boerboom

The Committee reviewed the accompanying correspondence from Division Engineer, Nathan Boerboom, regarding the approval of a Memorandum of Understanding between the City and the Fargo Park District, which specifies maintenance responsibilities for the 64th Avenue South borrow pit property.

Since the 2009 flood, the City has been removing clay from City owned property south of 64th Avenue South and west of University Drive for the construction of levees throughout the southern portion of the City. During this past construction season the last project on this property was completed. Throughout the years, staff has worked closely with the Fargo Park District on the development of this site so that it can be used not only for the City's storm sewer infrastructure but also as an amenity for the Park District to utilize. This collaboration has resulted in the Park District agreeing to take over portions of the long-term operations and maintenance of the property while ownership remains with the City.

Staff is seeking approval of the Memorandum of Understanding between the City and the Fargo Park District for maintenance responsibilities of the 64th Avenue South borrow pit property.

On a motion by Tim Mahoney, seconded by Bruce Grubb, the Committee voted to recommend approval of the Memorandum of Understanding with the Fargo Park District specifying maintenance responsibilities for the 64th Avenue South borrow pit property.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Memorandum of Understanding with Fargo Park District specifying maintenance responsibilities for the 64th Avenue South borrow pit property.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: N/A

Developer meets City policy for payment of delinquent specials

Agreement for payment of specials required of developer

Letter of Credit required (per policy approved 5-28-13)

Yes No

N/AN/AN/ACOMMITTEE

Present Yes No Unanimous

10

Tim Mahoney, Mayor

☒☒☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☒☒☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

Brenda Derrig, City Engineer

☒☒☐

Kent Costin, Finance Director

☐☐☐

ATTEST:

C: Kristi Olson

Brenda E. Derrig, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Nathan Boerboom, Division Engineer
Date: January 13, 2021
Re: Memorandum of Understanding with Fargo Park District for the
64th Avenue South Borrow Pit

Background:

Since the 2009 flood, the City has been removing clay from City-owned property south of 64th Avenue South and west of University Drive, commonly referred to as the 64th Avenue South borrow pit, for the construction of levees throughout the southern portion of the City. During this past construction season, the last project on this property was completed. As a result, the ponds are fully excavated to their planned grades, levees are constructed along University Drive, storm sewer is installed, trees are planted, a shared use path is in place, and the vegetation is established.

Throughout the years, staff has worked closely with the Fargo Park District on the development of this site so that it can be used not only for the City's storm sewer infrastructure but also as an amenity for the Park District to utilize. This collaboration has resulted in the Park District agreeing to take over portions of the long-term operations and maintenance of the property while the ownership remains with the City.

Highlights of the responsibilities for each party are:

- City of Fargo
 - Pond maintenance
 - Storm sewer maintenance
 - Levee maintenance
- Fargo Park District
 - Share use path maintenance, including snow removal
 - Grass mowing and weed control
 - Tree maintenance and replacement

The attached MOU provides a full description of all the responsibilities.

Recommended Motion:

Approve the Memorandum of Understanding between the City and the Fargo Park District, which specifies maintenance responsibilities, for the 64th Avenue South borrow pit property.

NAB/klb

Attachment

MEMORANDUM OF UNDERSTANDING REGARDING CONSTRUCTION AND MAINTENANCE

This Memorandum of Understanding ("MOU" or "Agreement") is entered into between the City of Fargo, whose address is 225 4th Street North, Fargo, North Dakota 58102 ("Fargo"), and the Park District of the City of Fargo, whose address is 701 Main Avenue, Fargo, North Dakota 58103 (the "Park District").

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

WHEREAS, North Dakota Century Code § 40-49-04 authorizes the Park District to enter into contracts; and

WHEREAS, Fargo has constructed a storm water retention pond as part of the overall City storm sewer system, as well as placed a flood levee on the east side of said property, as shown in Exhibit "A" attached hereto; and

WHEREAS, City has constructed certain amenities in conjunction with the storm water retention pond, including a shared use path, vegetation establishment and tree plantings; and

WHEREAS, the parties have agreed to share in the responsibility of construction, maintenance, inspection, and repair of the dedicated land and park amenities, subject to the terms of this Agreement.

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

1. Ownership. Fargo owns the parcel on which the storm water retention pond and other amenities have been constructed, and shall retain such ownership without regard to maintenance responsibilities. The parties understand and agree that the primary use of the property is for storm water retention and detention, flood control, and such purpose shall not be impaired or impeded by any provisions herein.

2. Access. Fargo hereby grants Park District access for ingress and egress, and for purposes of maintenance and construction, as necessary to carry out the terms of this Agreement. Park District agrees to ensure unimpeded access to the installed amenities for whatever purpose deemed necessary by City, including patrol, emergency access, and truck access, as necessary.

3. Construction.

a. Fargo shall be solely responsible for the construction of the storm water retention pond and all agreed upon amenities, including but not limited to a shared use path, vegetation establishment, and tree plantings.

b. Fargo shall be responsible for future pond maintenance, including but not limited to sediment removal and bank sloughing repair; storm sewer maintenance, and levee maintenance.

c. Fargo shall be responsible for levee construction, maintenance and reconstruction, as determined necessary in Fargo's sole discretion.

4. Park District General Maintenance. Park District shall be responsible for the repair and maintenance of the amenities and improvements placed by Fargo, including grass mowing, weed treatment, tree trimming, as well as pavement maintenance and repair, and snow and debris removal, as necessary, EXCEPT that in the event the shared use trail or vegetation constructed by Fargo are damaged as a result of Fargo's construction, maintenance or reconstruction, Fargo shall repair the same, at Fargo's cost. Park District understands and agrees that it may not construct any permanent structures on the Property, unless otherwise agreed to in writing signed by both parties. Fargo and Park District understand and agree that any work to be completed pursuant to this Agreement that may disrupt Park District use of the property shall be coordinated between the parties so as to minimize impacts, to the extent possible.

a. Park District shall be responsible for tree and vegetation replacement following Fargo's initial installation, at Park District sole cost.

b. Park District understands and agrees that any work completed by Park District may not impact the City storm sewer system or change the retention pond level, without prior written consent of City.

5. Dispute Resolution.

a. Fargo and the Park District will each designate a representative who will be the party's representative with respect to any matters relating to the repair and/or maintenance of the improvements and amenities identified herein, which may be in dispute or requiring agreement under the terms of this Agreement. Such representative may be changed from time to time. The representatives will be responsible for resolving any dispute between the parties concerning this Agreement and for the preparing an annual schedule of maintenance and repairs.

b. If the designated representatives cannot agree with respect to any matter requiring agreement or with respect to any dispute concerning this Agreement, the parties will submit the matter to their respective Boards (or a committee established by the Board) to resolve the dispute.

6. Term. The term of this Agreement will be 20 years. This Agreement will automatically renew for successive periods of 20 years. If either party intends to terminate this Agreement at any time, at least 180 days' Notice shall be given to the other party. This Agreement is personal as to the Park District, and may not be assigned or transferred without Fargo's written consent.

7. Release and Waiver. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this MOU and each party releases the other party, its officers, employees, agents or designees relating to or arising out of that parties', agents, employees or designees work pursuant to this MOU, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, direct or indirect, at law or in equity, from the beginning of time, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this MOU.

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

If to Fargo:

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

If to the Park District:

Park District of the City of Fargo
ATTN: Finance Director
701 Main Avenue
Fargo, ND 58103

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

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

10. Entire Agreement. This MOU constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this MOU and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties. It does not negate the parties' rights, duties and obligations under prior agreements related to the levee, pond, storm sewer construction and operation, and maintenance of the levee, pond, and storm sewer.

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

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

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

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

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

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

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

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

(Signatures appear on the following pages)

Dated this _____ day of _____, 2020.

CITY OF FARGO, NORTH DAKOTA, a
municipal corporation


By: _____
Dr. Timothy J. Mahoney, Mayor

ATTEST:

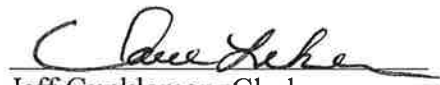
Steve Sprague, City Auditor

Dated this 13 day of January, 2020.

Park District of the City of Fargo

, President

ATTEST:


Jeff Gunkleman, Clerk
Dave Laker

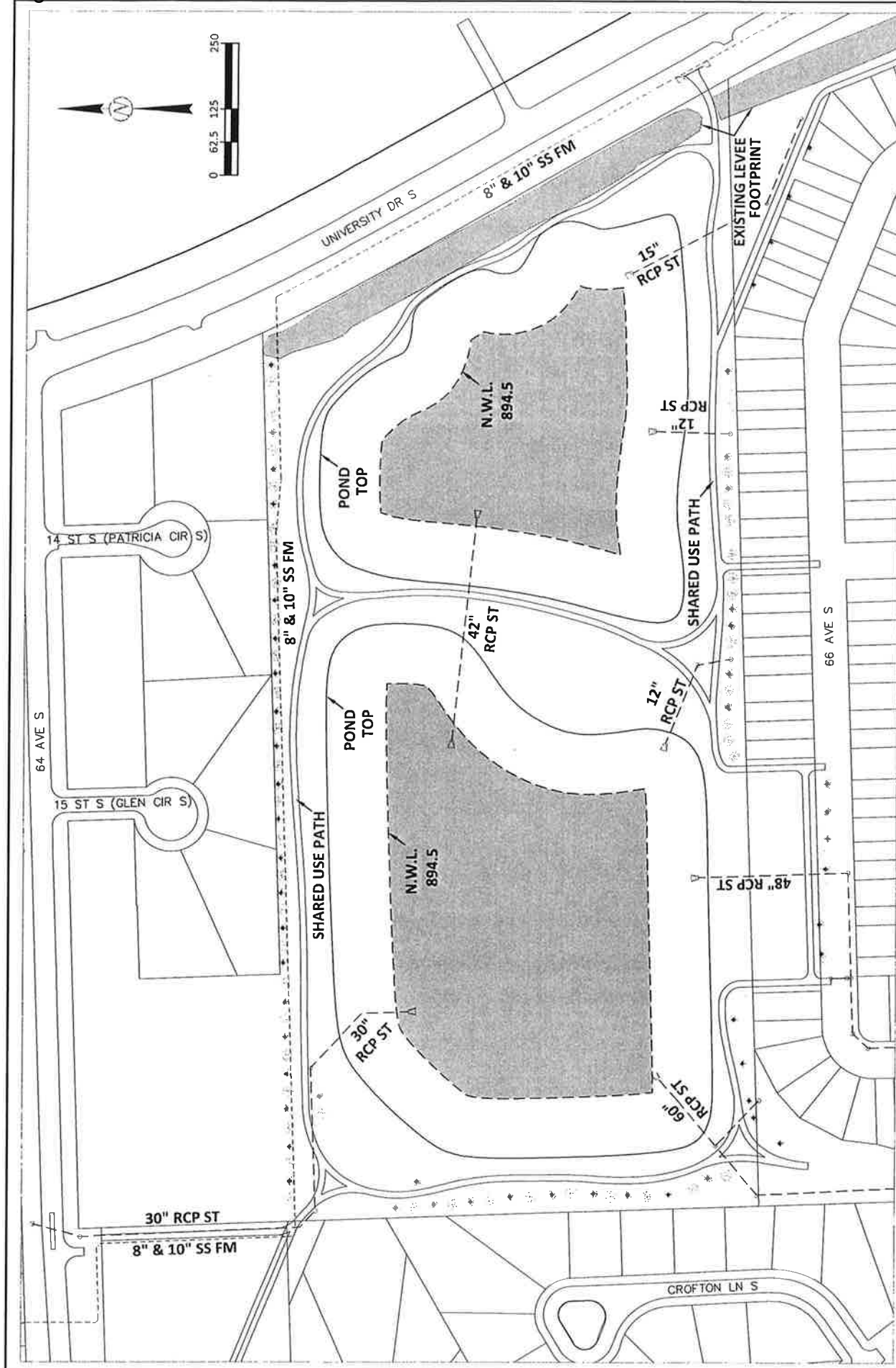


EXHIBIT A

ENGINEERING
DEPARTMENT

DRAWN BY: CAS
APPROVED: NAB

DATE: 12/4/2020
SHEET 1 of 1

REPORT OF ACTION

11

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. BN-20-A0

Type: Access Agreement

Location: 32nd Avenue N & University Dr (Drain 3)

Date of Hearing: 1/19/2021

RoutingDate

City Commission

1/25/2021

PWPEC File

X

Project File

Roger Kluck

The Committee reviewed the accompanying correspondence from Civil Engineer, Roger Kluck, regarding an Access Agreement with Southeast Cass Water Resource District to permit work in the Drain as part of this project.

Staff is recommending approval of the Access Agreement with SE Cass WRD.

On a motion by Bruce Grubb, seconded by Ben Dow, the committee voted to recommend approval of the Access Agreement with SE Cass WRD.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Access Agreement with SE Cass Water Resource District.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

Yes No

N/AN/AN/ACOMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☒☒☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

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Ben Dow, Director of Operations

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Steve Sprague, City Auditor

☒☒☐

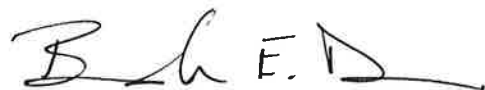
Brenda Derrig, City Engineer

☒☒☐

Kent Costin, Finance Director

☐☐☐

ATTEST:



Brenda E. Derrig, P.E.
 City Engineer

Memorandum

To: Members of PWPEC

From: Roger E. Kluck, PE, CFM, Engineer II Storm Sewer/Floodplain

CC: Jody Bertrand, Division Engineer; Jeremy Gorden; Division Engineer

Date: January 6, 2021

Re: Project #BN-20-A0 Reconstruction of North University Drive in Fargo, ND
NDDOT Project No. SU-8-984(165), PCN 22292

The City of Fargo and Apex Engineering have been working on the design and permitting for reconstruction of North University Drive. The project includes work that needs to occur on Drain 3 north of 32nd Avenue North on University Drive. The attorney for SE Cass has developed the attached access agreement to permit work in the Drain as part of this project. Engineering and the Assistant City Attorney have reviewed the proposed access agreement and recommend its approval.

Recommended Motion:

To approve the agreement with SE Cass and to authorize the mayor to sign the agreement.

ACCESS AGREEMENT

THIS AGREEMENT is by the Southeast Cass Water Resource District, a North Dakota political subdivision, whose post office address is 1201 Main Avenue West, West Fargo, North Dakota 58078-1301 (the "District"); and the City of Fargo, a North Dakota municipal corporation, whose post office address is 225 4th St. N., Fargo, North Dakota 58102 (the "City").

RECITALS

A. The District owns, operates, and maintains CASS COUNTY DRAIN NO. 3 (the "Drain"), a legal assessment drain in portions of Cass County and within the City's municipal boundaries.

B. The City plans to reconstruct a portion of University Drive North, a project that will require modifications to certain components of the Drain, and the City has requested temporary access on and over certain portions of the Drain and the Drain right of way for purposes of installation and construction of the City's project.

C. The District is willing to grant the City temporary access across portions of the Drain and the District's Drain right of way, subject to the terms and conditions contained in this Agreement.

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

AGREEMENT

1. **The Project.** The City's project will include construction, modification, and installation of the following components on the District's property:

- Extension of the existing 72" RCP culvert, which conveys the Drain flow beneath University Drive North, approximately 14 feet to the west, and installation of a new end section on the extension;
- Construction of a new 54" RCP storm sewer outfall and end section into the Drain on the east side of University Drive North, on the north side of the Drain channel;
- Installing new 16" PVC watermain underneath the Drain channel on the west side of University Drive North (minimum 5' bury depth from channel bottom to top of watermain will be maintained); and
- Placing riprap pads at inlets and outlets of the above-mentioned RCP storm culverts, and on the sideslopes of the Drain channel on the west side of North University Drive where ditches enter the Drain channel.

The improvements described above are depicted in the map attached as **Exhibit A** (the "Project"). The City refers to the Project as the "Fargo University Drive North Project."

Southeast Cass Water Resource District

City of Fargo - Fargo University Dr. N. Project

Access Agreement

Page 2

2. **The License Property.** The District grants and conveys to the City a non-exclusive, revocable license for the construction, installation, and maintenance of the Project, with the access rights described in this Agreement, upon, over, and across the District's Drain right of way in Cass County, North Dakota, as depicted in the map attached as **Exhibit A**; the property depicted in **Exhibit A** is the "License Property." The rights granted to the City by the District under this Agreement constitute a license, revocable by the District for cause or for protection of the Drain or the District's other property under the terms of this Agreement, and the license does not create for or on behalf of the City any interest or estate of any kind in the License Property, either by virtue of this Agreement or by the City's entry upon or use of the License Property.

3. **Access Rights.** The City's access rights are limited to access, ingress, and egress rights upon, over, and across the License Property for purposes of constructing, installing, and maintaining the Project. The City will take steps to ensure proper operation of the Drain during construction of the Project. Following completion of the Project, the City will repair or replace any portions of the Drain damaged as a result of the City's access or as a result of the Project. The City may not use the License Property or any of the District's facilities or right of way for any other purpose, and the City's use, access, ingress, and egress rights regarding the License Property will not disrupt or interfere with the Drain or the District's use of the License Property for purposes of the Drain.

4. **Drainage Priority and Use.** The parties understand and agree the Drain is a public facility that provides drainage benefits and other important public benefits to residents of Cass County, including the City, and further agree the District's use of the Drain, including the License Property, for purposes of a public drainage facility takes priority over any other use of the License Property, including the City's use of the License Property for purposes of the Project. The parties further understand and agree the District and the Drain are subject to certain laws, rules, regulations, requirements, and directives under the jurisdiction of the North Dakota State Engineer's Office, and possibly other various federal and state agencies, and the City's use of the Drain for purposes of the Project is subject to any applicable laws, rules, regulations, requirements, or directives from or regarding any applicable federal or state agencies; the District does not have any control over, and does not make any representations or warranties regarding, the State of North Dakota or any other federal or state agencies, or the City's use of, or inability to use, the License Property for purposes of the Project. The District will not unreasonably interfere with the Project or the City's rights under this Agreement. The District has not made any warranties, express or implied, that the License Property is now, or will be in the future, suitable for the Project, and the District has not made any other representations, warranties, or promises regarding the License Property. The District will use reasonable care to avoid any disruptions or damages to the Project or related appurtenances. The District may impose restrictions or limitations on the City's access rights as necessary for drainage purposes or otherwise as necessary to protect the integrity of the Drain or the License Property.

Southeast Cass Water Resource District

City of Fargo - Fargo University Dr. N. Project

Access Agreement

Page 3

5. **Improvements to the License Property.** With the exception of the installation of the Project, the City will not construct any improvements in, upon, under, over, or across any portion of the Drain or the License Property; the City will not place any fixtures, equipment, or other personal property on any portion of the License Property; the City will not construct or install, nor allow construction or installation of, any utility facilities, lines, structures, or associated appurtenances on, over, in, under, through, or across the License Property; the City will not encumber any portion of the License Property; and the City will not otherwise alter any portion of the License Property without prior consent from the District. The City will cease any activity and remove any structure or obstruction that interferes with the Drain or the District's use of the License Property, at the City's sole cost.

6. **Duty to Repair and Remedies.** The City will repair the Drain and the License Property, and will repair or replace any of the District's other structures, facilities, right of way, or any other property owned by the District, damaged as a result of the City's construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, or removal of the Project or otherwise damaged as a result of any entry upon or use, access, ingress, or egress upon or over the License Property by the City or any of its officers, employees, agents, representatives, contractors, consultants, subcontractors, licensees, or other invitees. The City will otherwise repair and return the License Property as nearly as practicable to its original condition following any disturbance or damages, at the City's sole cost, with the exception of the extended RPC culvert, 54" RCP storm sewer, 16" PCV watermain, riprap pads, and other Project improvements. If the City fails to repair or replace within a reasonable time following request or demand from the District, or if the City otherwise fails to perform any of the City's obligations under this Agreement within a reasonable time following request or demand from the District, the District may perform the City's obligations and the City will reimburse the District for all of the District's costs and expenses. The District's remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any and all other remedies available to the District under North Dakota law. The City will reimburse the District for all of the District's costs and expenses, including reasonable attorneys' fees, incurred in enforcing, collecting, or attempting to collect under this Agreement, or incurred in litigating the terms or validity of this Agreement.

7. **Term.** The City's rights under this Agreement will continue as long as the City operates and maintains the components of the Project. The District may terminate this Agreement if the District concludes termination is necessary to protect the integrity of the Drain following notice to City with adequate time to rectify any Drain concerns; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over the Drain; or in the event of any default by the City not remedied within a reasonable time. Upon any termination of this Agreement, the City will repair and return the License Property as nearly as practicable to its original condition, with the exception of Project improvements, at the City's sole cost.

Southeast Cass Water Resource District

City of Fargo - Fargo University Dr. N. Project

Access Agreement

Page 4

8. **Compliance with Laws.** The City, at its own cost, is solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations, and obtaining all necessary licenses, permits, registrations, and/or approvals, from all applicable federal, state, county, and municipal governments and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers, regarding the Project, including all Project components, or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the License Property.

9. **Forbearance.** The failure or delay of the District to insist on the timely performance of any of the terms of this Agreement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.

10. **Governing Law.** This Agreement will be construed and enforced in accordance with North Dakota law,

11. **Interpretation.** This Agreement will be construed as if prepared by both parties.

12. **Severability.** If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Agreement is invalid, illegal, or unenforceable.

13. **Entire Agreement.** This Agreement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes all other previous oral or written agreements between the parties.

14. **Assignment.** Neither party may transfer or assign this Agreement, nor any rights or obligations under this Agreement, without the express written consent of the other party.

15. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' heirs, successors, and assigns.

16. **Modifications.** Any modifications or amendments of this Agreement must be in writing and signed by the District and the City.

Southeast Cass Water Resource District
City of Fargo - Fargo University Dr. N. Project
Access Agreement

Page 5

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

18. Effective Date. This Agreement will become effective upon the execution by the last party to sign.

(Signatures appear on the following pages.)

***Southeast Cass Water Resource District
City of Fargo - Fargo University Dr. N. Project
Access Agreement***

Page 6

SOUTHEAST CASS WATER
RESOURCE DISTRICT

By:


Dan Jacobson, Chair

ATTEST:



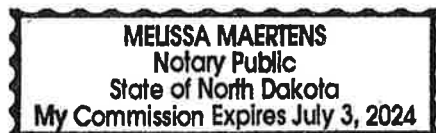
Carol Harbeke Lewis
Secretary-Treasurer

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF CASS)

On this 14th day of January, 2021, before me, a Notary Public in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Southeast Cass Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Southeast Cass Water Resource District.




Notary Public, Cass County, ND

(SEAL)

***Southeast Cass Water Resource District
City of Fargo - Fargo University Dr. N. Project
Access Agreement***

Page 7

CITY OF FARGO

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

ATTEST:

Steven Sprague, City Auditor

[illegible]

On this ____ day of _____, 2021, 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, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the City of Fargo.

Notary Public, Cass County, ND

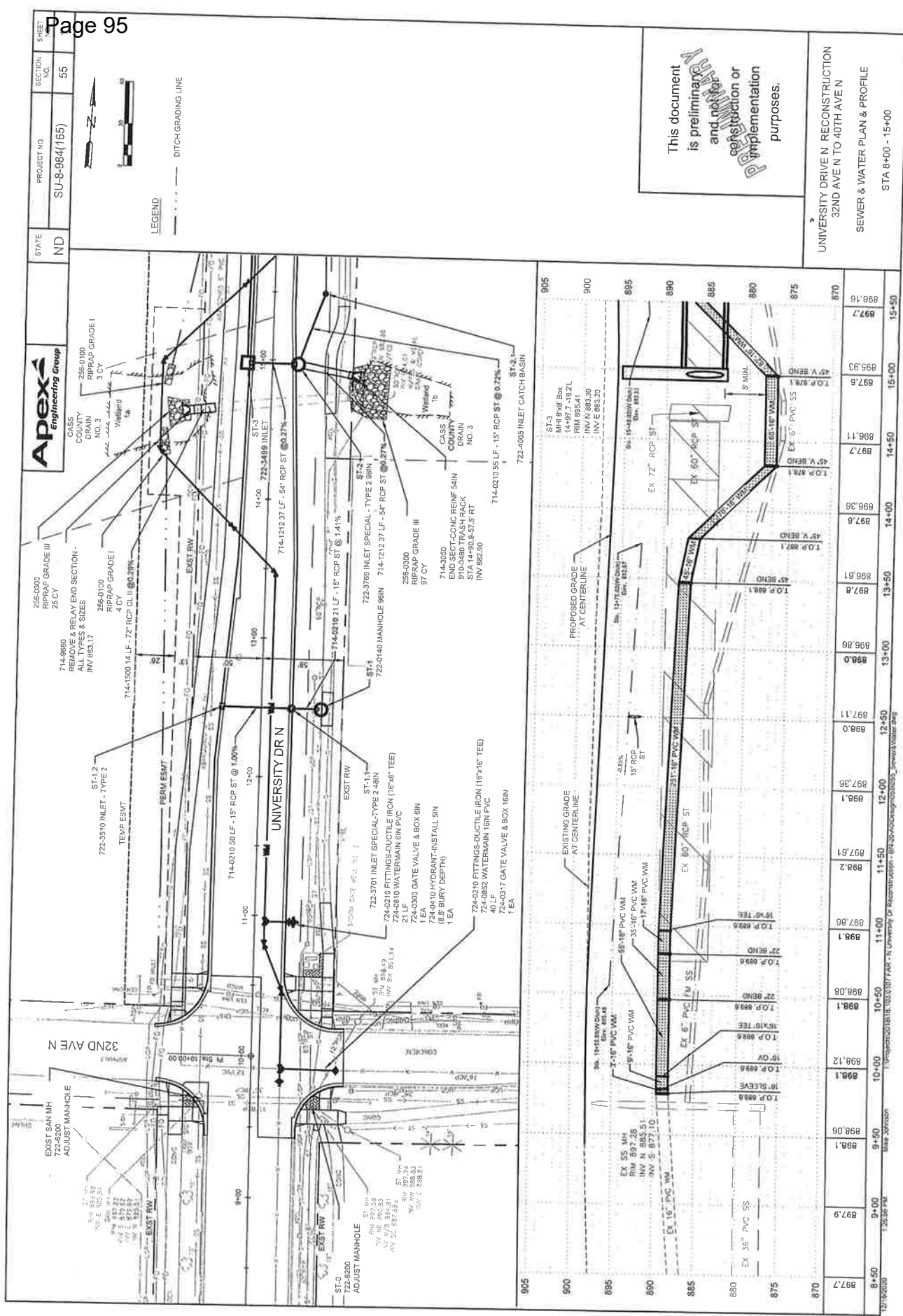
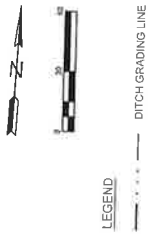
(SEAL)

Southeast Cass Water Resource District
City of Fargo - Fargo University Dr. N. Project
Access Agreement

Page 8

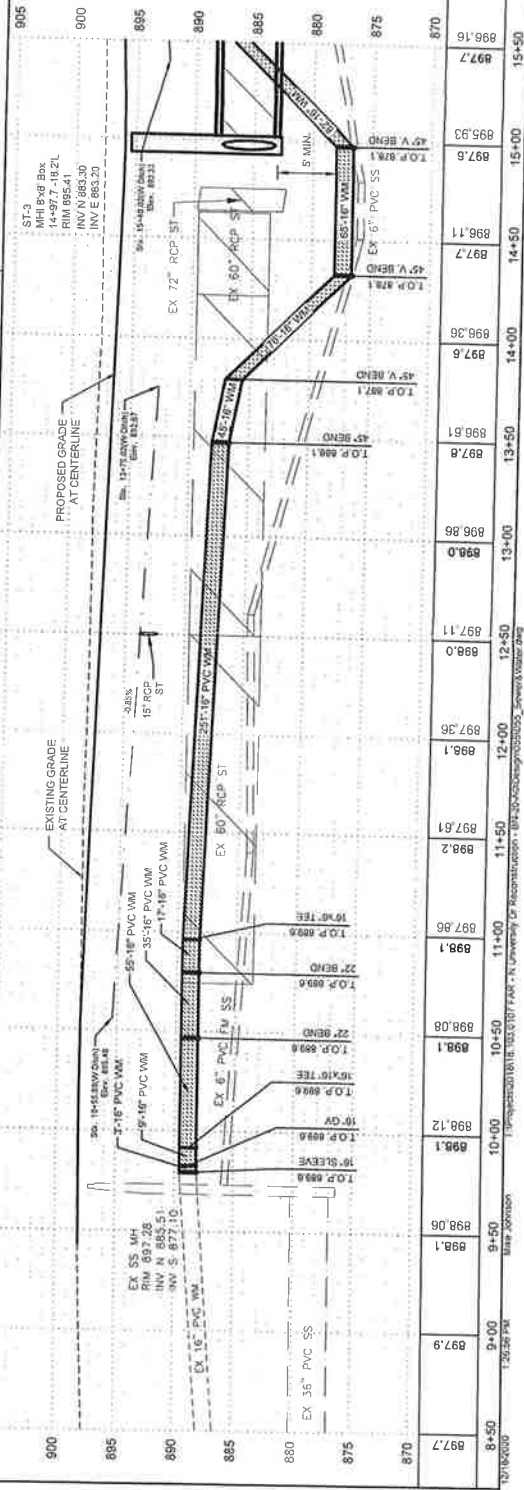
EXHIBIT A

Map of the License Property and the Project



This document is preliminary and not for construction or implementation purposes.

UNIVERSITY DRIVE N RECONSTRUCTION
32ND AVE N TO 40TH AVE N
SEWER & WATER PLAN & PROFILE
STA 8+00 - 15+00



COVER SHEET
CITY OF FARGO PROJECTS

(1200)

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:

Street Rehabilitation & Incidentals

Project No. PR-21-A

Call For Bids January 25, 2021

Advertise February 3, 10, 17, 2021

Bid Opening Date March 3, 2021

Substantial Completion Date June 4, 2021

Completion Date July 4, 2021

N/A PWPEC Report (Attach Copy) **Part of 2021 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)

Project Engineer Jason Hoogland

Phone No. (701) 241-1545

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

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
STREET REHABILITATION & INCIDENTALS
PROJECT NO. PR-21-A

Nature & Scope

This project is for routine joint sealing on various roadways throughout the City.

Purpose

To seal the joints which have opened up in the roadways due to freeze/thaw conditions. This has proven to be a very cost effective process. Sealing the joints at this time, prior to roadway deterioration, helps preserve the ride as well as extend the life of the streets.

Feasibility

The total construction cost is estimated to be \$78,750. The project will be paid for by Street Sales Tax Fund. The cost breakdown is as follows:

<u>Estimated Construction Cost:</u>	\$ 78,750.00
Engineering Fees (10%):	\$ 7,875.00
Administration Fees (4%):	\$ 3,150.00
Legal Fees (3%):	\$ 2,362.50
Interest Fees (4%):	\$ 3,150.00
Contingency (5%):	\$ 3,937.50
Total Cost (Street Sales Tax Fund):	\$ 99,225.00

We believe this project to be cost effective.




Tom Knakmuhs, P.E.
Assistant City Engineer

COVER SHEET
CITY OF FARGO PROJECTS

(126)

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

Exact, full name of Improvement District as it will appear in the Contract:

SEAL COAT & INCIDENTALS

Project No. PR-21-B

Call For Bids January 25, 2021

Advertise Dates February 3 & 10, 17, 2021

Bid Opening Date March 3, 2021

Substantial Completion Date July 31, 2021

Final Completion Date August 31, 2021

N/A PWPEC Report (Attach Copy) (**Part of 2021 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)

Project Engineer Jason Hoogland

Phone No. (701) 241-1545

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

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
SEAL COAT & INCIDENTALS
PROJECT NO. PR-21-B

Nature & Scope

This project involves installing a seal coat on the asphalt surfaced streets in several sections of the City as follows:

Section 1:

- On Lilac Lane North from Maple Street North to Willow Road North.
- On North Woodcrest Drive North from Maple Street North to Park Lane North.
- On 28th Avenue North from Maple Street North to the east end of cul-de-sac.
- On Meadowlark Lane North from Maple Street North to Lilac Lane North.
- On Willow Road North from Maple Street North to North Woodcrest North.
- On Maple Street North from 29th Avenue North to Willow Road North.

Section 2:

- On 22nd Avenue North from Broadway North to 10th Street North.
- On 25th Avenue North from 8th Street North to 10th Street North.
- On 28th Avenue North from 8th Street North to 10th Street North.
- On 29th Avenue North from Broadway North to 10th Street North.
- On 30th Avenue North from Broadway North to 10th Street North.
- On 31st Avenue North from Broadway North to 10th Street North.
- On 7th Street North from 19th Avenue North to 25nd Avenue North.
- On 8th Street North from 19th Avenue North to 25nd Avenue North.
- On 8th Street North from 28th Avenue North to 32nd Avenue North.
- On 9th Street North from 19th Avenue North to 32nd Avenue North.
- On 9 ½ Street North from 19th Avenue North to 32nd Avenue North.
- On 10th Street North from 19th Avenue North to 32nd Avenue North.

Section 3:

- On 13th Avenue North from Broadway North to 10th Street North.
- On 14th Avenue North from Broadway North to 10th Street North.
- On 7th Street North from 12th Avenue North to 13th Avenue North.
- On 7th Street North from 14th Avenue North to 15th Avenue North.
- On 8th Street North from 12th Avenue North to 14th Avenue North.
- On 9th Street North from 12th Avenue North to 14th Avenue North.

Section 4:

- On 40th Street South from Main Avenue to 13th Avenue South.
- On 43rd Street South from 13 ½ Avenue South to 15th Avenue South.
- On 43 ½ Street South from 13th Avenue South to 13 ½ Avenue South.
- On 44th Street South from 13th Avenue South to 15th Avenue South.
- On 11th Avenue South from 40th Avenue South to 42nd Avenue South.
- On 13 ½ Avenue South from 43rd Street South to 400' west of 43rd Street South.

Section 5:

- On 14th Avenue South from 5th Street South to 10th Street South.
- On 15th Avenue South from 5th Street South to 10th Street South.
- On 16th Avenue South from 7th Street South to 10th Street South.
- On 6th Street South from 13th Avenue South to 17th Avenue South.
- On 7th Street South from 13th Avenue South to 18th Avenue South.
- On 8th Street South from 13th Avenue South to 18th Avenue South.
- On 9th Street South from 13th Avenue South to 18th Avenue South.
- On 10th Street South from 13th Avenue South to 18th Avenue South.
- On 11th Street South from 17th Avenue South to 18th Avenue South.

Section 6:

- On 9th Street South from 24th Avenue South to 26th Avenue South.
- On 11th Street South from 26th Avenue South to 30th Avenue South.
- On 12th Street South from 26th Avenue South to 30th Avenue South.
- On 28th Avenue South from 11th Street South to 12th Street South.
- On Southwood Drive South.
- On 30th Avenue South from 11th Street South to University Drive South.

Section 7:

- On Ironwood Court South.
- On Oakwood Court South.
- On Maplewood Court South.
- On Birchwood Court South.
- On Hackberry Drive South from Harwood Drive South to River Drive South.
- On River Drive South from Harwood Drive South to 35th Avenue South.
- On 11th Street South from Harwood Drive South to 35th Avenue South.
- On 35th Avenue South from River Drive South to University Drive South.
- On 37th Avenue South from Kennedy Street South to University Drive South.
- On 38th Avenue South from River Drive South to University Drive South.
- On Kennedy Street South from River Drive South to the north end of the cul-de-sac.
- On 12th Street South from River Drive South to 37th Avenue South.
- On Burritt Street South from 37th Avenue South to 38th Avenue South.
- On cul-de-sac off of River Drive South.
- On 15th Street South from 40th Avenue South to the south end of cul-de-sac.
- On 17th Street South from 40th Avenue South to the south end of cul-de-sac.
- On 41st Avenue South from 15th Street South to 17th Street South.

Section 8:

- On Copperfield Court South.
- On Carrie Rose Lane South.
- On Oak Creek Drive South.
- On 44th Avenue South from 25th Street South to Oak Creek Drive South.
- On Meadow Creek Drive South.
- On Meadow Creek Circle South.

Section 9:

- On Townsite Place South.
- On Clock Tower Lane South.
- On 47th Street South from 40th Avenue South to ½ way between 45th Avenue South and 47th Avenue South.
- On 48th Street South from 44th Avenue South to 45th Avenue South.
- On 49th Street South from 44th Avenue South to 45th Avenue South.
- On 50th Street South from 44th Avenue South to 45th Avenue South.
- On 52nd Street South from Farmstead Court South to 44th Avenue South.
- On 53rd Street South from Farmstead Court South to 900' south of 44th Avenue South.
- On 54th Street South from 40th Avenue South to 44th Avenue South.
- On 55th Street South from Farmstead Court South to 44th Avenue South.
- On Farmstead Court South.
- On Sunflower Lane South.
- On Tuscan Court South.
- On 44th Avenue South from 45th Street South to Veterans Boulevard.
- On 45th Avenue South from 47th Street South to 50th Street South.

Purpose

Installation of a seal coat at this time will extend the life of these roadways considerably.

Feasibility

The total construction cost is estimated to be \$853,205.00 and will be paid by Street Sales Tax Funds. The cost breakdown is as follows:

Sections 1 - 9:

Estimated Construction Cost:	\$ 853,205.00
Plus Engineering Fees (10%):	\$ 85,320.50
Plus Administration Fees (4%):	\$ 34,128.20
Plus Legal/Misc Fees (3%):	\$ 25,596.15
Plus Interest (4%):	\$ 34,128.20
Plus Contingency (5%):	\$ 42,660.25
Total Cost (Street Sales Tax Funds):	\$ 1,075,038.30

We believe this to be cost effective.




Tom Knakmuhs, P.E.
Assistant City Engineer

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(13)

Type: Access Agreement for Fire Access

Location: Craigs Oak Grove Second Addition

Date of Hearing: 12/21/2020

RoutingDate

City Commission

PWPEC File

Project File

X
Brenda Derrig

The Committee reviewed the attached correspondence from Brenda Derrig, City Engineer, for an Access Agreement. The Developer has requested an Access Agreement on the City owned property adjacent to the levee to meet the fire code requirements for his adjacent site.

Staff supports and is seeking approval of the development of the Fire Access Agreement.

On a motion by Bruce Grubb, seconded by Ryan Erickson, the Committee voted to approve the Access Agreement for Fire Access to Craigs Oak Grove Second Addition.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Access Agreement for Fire Access to Craigs Oak Grove Second Addition.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

Yes	No
N/A	
N/A	
N/A	


COMMITTEE

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

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

ATTEST:

C: Kristi Olson


 Brenda E. Derrig, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Brenda Derrig, City Engineer
Date: December 18, 2020
Re: Access Agreement for Fire Access to Craigs Oak Grove Second Addition

Background:

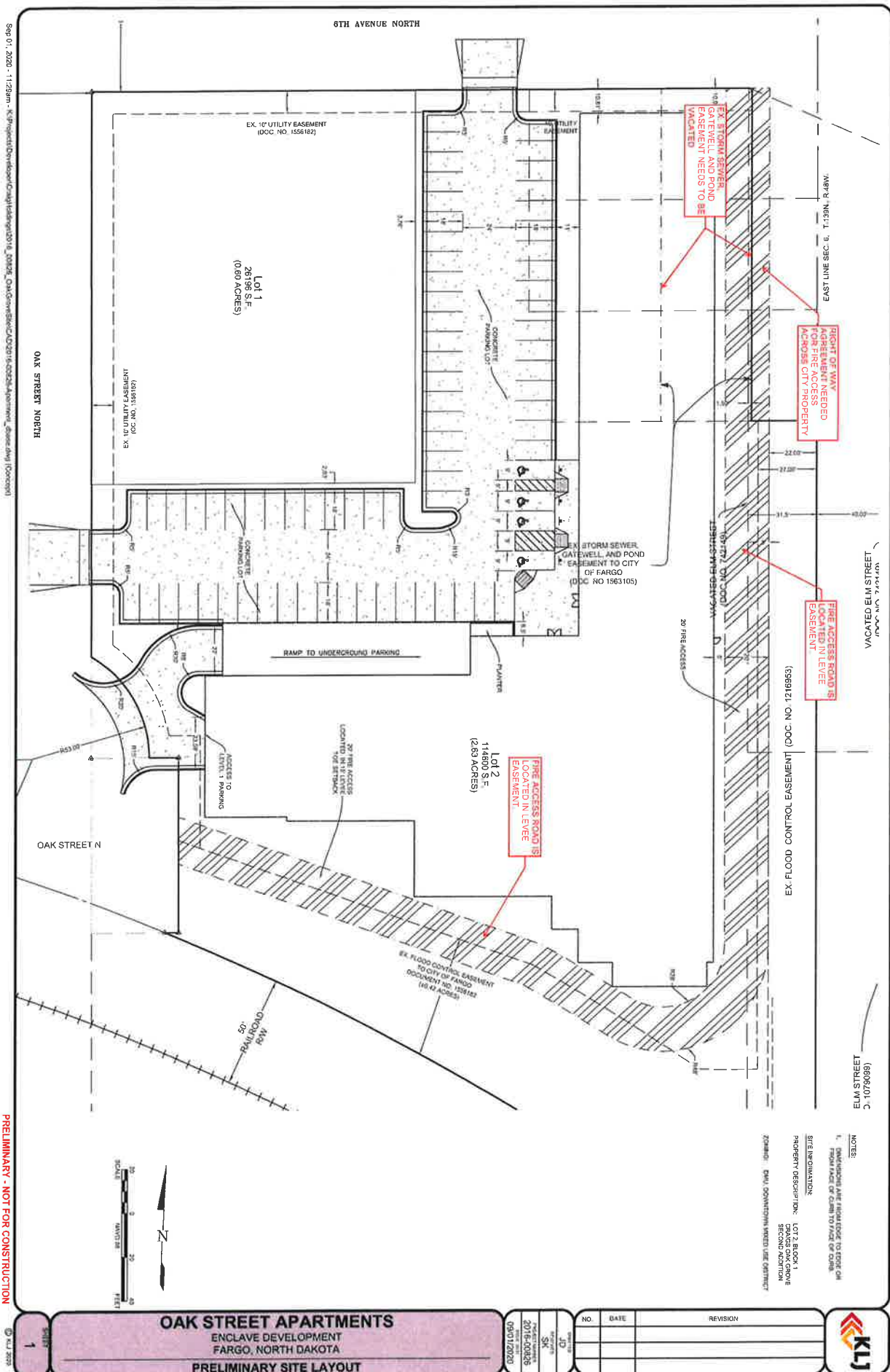
The Developer has requested an access agreement on the City owned property adjacent to the levee to meet the fire code requirements for his adjacent site. Staff support the development of this agreement.



Staff will work with the City Attorney Office to draft an agreement to move forward to Commission.

Recommended Motion:

Approve staff to work with the City Attorney and draw up an access agreement with the adjacent Developer and move forward to Commission for approval.





PERMANENT EASEMENT
(Fire Service Surface Access Easement)

KNOW ALL MEN BY THESE PRESENTS that the City of Fargo, a North Dakota municipal corporation, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO** Craig Enclave OG, LLC, a North Dakota limited liability company, its successors and assigns, hereinafter referred to as "Grantee", a fire service surface access easement to serve the Grantee's adjacent property, said land being more fully described, to-wit:

The west 10 feet of the east 30 feet of Vacated Elm Street lying west of the section line and adjacent to Lots 5, 6, and 7 in Block Twenty-eight (28) of Keeney and Devitt's Second Addition situated in the Southeast Quarter (SE1/4) of Section Six (6), Township One Hundred Thirty-nine North (T139N), Range Forty-eight West (R48W), of the Fifth Principal Meridian, in the City of Fargo, Cass County, North Dakota, more particularly described as follows:

Commencing at the most northerly point of the northeast corner of Block 1, Craigs Oak Grove Second Addition which is part of the Replat of said Block 28, Keeney and Devitt's Second Addition; said point once being the northeast corner of Lot 7 of said Block 28 and said point also once being on the west line of Vacated Elm Street; thence S 69 degrees 39 minutes 57 seconds E, along the northerly line of said Block 1, Craigs Oak Grove Second Addition, a distance of 1.63 feet to the northeast corner of said Block 1 and the Point of Beginning; thence continue S 69 degrees 39 minutes 57 seconds E along the easterly extension of said north line, a distance of 10.87 feet to a point 20.00 feet distant perpendicular to the east line of Section 6; thence S 02 degrees 52 minutes 08 seconds E, parallel with said east line, a distance of 145.13 feet to a point on the easterly extension of the south line of Lot 5, said Block 28; thence S 87 degrees 02 minutes 05 seconds W along said south line, a distance of 10.00 feet to the east line of Block 1, Craigs Oak Grove Second Addition; thence N 02 degrees 52 minutes 08 seconds W, along said east line of Block 1, a distance of 149.43 feet to the Point of Beginning.

Said tract contains 1473 square feet, more or less ("Easement Area").

Grantor warrants that it is the owner of the above described premises and has the lawful right and authority to convey and grant the easement herein granted.

Grantee shall be permitted to place grassy pavers in the Easement Area to support the weight of the Fire Department vehicles. Grantee shall install a driveway for Fire Department use, and shall further place a permanent gate across the fire service access road, preventing the public from using the road. Grantee shall place appropriate signs, clearly identifying the limited intended and necessary use of the fire service access road permitted herein. No trees or other vegetation shall be permitted in the Easement Area.

Grantee agrees it shall be responsible for maintenance of the Easement Area, including mowing, weed control, snow removal, sweeping, and such other maintenance as may be required from time to time. Grantee shall be responsible for all necessary repair and maintenance of the items permitted in the Easement Area, including grassy paver repairs and replacement, gate and sign preservation, and driveway construction required as a result of Grantee's use thereof. No other use of any kind, including but not limited to vehicle traffic, structures or recreational facilities, shall be permitted.

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

Grantor and Grantee understand and agree that Grantor's use of the Easement Area for flood protection purposes is primary and paramount to the use permitted herein. Grantor, its successors and assigns, reserves the right to access the Easement Area at any time necessary to maintain, repair or reconstruct Grantor's property, including flood protection purposes on the existing levee. Grantor shall bear no responsibility whatsoever for the Grantee's property permitted pursuant to this agreement, including the grassy pavers, signs, driveway, and gate structure. Grantee shall have sole obligation to repair or replace the access road permitted herein, as Grantee's sole expense. Grantor expressly warrants and states that no 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 access, unless Grantor's use of the property encumbered by this Easement.

(Signatures on Following Pages)

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed this _____ day of _____, 2021.

GRANTOR:

City of Fargo, a North Dakota municipal corporation

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

Attest:

Steve Sprague, City Auditor

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

On this _____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared Dr. Timothy J. Mahone, M.D. and Steve Sprague, to me known to be the Mayor and City Auditor of the city of Fargo, North Dakota, described in and who has executed the within and foregoing instrument, and acknowledged to me that they executed the same.

(SEAL)

Notary Public
Cass County, North Dakota

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed this ____ day of _____, 2021.

GRANTEE:

Craig Enclave OG, LLC, a North
Dakota limited liability company

By:
Its:

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

On this ____ day of _____, 2021, before me, a notary public in and for said county and state, personally appeared _____, to me known to be the _____ of **Craig Enclave OG, LLC** described in and who has executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)

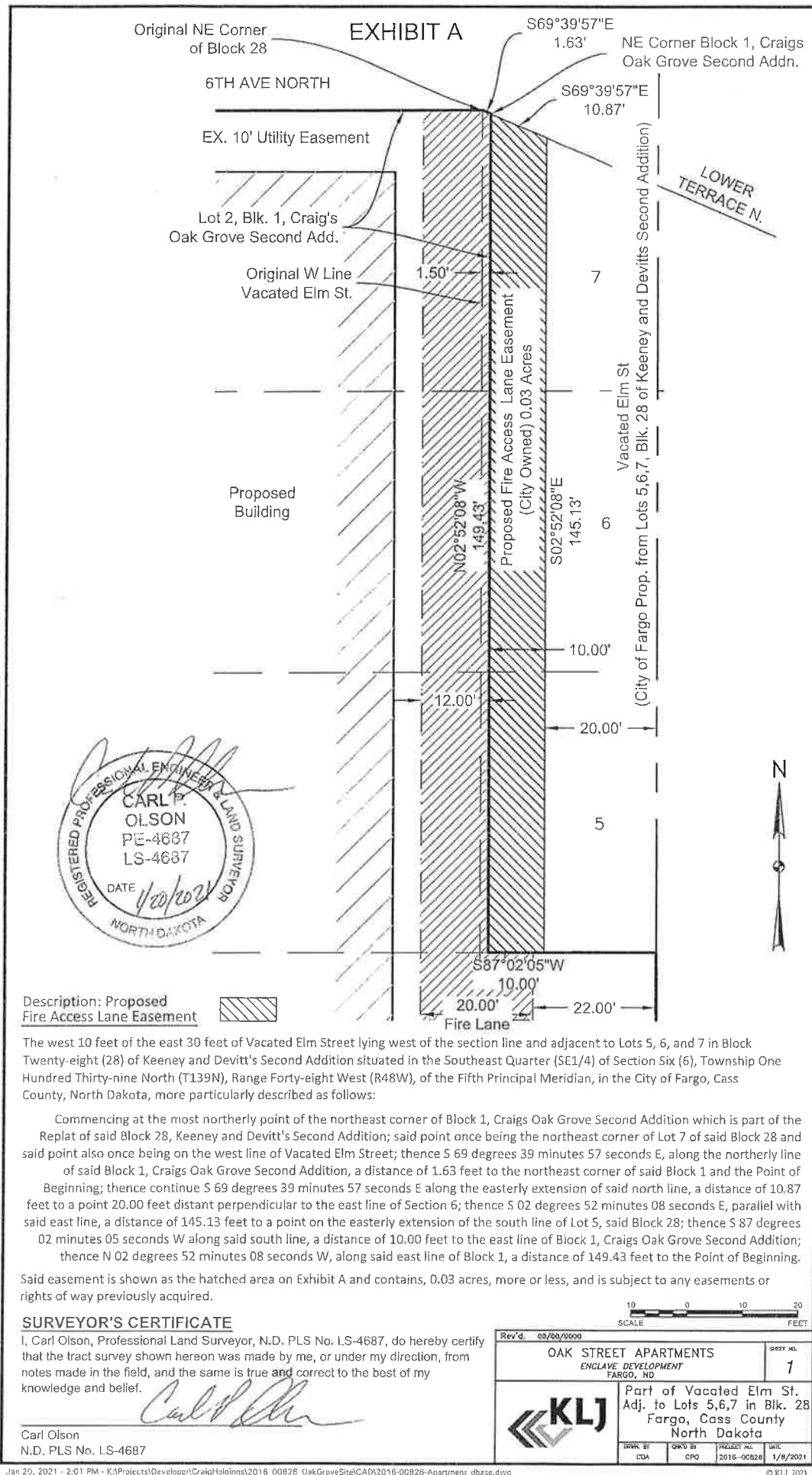
Notary Public
Cass County, North Dakota

The legal description was prepared by:

Carl P. Olson
Registered Professional Engineer
and Land Surveyor
PE-4687, LS-4687
KLJ Engineering
300 23rd Ave. E., Ste. 100
West Fargo, ND 58078
(701) 232-5353

This document was prepared by:

Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
(701) 280-1901
nmorris@lawfargo.com






(14)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 8, 2021

**RE: ND DEPARTMENT OF HEALTH FOR HIV PREVENTION
ACTIVITIES HEALTH DEPARTMENT BASED, CONTRACT NO.
PF19.191 CFDA NO. 93.940 FOR \$38,000.**

The attached grant from North Dakota Department of Health is for a HIV Prevention Activities Program for HIV.HCV Counseling, Testing and Referral (CTR). If you have any questions please contact me at 241.1380.

Suggested Motion: Move to approve the HIV Prevention Activities grant

DF/lls
Enclosure



PURCHASE OF SERVICE AGREEMENT – RESTRICTED FUNDING

NORTH DAKOTA DEPARTMENT OF HEALTH


SFN 59918 (01-2020)

Contract Number PF19.191	CFDA Name HIV Prevention Activities - Health Department Based		CFDA Number 93.940
FAIN Number NU62PS924540	Contract Type (Check One) <input type="checkbox"/> Acquisition <input type="checkbox"/> Research	Start Date 1/11/2021	End Date 12/31/2021
Federal Award Date 12/16/2020	Federal Awarding Agency Department Of Health And Human Services, Centers for Disease Control and Prevention		
This contract is not effective and expenditures related to this contract should not be incurred until all parties have signed this document.			
Title of Project/Program HIV.HCV Counseling, Testing and Referral (CTR)		North Dakota Department of Health (NDDoH) Project Code 2201-HLH5371-02	
Contractor Name Fargo Cass Public Health		Project Director Lindsey VanderBusch	
Address 1240 25th Street South		Address 600 E Boulevard Ave, Dept 301	
City/State/ZIP Code Fargo, ND 58103		City/State/ZIP Code Bismarck, ND 58505	
Contact Name Desi Fleming		Contact Name Lindsey VanderBusch	
Telephone Number 701.241.380		Telephone Number 701.328.4555	
Email Address DFleming@FargoND.gov		Email Address lvanderbusch@nd.gov	
	NDDoH Cost Share	Contractor Cost Share	Total Costs
Amount Awarded	\$38000	\$0	\$38000
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$38000	\$0	\$38000
Scope of Service Contractor will provide the following services: (1) Collect blood specimens for rapid HIV/HCV testing for persons at risk for infection; (2) Provide pre-test and post-test counseling to individuals being screened for HIV/HCV at a time and place appropriate for both the client and provider; (3) Collect and provide blood specimens to confirm positive rapid screens to the North Dakota Department of Health-Laboratory Services Section using the most recent laboratory specimen testing form; (4) Submit the mandatory epidemiologic information on all tests performed within one week of specimen collection via online reporting tool; (5) Provide hepatitis A and hepatitis B vaccinations to individuals who identify a risk factor or are positive for hepatitis C; (6) Provide community outreach testing and education; (7) Ensure access to HIV prevention supplies and educational materials; (8) Provide linkage to medical care services for individuals who are positive for HCV; (9) Follow all requirements as written in the NDDoH Counseling, Testing and Referral Manual; (10) Submit the HIV/HCV Reimbursement Form to the HIV/AIDS Program no later than 15 days after the end of each month via the PRS system; (11) File necessary records consistent with the Maven Security Policy; (12) Conduct evaluative activities as requested by the Department; and (13) Participate in HIV/HCV CTR site meetings, training and other activities as requested.			
Reporting Requirements Monthly expenditure and progress reports are due 15 days after the end of each month. Reimbursement will be processed upon Department approval of expenditure and progress reports. The expenditure report ending June 30, 2021 must be received by July 15, 2021. The final expenditure report ending December 31, 2021 must be received by February 15, 2022. Epidemiologic data must be submitted using the online reporting tool within one week of the specimen collection date for each person tested.			
Special Conditions Funding for this contract is restricted to 25% of the total award until such time as the Federal Award is received and processed by the Department. During this restriction. Financial obligation of the Department is contingent upon funds being made available by The Centers for Disease Control and Prevention. The Department will send notification to the Contractor when the restriction has been lifted. This notification serves as official documentation and should be filed with the Purchase of Service Agreement for documentation. Allowable expenses are included on the HIV.HCV Reimbursement Form. All contractors with the ability to bill third-party payers for these services are expected to do so as appropriate before requesting reimbursement from the Department. Expenditures incurred related to the scope of service for this agreement will be covered as early as January 1, 2021.			
This Purchase of Service Agreement is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum for Purchase of Service Agreements issued by the NDDoH as signed by Contractor for the period of July 1, 2019 to June 30, 2021 [Fiscal Services Use Only: <input type="checkbox"/> Requirements Received] and (2) applicable State and Federal regulations.			
Evidence of Contractor's Acceptance		Evidence of NDDoH Acceptance	
Date 1/11/21	Signature Desi Fleming	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Kirby Kruger, Section Chief, Disease Control & Forensic Pathology	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Brenda M. Weisz, Chief Financial Officer	
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.			

(15)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING 
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 21, 2021

**RE0: AGREEMENT FOR SERVICES WITH COSCHEDULE FOR
BREASTFEEDING FRIENDLY WORKPLACE FOR \$500.00**

The attached agreement for services is for breastfeeding friendly environment support for CoSchedule.

No budget adjustment is required for this contract.

Suggested Motion: Move to approve the Agreement for Services with CoSchedule.

DF/ls
Enclosure



CONTRACT AGREEMENT



THIS AGREEMENT, effective the 19th day of January, 2021, by and between Fargo Cass Public Health ("FCPH"); and CoSchedule.

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

- A. Term of Agreement:** Project plans must be implemented by September 30, 2021 after funds are received.
- B. Statement of Work:** Support worksites in their efforts to provide a breastfeeding friendly environment for their employees. Provided the activities authorized under the statement of work and contract signed by the Recipient are eligible expenditures of Fargo Cass Public Health, the City agrees to provide an amount not to exceed \$500.00. Funds shall be disbursed upon a presentation of a signed agreement.
- C. Termination:** This agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- D. Accounts and Records:** The grant partner shall establish and maintain accurate and complete account and financial or other record in relation to the receipt and expenditure of all grant funds for the project so they adequately show that the grant funds were used exclusively for the purposes described in this agreement.

Special Considerations:

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of grant partner and shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this contract agreement. I hereby certify that the above assurances and provisions of responsibility 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.

In Witness thereof, this contract agreement has been executed between the Grant Partner and Fargo Cass Public Health on the date-executed below.

FARGO CASS PUBLIC HEALTH

By Desi Fleming
Desi Fleming
Director of Public Health

Date 1-21-2021

By _____
Timothy J. Mahoney
Mayor, City of Fargo

Date _____

GRANT PARTNER - CoSchedule

By Amanda Houston
Amanda Houston
Office Manager

Date 1-20-2021

16



MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING *DF*
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 20, 2021

RE: PURCHASE OF SERVICE AGREEMENT WITH THE NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES FOR IMPLEMENTING ACTIVITIES TO PROMOTE PARENTS LEAD IN THE COMMUNITY CONTRACT NO. #810-11920 CFDA NO. N/A, MONTHLY PAYMENTS NOT TO EXCEED \$3,000 AND THE TOTAL NOT TO EXCEED \$15,995

This is a request to approve the attached Purchase of Service Agreement with the North Dakota Department of Human Services, Behavioral Health Division for the Parents Lead program which addresses preventing behavioral issues in children. The term lasts until June 30, 2021 and the reimbursement shall for no more than \$15,995.

There will be no budget adjustments required for this contract:

If you have questions, please contact Desi Fleming at 241.1380.

Suggested Motion: Move to approve the contract with the North Dakota Department of Human Service for the Parents Lead program.

DF/lis
Enclosure

CONTRACT #810-11920

PURCHASE OF SERVICE AGREEMENT

The state of North Dakota, acting through its North Dakota Department of 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 Street South, 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 December 14, 2020, through June 30, 2021. This Agreement will not automatically renew.

2. SCOPE OF SERVICE

Vendor shall implement activities to promote Parents Lead in the community, aligning with the Activity and Reimbursement Guide, which is made a part of this Agreement as Attachment A, in order to support parents in preventing behavioral health issues in children. Vendor shall provide services in a manner that is recovery-oriented, trauma-informed, and person-centered.

Vendor shall coordinate with existing community-based organizations and programs to maximize benefit, avoid duplication, and leverage, redirect, and realign resources.

Vendor shall ensure all communication and branding aligns with the Parents Lead brand guidelines.

Vendor shall participate in training and technical assistance provided by State.

Vendor shall submit monthly report to State by the 10th of the following month following the template provided by State.

3. COMPENSATION

State, upon receipt and approval of SFN 1763 Request for Reimbursement, monthly report, and required Agreement deliverables met to date, shall pay Vendor monthly payments based on the activities implemented, not to exceed \$3,000. Total payment under this Agreement may not exceed \$15,995. Vendor shall submit its request for reimbursement to State monthly. Vendor shall submit its final payment request to State no later than 15 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

Vendor shall not be held responsible for delay or default caused by fire, flood, riot, acts of God, or war if the event is beyond Vendor's reasonable control, and Vendor gives notice to State 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, and the Pro-Children Act of 1994.

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 a minimum liability limit of \$1,000,000 per occurrence.
 - 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - 3) Workers compensation coverage meeting all statutory requirements.

- b. The insurance coverages listed above must meet the following additional requirements:
- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Vendor. The amount of any deductible or self-retention is subject to approval by the State.
 - 2) 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.
 - 3) The insurance required in this Agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without 30 days' prior written notice to the undersigned State representative.
 - 4) Vendor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this Agreement. An updated, current certificate of insurance shall be provided in the event of any change to a policy.
 - 5) Failure to provide insurance as required in this Agreement is a material breach of contract entitling State to terminate this Agreement immediately.

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 Street South
Fargo, ND 58103

OR

ND Department of 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.

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

Neither party may assign this Agreement or the party's rights under this Agreement without the written approval of the other party. Approval to assign may not be unreasonably withheld. 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, except for disclosures prohibited in this Agreement, 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 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 laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil rights. 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.

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: _____
 Timothy J. Mahoney
 Its: _____ Mayor, City of Fargo _____
 Date: _____

By: Desi Fleming 1/20/21
 Desi Fleming DATE
 Its: _____ Director of Public Health

 45-6002069
 Vendor's Federal Taxpayer Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

By: _____
 PAMELA SAGNESS, DIRECTOR
 BEHAVIORAL HEALTH DIVISION DATE

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

(17)

To: Board of City Commissioners

From: Jill Minette, Director of Human Resources JM

Re: Blue Cross Blue Shield of North Dakota - Health Insurance Benefit Plan Agreement and Dental Insurance Group Insurance Policy

Date: January 20, 2021

Please see the attached Blue Cross Blue Shield of North Dakota (BCBSND) Health Insurance Benefit Plan Agreement and Dental Group Insurance Policy. The health insurance agreement and dental insurance policy reflect the renewal terms previously approved for the 2021 plan year and have been reviewed by the Assistant City Attorney.

RECOMMENDED MOTION: To approve the Blue Cross Blue Shield of North Dakota (BCBSND) Health Insurance Benefit Plan Agreement and Dental Group Insurance Policy.

CITY OF FARGO

January 1, 2021 through December 31, 2021

BENEFIT PLAN AGREEMENT

This Benefit Plan Agreement ("Agreement") is entered into between CITY OF FARGO ("the Plan Sponsor"), CITY OF FARGO ("the Plan Administrator") and Blue Cross Blue Shield of North Dakota ("BCBSND"). Throughout this Agreement, BCBSND is referred to as the "Company."

The Plan Sponsor has established and maintains a fully insured group health plan (the Plan) which provides, among other things, various benefits to Members in the Plan, as set forth in the Certificate of Insurance provided to plan Members. The Plan Administrator is the administrator of the Plan established through this Agreement.

In consideration of payment of required premium and acceptance of applications, the Company enters into this Agreement with the Plan Sponsor and the Plan Administrator. The Company agrees to provide plan Members the benefits set forth in the Certificate of Insurance, in accordance with its terms and conditions. This Agreement also includes the Certificate of Insurance, applications, Identification Cards and any endorsements, supplements, attachments, addenda or amendments.

FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. EFFECTIVE DATE AND PLAN YEAR

This Agreement is effective January 1, 2021, through December 31, 2021, unless terminated as provided in Section 7. TERMINATION.

For the purposes of the costs of any and all benefits and services extended through this Benefit Plan, including the implementation of any benefit changes required under federal or state law, the Plan Administrator agrees that the Plan Year shall commence on January 1, unless it is terminated by one of the parties as specified in Section 7. TERMINATION.

2. DEFINITIONS

This section defines the terms used in this Agreement. These terms will be capitalized throughout this Agreement when referred to in the context defined.

- 2.1 **CLAIM** - notification in a form acceptable to the Company that services have been provided or furnished to a Member.
- 2.2 **DATA AGGREGATION** - the combining of Protected Health Information the Company creates or receives for or from the Plan and for or from other health plans or health care providers for which the Company is acting as a business associate to permit data analyses that relate to the Health Care Operations of the Plan and those other health plans or providers.
- 2.3 **HEALTH CARE OPERATIONS** - any of the activities of a health plan to the extent the activities relate to those functions that make it a health plan.
- 2.4 **MEMBER** - the Subscriber and any dependent of a Subscriber or any other person designated by a Subscriber or by the terms of the Plan who is or may become entitled to a benefit under the Plan. The term shall also include any proprietor, partner, or owner of the Plan Sponsor, if any, who is designated by the terms of the Plan who is or may become entitled to a benefit under the Plan. In no case shall the term Member include any person not otherwise entitled to coverage under the terms of the Plan.

For the purposes of determining the various benefits and restrictions or other limitations thereto made available to a Member under the terms of this Agreement, all benefits under any Plan option or tier (and any restrictions or other limitations thereto) made available to or received by a Member shall accumulate toward that Member's benefits and any restrictions and other limitations thereto.

- 2.5 **PAYMENT** - activities undertaken to obtain premiums, determine or fulfill coverage and benefits, or obtain or provide reimbursement for health care services.
- 2.6 **PROTECTED HEALTH INFORMATION (PHI)** - individually identifiable health information, including summary and statistical information, collected from or on behalf of a Member that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium and that:
- A. is created by or received from a Health Care Provider, health care employer, or health care clearinghouse;
 - B. relates to a Member's past, present or future physical or mental health or condition;
 - C. relates to the provision of health care to a Member;
 - D. relates to the past, present or future payment for health care to or on behalf of a Member; or
 - E. identifies a Member or could reasonably be used to identify a Member.

Educational records and employment records are not considered PHI under federal law.

- 2.7 **SECURITY INCIDENT** - any attempted or successful unauthorized access, use disclosure, modification, or destruction of a Member's electronic PHI or interference with the Company's system operations in the Company's information systems.
- 2.8 **STANDARD TRANSACTIONS** - health care financial or administrative transactions conducted electronically for which standard data elements, code sets and formats have been adopted in accordance with federal or state law.
- 2.9 **SUBSCRIBER** - any employee of the Plan Sponsor who is or may become eligible to receive a benefit under the Plan. The term includes all common law employees as well as any proprietors, partners, or other owners who work for the Plan Sponsor, if any, and who are otherwise entitled to coverage under the Plan. Notwithstanding the above, in no case shall the term Subscriber include any person not otherwise entitled to coverage under the terms of the Plan.
- 2.10 **SUCCESSFUL SECURITY INCIDENTS** - Security Incidents that result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.
- 2.11 **UNSUCCESSFUL SECURITY INCIDENTS** - Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.

3. **PREMIUMS**

- 3.1 All premiums are due and payable before the first of the month. If premiums are not received before the date due, a grace period of 31 days is allowed. The Plan Administrator remains responsible for payment of any premium due during the grace period. If the Plan Administrator provides written notice of cancellation during the grace period, the Plan Administrator will be charged a pro rata premium.
- 3.2 The Company will advise the Plan Administrator of any change in required premium at least 31 days prior to the anniversary date of this Agreement, unless otherwise specifically agreed to by the parties. In addition, the Company reserves the right, upon providing at least 31 days notice, to change the required premium in response to any change in the rate of insurance premium tax assessed by the state of North Dakota or if the Plan Administrator should choose to offer a dual choice option.

3.3 Health Premiums:

	Individual Coverage	Parent and Child Coverage	Parent and Children Coverage	Two Person Coverage	Family Coverage
BlueAccess	\$614.00	\$1,485.80	\$1,485.80	\$1,485.80	\$1,485.80

4. **PRIVACY USE AND DISCLOSURE RESPONSIBILITIES**4.1 **RESPONSIBILITIES OF THE COMPANY**A **Privacy of Protected Health Information (PHI)**

1. The Company will keep confidential all Claim records and all other PHI the Company creates or receives in the performance of its duties under this Agreement. Except as permitted or required by this Agreement for the Company to perform its duties under this Agreement, the Company will not use or disclose such Claim information or other PHI without the authorization of the Member who is the subject of such information or as required by law.
2. The Company will neither use nor disclose Members' PHI (including any Members' PHI received from a business associate of the Plan) except (1) as permitted or required by this Agreement, (2) as permitted in writing by the Plan Administrator, (3) as authorized by Members, or (4) as required by law.
3. The Company will be permitted to use or disclose Members' PHI only as follows:
 - a. The Company will be permitted to use and disclose Members' PHI (a) for the management, operation and administration of the Plan that the Plan Administrator offers Members, and (b) for the services set forth in the Plan, which include Payment activities, Health Care Operations, and Data Aggregation as these terms are defined under federal law. The Company also may de-identify PHI it obtains or creates in the course of providing services for the Plan Administrator.
 - (1) The Company will be permitted to use Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities.
 - (2) The Company will be permitted to disclose Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities only if (i) the disclosure is required by law, or (ii) before the disclosure, the Company obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written Agreement, that the entity will hold Members' PHI in confidence, use or further disclose Members' PHI only for the purposes for which the Company disclosed it to the entity or as required by law, and notify the Company of any instance the entity becomes aware of where the confidentiality of any Members' PHI was breached.
 - b. The Company will make reasonable efforts to use, disclose, or request only a limited data set where practical. Otherwise, the minimum necessary amount of Members' PHI to accomplish its intended purpose.
4. Other than disclosures permitted by Section 4.1(A)3, the Company will not disclose Members' PHI to the Plan Administrator or to the Plan's business associate except as directed by the Plan Administrator in writing.

5. The Company will require each subcontractor and agent to which the Company is permitted by this Agreement or in writing by the Plan Administrator to disclose Members' PHI to provide reasonable assurance, evidenced by written contract, that such other entity will comply with the same privacy and security obligations with respect to Members' PHI as this Agreement applies to the Company.
6. The Company will not disclose any Members' PHI to the Plan Sponsor, except as permitted by and in accordance with Section 4.1(A)3.

7. **Disposition of Protected Health Information**

The parties agree that upon termination, cancellation, expiration or other conclusion of this Agreement, the Company will return or destroy all PHI received or created by the Company on the Plan Administrator's behalf as soon as feasible. Due to various regulatory and legal requirements, the Plan Administrator acknowledges that immediate return or destruction of all such information is not feasible. The Company agrees that upon conclusion of this Agreement for any reason, it will use or disclose the PHI it received or created on the Plan's behalf only as necessary to meet the Company's regulatory and legal requirements and for no other purposes unless permitted in writing by the Plan Administrator. The Company will destroy PHI received or created by the Company on the Plan Administrator's behalf that is in the Company's possession under such circumstances and upon such schedule as the Company deems consistent with its regulatory and other legal obligations.

These responsibilities agreed to by the Company and related to protecting the privacy and safeguarding the security of PHI, as well as any terms directly related thereto, shall survive the termination of this Agreement and, where applicable, shall govern the Company's receipt, use or disclosure of PHI pursuant to the terms of this Agreement.

8. The Company will meet all obligations imposed upon it by the HIPAA Privacy Rule.

B. Information Safeguards

1. The Company will maintain reasonable and appropriate administrative, technical and physical safeguards to protect the privacy of Member PHI. The safeguards must reasonably protect Member PHI from any intentional or unintentional use or disclosure in violation of federal law and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement.
2. The Company will implement administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI the Company creates, receives, maintains, or transmits on behalf of the Plan Administrator as required by federal law.

C. Inspection of Books and Records

The Company will make its internal practices, books, and records relating to its use and disclosure of PHI created or received for or from the Plan Administrator available to the U.S. Department of Health and Human Services to determine compliance with federal law or this Agreement.

- D. The Company will prepare and distribute a notice of privacy practices appropriate for the Plan to meet its notice obligations under federal law. The Plan Administrator authorizes the Company to disclose the minimum necessary PHI to the Plan Sponsor for plan administration functions specified in the Plan documents as amended.

E. Information Privacy and Safeguard Provisions Survive Termination of Agreement

These responsibilities agreed to by the Company and related to protecting the privacy of PHI, as well as any terms directly related thereto, shall survive the termination of this Agreement and where applicable, shall govern the Company's receipt and use of PHI obtained pursuant to the terms of this Agreement.

4.2 RESPONSIBILITIES OF THE PLAN SPONSOR

- A. The Plan Sponsor retains full and final authority and responsibility for the Plan and its operation. The Company is empowered to act on behalf of the Plan only as stated in this Agreement or as mutually agreed in writing by the Plan Sponsor and the Company.
- B. The Plan Sponsor will have the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules, and regulations, including any licensing, filing, reporting, and disclosure requirements, that may apply to the Plan. The Company will have no responsibility for or liability with respect to the Plan's compliance or noncompliance with any applicable federal, state, or local law, rule, or regulation.

If the Group offers a high deductible health plan, the Plan Sponsor assumes sole responsibility for determining whether the Plan qualifies as a high deductible health plan under Section 223(c)(2) of the U.S. Internal Revenue Code. THE COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING THE PLAN.

If the Group offers a high deductible health plan, the Company does not provide legal or tax advice, and expressly disclaims responsibility for determining, on behalf of any individual or group, the legal and tax implications of: (1) establishing a health savings account; (2) eligibility for a health savings account; (3) the contributions made to a health savings account; (4) the deductibility of contributions to a health savings account; and (5) withdrawals from a health savings account and related taxation.

- C. By executing this Agreement, the Plan Sponsor certifies to the Company that its Plan documents have been amended to incorporate the provisions required by and under federal law, and agrees to comply with the Plan Administrator's plan documents.

The Company may rely on Plan Sponsor's certification and Plan Administrator's written authorization, and will have no obligation to verify (1) that the Plan Administrator's plan documents have been amended to comply with the requirements of federal law or this Agreement or (2) that the Plan Sponsor is complying with the Plan Administrator's plan document as amended.

- D. By executing this Agreement, the Plan Sponsor also certifies to the Company that its Plan does not contain a waiting period, as defined under applicable federal HIPAA portability regulations, exceeding 60 days. The Plan Sponsor acknowledges that the Company will rely on the Plan Sponsor's certification and that the Plan Sponsor shall have a continuing obligation to immediately notify the Company if any revisions are made to the Plan's waiting period.

5. **INTER-PLAN ARRANGEMENTS**

BCBSND has a variety of relationships with other Blue Cross and/or Blue Shield Licensees referred to generally as "Inter-Plan Arrangements." These Inter-Plan Arrangements operate under rules and procedures issued by the Blue Cross Blue Shield Association ("Association"). Whenever a Member accesses health care services outside of the geographic area BCBSND serves, the claim for those services may be processed through one of these Inter-Plan Arrangements and presented to BCBSND for payment in accordance with the rules of the Inter-Plan Arrangements. The Inter-Plan Arrangements are described generally below.

Typically when accessing care outside the geographic area BCBSND serves, a Member obtains care from health care providers that have a contractual agreement ("participating health care providers") with the local Blue Cross and/or Blue Shield Licensee in that other geographic area ("Host Blue"). In some instances, a Member may obtain care from health care providers in the Host Blue geographic area that do not have a contractual agreement ("nonparticipating health care providers") with a Host Blue. BCBSND remains responsible for fulfilling its contractual obligations to the Plan Administrator. BCBSND payment practices in both instances are described below.

All claim types are eligible to be processed through Inter-Plan Arrangements, as described above, except for all dental care benefits and vision care benefits (except when paid as medical claims/benefits), and those prescription drug benefits that may be administered by a third party contracted by BCBSND to provide the specific service or services.

A. **BlueCard® Program**

The BlueCard Program is an Inter-Plan Arrangement. Under this Arrangement, when Members access Covered Services within the geographic area served by a Host Blue, the Host Blue will be responsible for contracting and handling all interactions with its participating health care providers. The financial terms of the BlueCard Program are described generally below.

Liability Calculation Method Per Claim:

Unless subject to a fixed dollar copayment, the calculation of Member liability on claims for Covered Services processed through the BlueCard Program will be based on the lower of the Host Blue's participating health care provider's billed charges or the negotiated price made available to BCBSND by the Host Blue.

Host Blues determine a negotiated price, which is reflected in the terms of each Host Blue's health care provider contracts. The negotiated price made available to BCBSND by the Host Blue may represent one of the following:

1. the actual price. An actual price is a negotiated rate of payment without any other increases or decreases; or
2. an estimated price. An estimated price is a negotiated rate of payment reduced or increased by a percentage to take into account certain payments negotiated with the provider and other claim- and non-claim-related transactions. Such transactions may include, but are not limited to, anti-fraud and abuse recoveries, provider refunds not applied on a claim-specific basis, retrospective settlements, and performance-related bonuses or incentives; or
3. an average price. An average price is a percentage of billed covered charges representing the aggregate payments negotiated by the Host Blue with all of its health care providers or a similar classification of its providers and other claim- and non-claim-related transactions. Such transactions may include the same ones as noted above for an estimated price.

Host Blues determine whether or not they will use an actual, estimated or average price. Host Blues using either an estimated price or an average price may prospectively increase or reduce such prices to correct for over- or underestimation of past prices (i.e., prospective adjustments may mean that a current price reflects additional amounts or credits for claims already paid or anticipated to be paid to providers or refunds received or anticipated to be received from providers). However, the BlueCard Program requires that the amount paid by the Member is a final price; no future price adjustment will result in increases or decreases to the pricing of past claims. The method of claims payment by Host Blues is taken into account by BCBSND in determining premiums.

B. Value-Based Programs

BCBSND has included a factor for bulk distributions from Host Blues in the Plan Administrator's premium for Value-Based Programs when applicable under this Agreement. "Value-Based Program" means an outcomes-based payment arrangement and/or a coordinated care model facilitated with one or more local health care providers that is evaluated against cost and quality metrics/factors and is reflected in provider payment.

C. Return of Overpayments

Under the Inter-Plan Arrangements, recoveries from a Host Blue or from participating health care providers of a Host Blue can arise in several ways, including, but not limited to, anti-fraud and abuse recoveries, provider/hospital bill audits, credit balance audits, utilization review refunds, and unsolicited refunds. In some cases, the Host Blue will engage third parties to assist in discovery or collection of recovery amounts, which generally require correction on a claim-by-claim or prospective basis. The fees of such a third party may be charged to the Plan Administrator as a percentage of the recovery.

D. Federal/State Taxes/Surcharges/Fees

In some instances federal or state laws or regulations may impose a surcharge, tax or other fee that applies to insured accounts. If applicable, BCBSND will include any such surcharge, tax or other fee in determining premiums.

E. Nonparticipating Health Care Providers Outside the BCBSND Service Area

1. Member Liability Calculation

When Covered Services are provided outside of BCBSND's service area by nonparticipating health care providers, the amount the Member pays for such services will generally be based on either the Host Blue's nonparticipating health care provider local payment or the pricing arrangements required by applicable state law. In these situations, the Member may be responsible for the difference between the amount that the nonparticipating health care provider bills and the payment BCBSND will make for the Covered Services as set forth in this paragraph. Payments for out-of-network emergency services are governed by applicable federal and state law.

2. Exceptions

In certain situations, BCBSND may pay claims based on the payment BCBSND would make if the Covered Services had been obtained within the BCBSND service area. Such situations include where a Member did not have reasonable access to a participating health care provider, as determined by BCBSND in its sole and absolute discretion or by applicable state law. In other situations, BCBSND may pay such a claim based on the payment BCBSND would make if BCBSND were paying a nonparticipating health care provider inside of BCBSND's service area (as described in the Member's Certificate of Insurance) where the Host Blue's corresponding payment would be more than BCBSND's payment to a nonparticipating health care provider within the BCBSND service area. BCBSND may also in its sole and absolute discretion, negotiate a payment with such a health care provider on an exception basis. In any of these situations, the Member may be responsible for the difference between the amount that the nonparticipating health care provider bills and payment BCBSND will make for the Covered Services as set forth in this paragraph.

F. Blue Cross Blue Shield Global Core

If Members are outside the United States, the Commonwealth of Puerto Rico and the U.S. Virgin Islands ("BlueCard service area"), they may be able to take advantage of Blue Cross Blue Shield Global Core when accessing Covered Services. Blue Cross Blue Shield Global Core is not served by a Host Blue.

1. Inpatient Services

In most cases, if a Member contacts the Blue Cross Blue Shield Global Core Service Center for assistance, hospitals will not require the Member to pay for covered inpatient services, except for Cost Sharing Amounts. In such cases, the hospital will submit the Member's claims to the Blue Cross Blue Shield Global Core Service Center to initiate claims processing. However, if the Member paid in full at the time of service, the Member must submit a claim to obtain reimbursement for Covered Services.

2. Outpatient Services

Physicians, urgent care centers and other outpatient health care providers located outside the BlueCard service area will typically require a Member to pay in full at the time of service. The Member must submit a claim to obtain reimbursement for Covered Services.

3. Submitting a Blue Cross Blue Shield Global Core Claim

When a Member pays for Covered Services outside the BlueCard service area, the Member must submit a claim to obtain reimbursement. For institutional and professional claims, the Member should complete a Blue Cross Blue Shield Global Core International claim form and send the claim form with the health care provider's itemized bill(s) to the Blue Cross Blue Shield Global Core Service Center address on the form to initiate claims processing. The claim form is available from BCBSND, the Blue Cross Blue Shield Global Core Service Center or online at www.bcbsglobalcore.com.

6. RETROSPECTIVE DISCOUNT PAYMENT

Regarding prescription medications or drugs purchased by Members under the terms of the Plan, the Company will pay the amount due to the pharmacy (or other prescription drug retailer) under the terms of the pharmacy provider participating agreement. The amount due to the pharmacy under the terms of the pharmacy provider participating agreement is that which is due at the time the prescription medication or drug is purchased by the Member. The amount due to the pharmacy under the pharmacy provider participating agreement is calculated without regard to any subsequent, retrospective manufacturer discount that may apply to the cost of the prescription medication or drug. The Plan Administrator acknowledges and agrees that, in some cases but not all, drug manufacturers may offer retrospective discounts to the Company on prescription medications and drugs purchased under the terms of the Plan. If a drug manufacturer makes a retrospective discount payment available, the Plan Administrator acknowledges and agrees that a portion of any such retrospective discount may be retained by an entity that performs manufacturer discount program services on behalf of the Company under the terms of this Agreement. The Plan Administrator further acknowledges and agrees that, when made available by the drug manufacturer, another portion of the retrospective discount payment is retained by the Company. In its sole discretion, the Company may periodically refund to the Plan all or part of any rebate payments received. The calculation of any refund rests in the sole discretion of the Company.

7. TERMINATION

- 7.1 This Agreement will automatically terminate without notice on the last day of the month in which the grace period expires if premiums are not paid within the grace period. In the event of termination for nonpayment of premiums, reinstatement of this Agreement will be at the sole discretion of and subject to conditions established by the Company. The Plan Administrator assumes any obligation to provide notice to all Subscribers regarding termination of this Agreement due to nonpayment of premiums.
- 7.2 This Agreement may be terminated by the Plan Administrator providing the Company with written notice of termination at least 31 days in advance of the requested date of termination. Termination will be effective on the last day of the month. If the requested date of termination is other than the last day of the month, termination will be effective the last day of the month of the requested date of termination.
- 7.3 In the event of a breach by either party, other than for nonpayment of premium, the other party may terminate this Agreement by written notice to the breaching party. The breaching party has 31 days to fully cure the breach. If the breach is not cured within 31 days after written notice, this Agreement will immediately terminate.
- 7.4 The Plan Administrator will have the right to terminate this Agreement if the Company has engaged in a pattern of activity or practice that constitutes a material breach or violation of the Company's obligations regarding PHI under this Agreement and, on notice of such material breach or violation from the Plan Administrator, fails to take reasonable steps to cure the breach or end the violation.

If the Company fails to cure the material breach or end the violation after the Plan Administrator's notice, the Plan Administrator may terminate this Agreement by providing the Company written notice of termination setting forth the uncured material breach or violation serving as the basis for the termination and specifying the effective date of the termination.

- 7.5 The Company may decide to discontinue offering the Benefit Plan that is the subject of this Agreement, or all of its group health benefit plans including the Benefit Plan that is the subject of this Agreement, at any time. If the Benefit Plan that is the subject of this Agreement is discontinued, the Company will provide the Plan Administrator and Subscribers with at least 90 days prior written notice of the decision to cancel coverage. This Agreement shall automatically terminate on the date of discontinuation identified in the written notice. The Plan Administrator will be given the option to purchase any other group health benefit plans currently offered by the Company in the market. If all group health benefit plans are discontinued including the Benefit Plan that is the subject of this Agreement, the Company will provide the Plan Administrator and Subscribers with at least 180 days prior written notice of the decision to cancel coverage. This Agreement shall automatically terminate on the date of discontinuation identified in the written notice.

8. GENERAL PROVISIONS

- 8.1 The Plan Administrator agrees to furnish the Company with any information required by the Company for the purpose of enrollment. Any change affecting a Member's eligibility must be provided to the Company immediately, but in any event the Plan Administrator will notify the Company of any changes in a Member's eligibility within 31 days of the change. The Plan Administrator acknowledges and agrees that in the event there are premium payments made to the Company by the Plan Administrator based upon a failure by the Plan Administrator to notify the Company of any changes in enrollment or eligibility within 31 days of the change, the Company may retain any and all premium payments made by the Plan Administrator as consideration for the Company's administrative costs and burden incurred by said failure to notify the Company of the change.
- 8.2 The Plan Administrator acknowledges that the administration of the Benefit Plan that is the subject of this Agreement may be subject to regulation under federal and/or state law. The Plan Administrator agrees to furnish the Company with any and all information necessary to comply with any applicable federal and/or state laws and to certify that this information is accurate. If there are any changes in the employer contribution rate for benefits and services available under this Agreement, the Plan Administrator agrees that it is its obligation to provide information related to the change in contribution rates immediately to the Company.
- 8.3 The Plan Administrator agrees to abide by all underwriting requirements established by the Company as these underwriting requirements relate to, including but not limited to, rating factors, the minimum participation of eligible Members, minimum employer contributions, reporting employer contribution rates and provider network restrictions, as permitted and restricted under federal and/or state laws.
- 8.4 The Company will provide formal policy and procedure guidelines to the Plan Administrator for the conduct of external audits or reviews commissioned by the Plan Administrator. The Company shall cooperate with all external audit or review teams.

The Plan Administrator shall provide the Company with the scope and requirements of any audit or review prior to the commencement of the audit or review. If a sample of claims is required, the Company will provide the Plan Administrator with a statistically valid computerized sample of claims.

All audit or review findings shall be discussed with the Company upon discovery to allow further investigation or implementation of corrective action.

All Member records shall be kept confidential and considered proprietary. Such records shall be available for audit or review only after disclosure statements have been signed by the external audit or review team to ensure the information remains confidential and is utilized for the stated purpose only. If any records are removed from the Company's office for purposes of the audit or review, approval must be granted. All records will be subject to the minimum necessary requirements.

- 8.5 No change in this Agreement is valid unless approved by the President and Chief Executive Officer of BCBSND and a designated representative of the Plan Administrator.
- 8.6 Where federal law is not applicable, this Agreement shall be governed by and construed according to the laws of the state of North Dakota.
- 8.7 Any notice required under this Agreement shall be in writing and shall be effective when delivered in person or sent by certified mail to a party at its respective address.
- 8.8 The Plan Administrator hereby expressly acknowledges and understands that BCBSND is an independent corporation operating under a license with the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the "Association"), permitting BCBSND to use the Blue Cross and Blue Shield Service Marks in the state of North Dakota, and that BCBSND is not contracting as an agent of the Association. The Plan Administrator further acknowledges and agrees this legal agreement was not entered into based upon representations by any person or entity other than BCBSND and that no person, entity, or organization other than BCBSND shall be held accountable or liable to the Plan Administrator for any of BCBSND's obligations to the Plan Administrator created under this agreement. This paragraph shall not create any additional obligations whatsoever on the part of BCBSND other than those obligations created under other provisions of this agreement.
- 8.9 It shall be the sole responsibility of the Plan Administrator to distribute Certificates of Insurance to Subscribers of the Plan and to advise Members of their rights under ERISA, including, but not limited to claims appeals procedures. In the event a claim is paid due to the Certificate of Insurance not being distributed to the Subscriber, the Plan Administrator shall be liable for all such claims. The Certificate of Insurance is not the Summary Plan Description but contains some of the information that the Plan Administrator may deem essential for inclusion in the Summary Plan Description. The Plan Administrator has the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules, and regulations, including the creation and distribution of a Summary Plan Description.
- 8.10 If the Plan Administrator has a digital or online version of the Certificate of Insurance available to its employees, the Plan Administrator agrees that it will not alter, modify or change the language of the Certificate of Insurance, and further agrees the Certificate of Insurance, attached as Exhibit A, will be the controlling document in the event of any conflict or liability that might arise as the result of any alterations, modifications or changes made by the Plan Administrator. In the event a claim is paid based on the Plan Administrator's digital or online Certificate of Insurance, the Plan Administrator is liable for all such claims. The Plan Administrator further agrees that no waiver of this agreement is valid unless in writing and approved by the Company.
- 8.11 The Company will prepare Summaries of Benefits and Coverage for distribution to applicants and Members by the Plan Administrator so that the Company, the Plan and the Plan Administrator may all satisfy related disclosure obligations under federal law. It shall be the sole responsibility of the Plan Administrator to distribute the Summaries of Benefits and Coverage in accordance with federal law, and the Plan Administrator acknowledges and agrees that the Company will rely upon the Plan Administrator for compliance with the requirements for distribution of the Summaries of Benefits and Coverage to applicants and Members.
- 8.12 Upon the effective date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of health information or other aspects of the Health Insurance Portability and Accountability Act of 1996 applicable to this Agreement, this Agreement will automatically amend such that the obligations imposed on the Plan Sponsor, the Plan Administrator and the Company remain in compliance with such regulations, unless the Company elects to terminate this Agreement by providing the Plan Sponsor and the Plan Administrator notice of termination in accordance with this Agreement at least thirty-one (31) days before the effective date of such final regulation or amendment to final regulations.

- 8.13 When coverage under this Agreement is terminated, BCBSND will, within a reasonable period of time, issue a notification of termination of coverage to the Subscriber. Upon notification by the Subscriber of the ineligibility of a dependent, a notification of termination of coverage will be issued to the affected Member within a reasonable period of time. Termination notices may also be obtained from BCBSND upon request within 24 months after coverage is terminated.

9. **INDEMNIFICATION CLAUSE**

Each party agrees to indemnify and hold harmless the other party for all causes of action, suits, claims, judgments, settlements, liabilities, damages of any kind, penalties, losses, expenses, court costs and attorneys' fees resulting from or arising out of any duty under this Agreement, if the liability was the consequence of the actions of the indemnifying party.

10. **BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11. **INCORPORATION STATEMENT**

The attached Certificate of Insurance is incorporated herein by reference.

CITY OF FARGO
GROUP HEALTH PLAN (PLAN ADMINISTRATOR)
225 4TH STREET NORTH
FARGO, ND 58102

BLUE CROSS BLUE SHIELD OF NORTH DAKOTA*
4510 13TH AVENUE SOUTH
FARGO, NORTH DAKOTA 58121

By: _____



Title: _____

Its President and CEO

Date: _____

December 14, 2020

CITY OF FARGO
(PLAN SPONSOR)
225 4TH STREET NORTH
FARGO, ND 58102

By: _____

Title: _____

Date: _____

Benefit Plan Agreement
01/01/2021 – 12/31/2021
253973

*An Independent Licensee of the Blue Cross and Blue Shield Association

Exhibit "A"

GROUP INSURANCE POLICY
for
Dental Benefits

Blue Cross Blue Shield of North Dakota
4510 13th Avenue South
Fargo, North Dakota 58121

CITY OF FARGO

253973

Effective Date: January 1, 2021

Term: 12 Month(s)

The Policyholder has established and maintains a fully insured group dental plan (the Plan) which provides, among other things, various benefits to Members, as set forth in the Certificate of Insurance (Certificate). The Policyholder and Blue Cross Blue Shield of North Dakota the (Company) will make the dental benefits available to eligible Certificate Holders of the Policyholder and/or their Dependents at 12:01 AM on the Effective Date and upon the terms and conditions contained in this Group Insurance Policy (Group Policy). The Company will pay the benefits described in the Certificate and any Schedule of Benefits or amendments attached hereto, subject to the Group Policy terms. The Certificate is attached to this Group Policy as Exhibit A and incorporated by reference. The parties shall fulfill the obligations stated herein.

Certain terms in this Group Policy have specific meanings as set forth in the Definitions section of this Group Policy and in the Definitions section of the Certificate.

GROUP POLICY AND CONSIDERATION: In consideration of payment of all Premiums when due and receipt of accurate and complete application information, the Company will insure those Members enrolled in the Policyholder's Group Policy for dental benefits in accordance with the terms and conditions of this Group Policy. Coverage will begin at 12:01 AM on the Effective Date shown above. It will remain in force for the initial Term and for such further periods for which it is renewed.



Its President and CEO

December 14, 2020

DEFINITIONS

- A. **CERTIFICATE HOLDER** – any employee of the Policyholder who is or may become eligible to receive a benefit under this Plan. The term includes all common law employees as well as any proprietors, partners or other owners who work for the Policyholder, if any, and who are otherwise entitled to coverage under the Plan. Notwithstanding the above, in no case shall the term Certificate Holder include any person not otherwise entitled to coverage under the terms of the Plan.
 - B. **CLAIM** – notification in a form acceptable to the Company that services have been provided or furnished to a Member.
 - C. **COMPANY** – Blue Cross Blue Shield of North Dakota (BCBSND), or a third party with which BCBSND contracts for a provider network and to perform certain functions to administer the terms of the Group Policy and coverage within the Certificate.
 - D. **DATA AGGREGATION** – the combining of Protected Health Information the Company creates or receives for or from the Plan and for or from other health plans or health care providers for which the Company is acting as a business associate to permit data analyses that relate to the Health Care Operations of the Plan and those other health plans or providers.
 - E. **DEPENDENT** – those individuals eligible to enroll for coverage under the Group Policy because of their relationship to the Certificate Holder.
 - F. **HEALTH CARE OPERATIONS** – any of the activities of a health plan to the extent the activities relate to those functions that make it a health plan.
 - G. **MEMBER** – the Certificate Holder and any Dependent of a Certificate Holder or any other person designated by the Certificate Holder or by the terms of the Plan who is or may become entitled to a benefit under the Plan. The term shall also include any proprietor, partner or owner of the Policyholder, if any, who is designated by the terms of the Plan who is or may become entitled to a benefit under the Plan. In no case shall the term Member include any person not otherwise entitled to coverage under the terms of the Plan.
 - H. **POLICYHOLDER** – the entity identified as the Policyholder on the first page of this Group Policy that is also the Plan Sponsor and Plan Administrator for purposes of the Employee Retirement Income Security Act of 1974 (ERISA), as amended.
 - I. **PROTECTED HEALTH INFORMATION (PHI)** – individually identifiable health information, including summary and statistical information, collected from or on behalf of a Member that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium and that:
 - 1. is created by or received from a health care provider, health care employer or health care clearinghouse;
 - 2. relates to a Member's past, present or future physical or mental health or condition;
 - 3. relates to the provision of health care to a Member;
 - 4. relates to the past, present, or future payment for health care to or on behalf of a Member; or
 - 5. identifies a Member or could reasonably be used to identify a Member.
- Educational records and employment records are not considered PHI under federal law.
- J. **SECURITY INCIDENT** – any attempted or successful unauthorized access, use, disclosure, modification or destruction of a Member's electronic PHI or interference with the Company's system operations in the Company's information systems.

- K. **STANDARD TRANSACTIONS** – health care financial or administrative transactions conducted electronically for which standard data elements, code sets and formats have been adopted in accordance with federal or state law.
- L. **SUCCESSFUL SECURITY INCIDENTS** – Security Incidents that result in unauthorized access, use, disclosure, modification or destruction of information or interference with system operations.
- M. **UNSUCCESSFUL SECURITY INCIDENTS** – Security Incidents that do not result in unauthorized access, use, disclosure, modification or destruction of information or interference with system operations.

INSURANCE RULES

A. ELIGIBILITY:

In order to be eligible to enroll for benefits under this Group Policy, a Certificate Holder and any Dependents must meet the Policyholder's eligibility requirements, satisfy the requirements and definitions set forth in the Certificate, and meet any requirements of applicable law or regulation.

No person who meets the eligibility requirements of this Group Policy shall be refused enrollment or re-enrollment because of age, race, color, national origin, disability, sexual orientation, gender identity, sex, dental health status, genetic disorder or the existence of a pre-existing dental condition.

B. ENROLLMENT:

Eligible Certificate Holders and/or their Dependents shall become enrolled under the Group Policy as set forth in the Certificate and this Group Policy. An open enrollment period may be provided in which Certificate Holders may elect to enroll or disenroll themselves and Dependents under this Group Policy. Open enrollment occurs at a time and frequency stipulated by the Company subject to the request of the Policyholder or its authorized representative.

GENERAL POLICY RULES

A. PAYMENT OF PREMIUMS:

In consideration of the dental Benefit Plan made available to the Members by the Company, the Premium listed below is payable in accordance with the Premium payment provisions of this Group Policy. The Company reserves the right to seek reimbursement from the Policyholder for any bank charges incurred for insufficient funds on a payment by the Policyholder.

	Individual Coverage	Parent and Child(ren) Coverage	Two Person Coverage	Family Coverage
BlueDental Elite+	\$41.70	\$81.40	\$83.50	\$124.00

B. TERM OF GROUP POLICY:

This Group Policy shall begin at 12:01 A.M. on the Effective Date, continue in effect for the initial term shown on the first page of this Group Policy and automatically renew thereafter for terms indicated in the Group Policy renewal notices, subject to the following:

1. Either the Policyholder or the Company may elect not to renew the Group Policy by providing 60 days prior written notice. In the absence of notice from the Policyholder of its intention not to renew, receipt of the renewal Premium constitutes the Policyholder's acceptance of the renewal. In the event of non-renewal by the Policyholder, any unpaid Premium due for months prior to the termination shall be due and payable on the termination date.
2. The Company may terminate this Group Policy upon default in the payment of Premium by giving to the Policyholder 31 days prior written notice of such termination. Notice to the Policyholder shall state the amount of Premium due and the 31 day grace period for payment. Coverage under the Group Policy will remain in effect during the 31 day grace period. Payment of said sum prior to the date of intended termination shall continue this Group Policy in full force and effect. The Policyholder shall remain liable to the Company for Premiums accrued during the grace period. For purposes of this section, the Company will apply these default provisions to any separate billing locations of the Policyholder when the Policyholder elects to structure its Group with separate billing locations that are independently responsible for Premium payment.
3. The Company may terminate this Group Policy with 31 days advance notice if the number of Certificate Holders enrolled under this Group Policy totals less than the Company's required minimum participation.
4. The Company may also adjust the Premium or benefits with 31 days advance notice if the extent or nature of the risk changes significantly.
5. The Group Policy or coverage of a Member may be terminated immediately when there is fraud or misrepresentation by the Policyholder or Member respectively.
6. In the event of a breach by either party, other than for nonpayment of Premium, the other party may terminate this Group Policy by written notice to the breaching party. The breaching party has 31 days to fully cure the breach. If the breach is not cured within 31 days after written notice, this Group Policy will immediately terminate.
7. The Plan Administrator will have the right to terminate this Group Policy if the Company has engaged in a pattern of activity or practice that constitutes a material breach or violation of the Company's obligations regarding PHI under this Group Policy and, on notice of such material breach or violation from the Plan Administrator, fails to take reasonable steps to cure the breach or end the violation.

If the Company fails to cure the material breach or end the violation after the Plan Administrator's notice, the Plan Administrator may terminate this Group Policy by providing the Company written notice of termination setting forth the uncured material breach or violation serving as the basis for the termination and specifying the effective date of the termination.

8. Notwithstanding the above provisions, either the Company or the Policyholder may terminate this Group Policy with at least 31 days advance written notice. Any unpaid Premium due for months prior to the termination shall be due and payable on the termination date.

C. POLICYHOLDER OBLIGATIONS:

The Policyholder agrees, in addition to any other obligations contained herein, that it shall:

1. Have the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules and regulations, including any licensing, filing, reporting and disclosure requirements that may apply to the Plan. The Company will have no responsibility for or liability with respect to the Plan's compliance or noncompliance with any applicable federal, state or local law, rule or regulation.
2. By executing this Group Policy, the Plan Sponsor certifies to the Company that its Plan documents have been amended to incorporate the provisions required by and under federal law, and agrees to comply with the Plan Administrator's plan documents.

The Company may rely on Plan Sponsor's certification and Plan Administrator's written authorization, and will have no obligation to verify (1) that the Plan Administrator's plan documents have been amended to comply with the requirements of federal law or this Group Policy or (2) that the Plan Sponsor is complying with the Plan Administrator's plan document as amended.

3. Define its eligibility requirements for enrollment of Members under the Group Policy and communicate such requirements, including any changes, to Members. During the term of this Group Policy, no change in the Policyholder's eligibility requirements, participation requirements or renewal date shall be permitted to affect eligibility or enrollment unless such change is agreed to in advance by the Company.
4. Collect from its Certificate Holders any contribution toward the Premium and notify Certificate Holders of any change in such contribution. Pay in full when due the Premium specified in this Group Policy or renewal notice for this Group Policy for all enrolled Certificate Holders and Dependents, as reported to the Company. Unless otherwise agreed between the Policyholder and the Company or dictated by applicable law or regulation, Premium for Members who become ineligible during the course of this Group Policy is due through the end of such month in which they become ineligible.
5. Send accurate and timely enrollment data including additions, terminations and changes required by the Company to perform its duties under this Group Policy and to determine Premium rates. The Policyholder will be held liable for the cost of Claims incurred as a result of inaccurate enrollment data, or retroactive terminations of enrollment that exceed the guidelines of the Company. All records of the Policyholder that bear on the insurance including eligibility, enrollment and payment of Premium must be open to the Company for its inspection and to make copies at any reasonable time and with reasonable notice to the Policyholder.
6. Notify the Company as soon as possible when coverage is to be continued for ineligible Members under any state or federal law or regulation. It is the Policyholder's obligation to notify Certificate Holders and Dependents of their rights and any Premium due for continuation coverage as required by law.
7. Notify all Certificate Holders of the termination of the Group Policy. Coverage will be terminated regardless of whether the notice is given.

D. COMPANY OBLIGATIONS:

The Company or its authorized representative shall perform administrative functions necessary to ensure the provision of benefits for the Policyholder and its Members. Such functions may include, but are not limited to billing, processing Claims, providing a Certificate for Certificate Holders, responding to inquiries and complaints related to this Group Policy and maintaining records.

The Company does not disclose Claim or eligibility records except as allowed or required by law. The Company maintains physical, electronic and procedural safeguards to guard Claims and eligibility information from unauthorized access, use and disclosure. Claim records are owned by and are proprietary to the Company.

1. Privacy of Protected Health Information (PHI)

- a. The Company will keep confidential all Claim records and all other PHI the Company creates or receives in the performance of its duties under this Group Policy. Except as permitted or required by this Group Policy for the Company to perform its duties under this Group Policy, the Company will not use or disclose such Claim information or other PHI without the authorization of the Member who is the subject of such information or as required by law.
- b. The Company will neither use nor disclose Members' PHI (including any Members' PHI received from a business associate of the Plan) except (1) as permitted or required by this Group Policy, (2) as permitted in writing by the Plan Administrator, (3) as authorized by Members or (4) as required by law.
- c. The Company will be permitted to use or disclose Members' PHI only as follows:
 1. The Company will be permitted to use and disclose Members' PHI (a) for the management, operation and administration of the Plan that the Plan Administrator offers Members, and (b) for the services set forth in the Plan, which include payment activities, Health Care Operations, and Data Aggregation as these terms are defined under federal law. The Company also may de-identify PHI it obtains or creates in the course of providing services for the Plan Administrator.
 - (i) The Company will be permitted to use Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities.
 - (ii) The Company will be permitted to disclose Members' PHI as necessary for the Company's proper management and administration or to carry out the Company's legal responsibilities only if (i) the disclosure is required by law, or (ii) before the disclosure, the Company obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written Group Policy, that the entity will hold Members' PHI in confidence, use or further disclose Members' PHI only for the purposes for which the Company disclosed it to the entity or as required by law, and notify the Company of any instance the entity becomes aware of where the confidentiality of any Members' PHI was breached.
 2. The Company will make reasonable efforts to use, disclose or request only a limited data set where practical. Otherwise, the minimum necessary amount of Members' PHI to accomplish its intended purpose.

- d. Other than disclosures permitted by General Policy Rules (D.1.c), the Company will not disclose Members' PHI to the Plan Administrator or to the Plan's business associate except as directed by the Plan Administrator in writing.
- e. The Company will require each subcontractor and agent to which the Company is permitted by this Group Policy or in writing by the Plan Administrator to disclose Members' PHI to provide reasonable assurance, evidenced by written contract, that such other entity will comply with the same privacy and security obligations with respect to Members' PHI as this Group Policy applies to the Company.
- f. The Company will not disclose any Members' PHI to the Plan Sponsor, except as permitted by and in accordance with General Policy Rules (D.1.c).
- g. Disposition of Protected Health Information.

The parties agree that upon termination, cancellation, expiration or other conclusion of this Group Policy, the Company will return or destroy all PHI received or created by the Company on the Plan Administrator's behalf as soon as feasible. Due to various regulatory and legal requirements, the Plan Administrator acknowledges that immediate return or destruction of all such information is not feasible. The Company agrees that upon conclusion of this Group Policy for any reason, it will use or disclose the PHI it received or created on the Plan's behalf only as necessary to meet the Company's regulatory and legal requirements and for no other purposes unless permitted in writing by the Plan Administrator. The Company will destroy PHI received or created by the Company on the Plan Administrator's behalf that is in the Company's possession under such circumstances and upon such schedule as the Company deems consistent with its regulatory and other legal obligations.

- 1. The Company will meet all obligations imposed upon it by the HIPAA Privacy Rule.

2. Information Safeguards

- a. The Company will maintain reasonable and appropriate administrative, technical and physical safeguards to protect the privacy of Member PHI. The safeguards must reasonably protect Member PHI from any intentional or unintentional use or disclosure in violation of federal law and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Group Policy.
- b. The Company will implement administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI the Company creates, receives, maintains or transmits on behalf of the Plan Administrator as required by federal law.

3. Inspection of Books and Records

- a. The Company will make its internal practices, books and records relating to its use and disclosure of PHI created or received for or from the Plan Administrator available to the U.S. Department of Health and Human Services to determine compliance with federal law or this Group Policy.
- b. The Company will prepare and distribute a notice of privacy practices appropriate for the Plan to meet its notice obligations under federal law. The Plan Administrator authorizes the Company to disclose the minimum necessary PHI to the Plan Sponsor for Plan Administration functions specified in the Plan documents as amended.

4. Information Privacy and Safeguard Provisions Survive Termination of Group Policy

These responsibilities agreed to by the Company and related to protecting the privacy of PHI, as well as any terms directly related thereto, shall survive the termination of this Group Policy and where applicable, shall govern the Company's receipt and use of PHI obtained pursuant to the terms of this Group Policy.

E. GENERAL PROVISIONS:

1. Where federal law is not applicable, this Group Policy shall be governed by the laws of the state of North Dakota.
2. This Group Policy consists of the attached Certificate, Schedule of Benefits and amendments to the previously mentioned forms and represents the entire agreement between the Policyholder and the Company with respect to the subject matter. The failure of any section or subsection of this Group Policy shall not affect the validity, legality and enforceability of the remaining sections hereof.
3. The provisions of the Certificate and all of its Schedule of Benefits issued to amend this Group Policy after its Effective Date are made a part of this Group Policy.
4. Except as otherwise herein provided, each amendment to this Group Policy, including a change in the Premium or benefits, shall be proposed by the Company to the Policyholder at renewal and in writing. Except as otherwise provided herein, each amendment shall become effective on the date this Group Policy renews in accordance with General Policy Rules (B).
5. An amendment mutually agreed to by both parties can be proposed at any time by either party in writing to the other with the advance notice indicated on the first page of this Group Policy. The effective date must be mutually agreed to by both parties. Payment of Premium will confirm acceptance of amendment. A change in the Group Policy may be made at any time without mutual agreement of the parties if the change is necessary to satisfy the requirements of any state or federal law applicable to the Group Policy. An amendment will not affect a Claim incurred prior to the effective date of the change.
6. Only a duly designated officer of the Company has the authority to: (a) waive any conditions or restrictions of the Group Policy; (b) extend the time in which a Premium may be paid; (c) make or change a contract; and (d) bind the Company by a promise or representation or by information given or received. An agent of the Company is not an officer. No agent has such authority.
7. The Plan Administrator agrees to abide by all underwriting requirements established by the Company as these underwriting requirements relate to, including but not limited to, rating factors, the minimum participation of eligible Members, minimum employer contributions, reporting employer contribution rates and provider network restrictions, as permitted and restricted under federal and/or state laws.
8. The Company will provide formal policy and procedure guidelines to the Plan Administrator for the conduct of external audits or reviews commissioned by the Plan Administrator. The Company shall cooperate with all external audit or review teams.

The Plan Administrator shall provide the Company with the scope and requirements of any audit or review prior to the commencement of the audit or review. If a sample of Claims is required, the Company will provide the Plan Administrator with a statistically valid computerized sample of Claims.

All audit or review findings shall be discussed with the Company upon discovery to allow further investigation or implementation of corrective action.

All Member records shall be kept confidential and considered proprietary. Such records shall be available for audit or review only after disclosure statements have been signed by the external audit or review team to ensure the information remains confidential and is utilized for the stated purpose only. If any records are removed from the Company's office for purposes of the audit or review, approval must be granted. All records will be subject to the minimum necessary requirements.

9. The Plan Administrator hereby expressly acknowledges and understands that BCBSND is an independent corporation operating under a license with the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the "Association"), permitting BCBSND to use the Blue Cross and Blue Shield Service Marks in the state of North Dakota, and that BCBSND is not contracting as an agent of the Association. The Plan Administrator further acknowledges and agrees this Group Policy was not entered into based upon representations by any person or entity other than BCBSND and that no person, entity, or organization other than BCBSND shall be held accountable or liable to the Plan Administrator for any of BCBSND's obligations to the Plan Administrator created under this Group Policy. This paragraph shall not create any additional obligations whatsoever on the part of BCBSND other than those obligations created under other provisions of this Group Policy.
10. It shall be the sole responsibility of the Plan Administrator to distribute Certificates to Certificate Holders of the Plan and to advise Members of their rights under ERISA, including, but not limited to Claims appeals procedures. In the event a Claim is paid due to the Certificate not being distributed to the Certificate Holder, the Plan Administrator shall be liable for all such Claims. The Certificate is not the Summary Plan Description but contains some of the information that the Plan Administrator may deem essential for inclusion in the Summary Plan Description. The Plan Administrator has the sole responsibility for and will bear the entire cost of compliance with all federal, state and local laws, rules and regulations, including the creation and distribution of a Summary Plan Description.
11. If the Plan Administrator has a digital or online version of the Certificate available to its employees, the Plan Administrator agrees that it will not alter, modify or change the language of the Certificate, and further agrees the Certificate, attached as Exhibit A, will be the controlling document in the event of any conflict or liability that might arise as the result of any alterations, modifications or changes made by the Plan Administrator. In the event a Claim is paid based on the Plan Administrator's digital or online Certificate, the Plan Administrator is liable for all such Claims. The Plan Administrator further agrees that no waiver of this Group Policy is valid unless in writing and approved by the Company.
12. Upon the effective date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of health information or other aspects of the Health Insurance Portability and Accountability Act of 1996 applicable to this Group Policy, this Group Policy will automatically amend such that the obligations imposed on the Plan Sponsor, the Plan Administrator and the Company remain in compliance with such regulations, unless the Company elects to terminate this Group Policy by providing the Plan Sponsor and the Plan Administrator notice of termination in accordance with this Group Policy at least 31 days before the Effective Date of such final regulation or amendment to final regulations.

13. Any notice required under this Group Policy shall be in writing and shall be effective when delivered in person or sent by certified mail to a party at its respective address. Notices to the Company shall be sent to:

**Attention: President and CEO
Blue Cross Blue Shield of North Dakota
4510 13th Avenue South
Fargo, North Dakota 58121**

F. INDEMNIFICATION CLAUSE:

Each party agrees to indemnify and hold harmless the other party for all causes of action, suits, claims, judgments, settlements, liabilities, damages of any kind, penalties, losses, expenses, court costs and attorneys' fees resulting from or arising out of any duty under this Group Policy, if the liability was the consequence of the actions of the indemnifying party.

G. BINDING EFFECT:


This Group Policy shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Exhibit "A"



MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR 

DATE: JANUARY 21, 2021

RE: ADDITIONAL FUNDING TRANSFER FOR REMAINING HOUSING ASSISTANCE FROM RED RIVER TASK FORCE COVID-19 FUNDS

Since mid-November, the City and two local partners, Southeastern North Dakota Community Action Agency (SENDCAA) and Presentation Partners in Housing, have administered Red River Task Force (RRTF) COVID-19 funds for housing and utility assistance. The program has been successful with assisting over 1,400 qualified households with rental assistance in order to prevent evictions.

The City Commission approved an allocation of up to \$1.2 million of RRTF COVID-19 funds on November 2, 2020 and an additional \$1 million on December 14, 2020. In addition, a funding transfer of recaptured RRTF COVID-19 funds in the amount of \$66,477.36 to process housing assistance requests was approved at the January 11, 2021 City Commission meeting.

The final batch of housing assistance requests has been reviewed. Staff is requesting a reprogramming of \$20,000 in RRTF COVID-19 funding (or CARES Act general allocation if the RRTF funds are fully expended) to complete processing the final rental assistance requests. This amount has been recaptured from RRTF projects (funded as part of quarantine and isolation support) which did not utilize their entire award amount.

The funds are available as part of the quarantine and isolation support allocated as part of the Red River Task Force and other CARES Act funds as coordinated with City Administration.

Recommendation:

Approve City of Fargo to reallocate \$20,000 in recaptured Red River Task Force COVID-19 funding to process the final requests for housing assistance administered by SENDCAA.





MATBUS
Administrative Offices
650 23rd Street North
Fargo, ND 58102
Phone: 701.241.8140 | Fax: 701.241.8558
www.MATBUS.com

January 21, 2021

City Commission
225 N 4th Street
Fargo, ND 58102

Dear Committee:

Background:

Prior to the COVID-19 pandemic, MATBUS began implementation of a new farebox system with Genfare SPX. With this implementation we will be implementing account based mobile ticketing for passengers.

This was approved by the Finance Committee on September 28, 2020. The agreement has been reviewed by the City of Fargo attorney's office and City of Fargo Information Services Department. Both have agreed to approve the contract.

Recommended Motion:

Approve the Genfare Link Mobile Link Subscription agreement.

Sincerely,

Matthew G. Peterson

Matthew G. Peterson
Assistant Transit Director

Attachment: Genfare Link Mobile Link Subscription Agreement

GENFARE SUBSCRIPTION AND SERVICES AGREEMENT

THIS SUBSCRIPTION AND SERVICES AGREEMENT (the "Agreement") is made effective as of January, 21, 2021 ("Effective Date") by and between Genfare, a division of SPX Corporation, having a place of business at 800 Arthur Avenue, Elk Grove Village, IL 60007 ("Genfare") and City of Fargo, a Local Government, having a place of business at 650 23rd St N, Fargo ND 58102 ("Customer"), which may each be referred to as a "Party" or collectively as the "Parties".

WHEREAS, Genfare offers a comprehensive digital fare management platform having various Services and Software offerings; and

WHEREAS, Customer desires to obtain the Services and/or Software offerings as set forth in an applicable Attachment under this Agreement.

In consideration of the mutual covenants, promises, terms, and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound hereby, Genfare and Customer agree as follows:

1. Definitions

- 1.1 "Affiliated Users" means organizations, entities, affiliates or partners of Customer and to which access to the Services is approved and desired by Customer.
- 1.2 "Attachment" means the document that sets forth the subscription details for the Services and the Software, and any product specific terms applicable to Customer's subscription.
- 1.3 "Documentation" means certain Genfare documentation that describes the use, functions, features, or purpose of the Services or any component thereof, in any medium, which is delivered to Customer by Genfare under this Agreement, including Genfare's user manuals, training materials, program listings, data models, flow charts, logic diagrams, functional specifications, instructions, and complete or partial copies of the foregoing.
- 1.4 "Equipment" means certain equipment purchased by Customer from Genfare under a separate agreement which is to be used by Customer in connection with the Services.
- 1.5 "Initial Subscription Term" means the period of time specified on an Applicable Attachment.
- 1.6 "Intellectual Property Rights" means patent, copyright, trade secret, know-how, trademark, trade dress rights, and any other intellectual property or proprietary rights in the Services, Software, Equipment and all software, equipment, processes and facilities utilized by or on behalf of Genfare to provide the services contemplated herein.
- 1.7 "Permitted Users" means (a) Customer's employees (including temporary employees and contract employees) authorized by Customer to access and use the Services on Customer's behalf, and (b) Customer's service providers that need to access the Services, provided such third parties are subject to written restrictions comparable to the restrictions on use in this Agreement and may only use the Services for purposes of providing Services to Customer (provided that the acts and omissions of such third parties shall be deemed the acts and omissions of Customer) and (c) for Customers whose SaaS Services include the "Organizational Module", the applicable Affiliated Users authorized for such access in an Attachment.

- 1.8 "Renewal Subscription Term" means any extension to this Agreement, commencing upon the expiration of the Initial Term or any extensions thereto, as provided in this Agreement or otherwise in an Attachment.
- 1.9 "SaaS" means the software as a service subscribed to by the Customer. The SaaS Services being subscribed to by Customer are more specifically detailed in the applicable Attachment(s).
- 1.10 "Services" means the SaaS and/or the Payment Processing Services listed on an Attachment and Support.
- 1.11 "Software" means Genfare's proprietary software that is to be installed on Customer's computer system, including Network Manager, and/or the Garage Data System, and/or software that may be embedded on the Equipment.
- 1.12 "Subscription" means the Customer's payment to access, use and obtain the benefit of the Services.
- 1.13 "Subscription Fees" means the fees set forth in an Attachment for providing the Services.
- 1.14 "Subscription Term" means the Initial Subscription Term together with any Renewal Subscription Terms.
- 1.15 "Support" means those support services to be provided by Genfare pursuant to and in accordance with the terms and conditions set forth herein, as more particularly described in Exhibit A attached hereto.
- 1.16 "Term" means the term of the Agreement which begins on the Effective Date and continues until: (i) this Agreement is terminated by a Party as provided herein or (ii) this Agreement expires as provided herein, whichever is earlier.

2. Access Rights, License and Services

- 2.1 Subject to the terms of this Agreement and during the Subscription Term, Genfare grants Customer and its Permitted Users a limited, non-exclusive, non-transferable, revocable, non-sublicensable right to access and use the Services solely for Customers internal business purposes.
- 2.2 Subject to the terms of this Agreement, Genfare grants Customer a non-exclusive, non-transferable, revocable, non-sublicensable license to install and/or use the Software solely for Customers internal business purposes.
- 2.3 In the event that Customer desires to add services and/or increase its scope of use of the Services and/or add Permitted Users, Customer may do so by purchasing the applicable access rights from Genfare at Genfare's then current rates or as otherwise specified in the applicable Attachment. In such event, such Attachment shall be modified in writing to reflect the new scope and Subscription Fee changes agreed to by the Parties. Notwithstanding anything herein to the contrary, such modification to an Attachment can be evidenced through email or confirmation.

- 2.4 Customer's rights granted under this Agreement may not be leased, sublicensed or otherwise transferred or made available for use by unaffiliated third parties, in whole or in part, by Customer without Genfare's prior written consent or as expressly permitted in this Agreement. Customer shall not use or attempt to use the Services in a manner that would exceed the scope of the rights granted under this Agreement, or facilitate any such unauthorized access for any third party.
- 2.5 Customer shall not without the express written consent of Genfare: (a) reverse engineer, reverse assemble, decompile, or disassemble any technology underlying the Services and Software; (b) otherwise attempt to discover the source code to the Services or Software; (c) translate or migrate the Services or Software into another format, language, or hardware platform; (d) make the Services or Software available to anyone other than Permitted Users; (e) alter or remove any copyright, trademark or other proprietary notices on or within the Services, Software or Documentation; (f) create derivative works based upon the Services or Software in whole or in part; (g) develop or modify any software based on ideas, processes or materials incorporated into the Services or Software, or (h) permit any third party to do any of the foregoing.
- 2.6 Genfare may audit Customer's use of the Services or Software to verify compliance with the terms of this Agreement. Customer agrees to cooperate with such audit and provide Genfare with reasonable assistance and access to information. If the audit reveals an underpayment for Services by Customer, Customer shall pay Genfare all fees actually due and pay all costs and fees for such audit.

3. **Payment**

- 3.1 **Fees.** Customer shall pay Genfare the fees set forth in Attachment as set forth herein. Such fees may include the following:
 - 3.1.1 **Implementation Fee.** This fee is a one-time fee for the set-up and implementation of the Services.
 - 3.1.2 **Annual Subscription Fees.** This fee is payable annually in advance for Customer's access to the Services. The annual Subscription Fees for the first year of the Subscription Term will be invoiced upon the commencement of the Subscription Term. The annual Subscription Fees for all subsequent years of the Subscription Term will be payable prior to the anniversary date of the start of the Subscription Term.
 - 3.1.3 **Transaction Fees.** Customer agrees that Genfare will debit the amount due and owing on a at least a monthly basis. Genfare will debit the amount owed for Transaction Fees from account number [CUSTOMER TO PROVIDE] (the "Account"). Customer agrees to provide Genfare with updated account information if any changes are made to the Account. Customer represents and warrants that it is the legal owner of the Account or at least has the necessary rights to authorize Genfare to debit the Account. Should there be insufficient funds in the Account to pay all such sums when due, the full amount of such deficiency shall be immediately due and payable by Customer. For the avoidance of doubt, Transaction Fees are not subject to the automatic yearly increase of three percent (3%) as set forth in Section 3.5 of the Agreement, but that Genfare reserves the right to increase any fees for a subsequent Renewal Subscription Term in its sole discretion by providing Customer at least sixty (60) days' notice before the end of the then-current Subscription Term.

- 3.1.4 **Gateway Fees and Processing Fees.** Customer agrees to pay Genfare the Gateway Fees and Processing Fees set forth as Transaction Fees in the applicable Payment Processing Services Attachment. Customer acknowledges that a portion of the Transaction Fees includes the Gateway Fees and Processing Fees charged by Third Party Providers. Customer agrees that Genfare has the right to modify the Transaction Fees based upon a change in the Gateway Fees and/or Processing Fees charged by Third Party Providers at any time during the Term. Genfare reserves the right to change its Gateway Fees and/or Processing Fees after the Initial Subscription Term. Genfare will notify the Customer of changes to Genfare's Gateway Fees and/or Processing Fees at least thirty (30) days prior to the end of Customer's then-current term. Notwithstanding anything to the contrary contained herein, Genfare reserves the right to modify the Gateway Fees and/or Processing Fees upon thirty (30) days prior written notice to Customer to pass through price increases from Third Party Providers, payment networks and other third party service providers.
- 3.1.5 **Intentionally Omitted.**
- 3.1.6 **Fees increase due to expansion of Services.** In the event that Customer increases the scope of Services, Genfare shall invoice Customer the applicable fees as identified on the updated Attachment
- 3.2 **Other Fees.** With respect to other fees specified in an Attachment, such fees shall be invoiced as set forth in Attachment or, if Attachment is silent, invoiced as occurred on a monthly basis. Subject to any terms specified in Attachment, Genfare may increase such other fees once in any twelve (12) month period, plus upon each Renewal Term, upon thirty (30) days' prior written notice to Customer.
- 3.3 **Taxes.** Fees stated in Attachment do not include applicable taxes. Unless Customer is a tax exempt entity and provides Genfare with reasonable documentation demonstrating tax exempt status, Customer agrees to bear and be responsible for the payment of all taxes, except for taxes based upon Genfare's income, including but not limited to, all sales, use, rental receipt, personal property, customs duties or levies or other taxes, which may be levied or assessed in connection with this Agreement. Customer shall pay such tax when due or reimburse Genfare as applicable. If any tax is required to be paid by Genfare, the full amount of such tax, including any interest and penalties, will be invoiced to Customer, whether or not this Agreement is then in effect, and promptly paid by Customer.
- 3.4 **Invoice Terms.** Customer shall pay in full all amounts owed in an invoice within thirty (30) days from the invoice date except as otherwise provided in an Attachment. If Genfare does not receive payment by the payment date, Genfare in its sole discretion may impose a late payment charge equal to the lesser of (a) one and one-half percent (1.5%) per month or (b) the maximum rate allowed by law beginning thirty-one (31) days after the invoice date, and/or Genfare may suspend the Services for non-payment.
- 3.5 **Fee Increases.** During the Subscription Term, unless the Parties agree otherwise in writing, the annual subscription or license fee shall automatically increase by three percent (3%) each year; provided, however, that Genfare reserves the right to increase any fees for a subsequent Renewal Subscription Term in its sole discretion by providing Customer at least sixty (60) days' notice before the end of the then-current Subscription Term.

4. Term; Termination

- 4.1 This Agreement shall be in effect for the Term (as defined above).
- 4.2 Unless otherwise specified in an Attachment, at the end of the Initial Subscription Term and each Renewal Subscription Term, the Subscription shall automatically renew for an additional one (1) year period unless either Party notifies the other that this Agreement will not renew at least forty five (45) days prior to the expiration of the then-current Subscription Term.
- 4.3 Either Party may terminate this Agreement or a Subscription, including any and all access and usage rights for the Services provided herein, for a material breach by the other Party that is not cured within thirty (30) days after written notice of such material breach.
- 4.4 In addition to the termination provisions contained herein, the licenses granted in Section 2.2 of this Agreement shall automatically terminate if: (a) any of the Equipment or Software is sold or transferred to a third party or moved outside of the United States; or (b) the Software is no longer used in connection with the Services or the Equipment.
- 4.5 Genfare may immediately terminate this Agreement or a Subscription, or suspend its performance thereunder, if (i) Customer becomes insolvent or bankrupt or ceases to do business, (ii) Customer breaches its obligations under the provisions of Section 5 or 6 below, (iii) the provision of the Services, or any portion thereof, to Customer by Genfare is, in Genfare's sole opinion, no longer commercially viable, (iv) the Services are deemed, or Genfare reasonably believes the Services, or any portion thereof, violate an applicable local, state, or federal law or regulation, or (v) Genfare has a reasonable belief that the continued provision of Services puts Genfare, or its systems at any operational or security risk.
- 4.6 Genfare may immediately terminate this Agreement, or suspend its performance hereunder if (i) its agreement with the gateway service provider or the payment processor is suspended or terminated for any reason, (ii) it or any of its vendors or service providers experiences a force majeure, (iii) it is required to due to the formal or informal action or request of a regulatory or payment card network, or (iv) Genfare reasonably believes such action is necessary to prevent material harm due to fraud, violations of applicable laws or regulations, breach of payment card network rules, or other causes.
- 4.7 Unless Genfare terminated this Agreement pursuant to Sections 4.2 or 4.4, Customer may continue to utilize the Services for a transition period of up to ninety (90) days after termination of this Agreement, subject to payment of the applicable Subscription Fees (the "Transition Period"). Should Customer require further assistance during the Transition Period, Genfare may, in its sole discretion, offer additional transition services at Genfare's then-current rates. In any event, upon request from Customer, Genfare shall reasonably cooperate with Customer to export Customer's data from the Services in a delimited TXT file during the Agreement and for a period of up to sixty (60) days after termination.

5. Confidential Information

- 5.1 "Confidential Information" means any trade secret or other information of Genfare or Customer, whether of a technical, business, or other nature, which is disclosed by one Party ("Discloser") to the other Party ("Recipient") orally or in writing and that (a) is marked "confidential" or (b) is of a nature that a reasonable person would understand to be confidential. Confidential Information does not include any information that: (a) was known to Recipient

before receiving it from the Discloser; (b) is independently developed by Recipient without use of or reference to any Confidential Information of the Discloser; (c) is received from a third party who had a lawful right to disclose such information (without corresponding confidentiality obligations) to it; or (d) is or becomes part of the public domain through no fault or action of Recipient.

- 5.2 Recipient will: (a) use the Confidential Information of the Discloser solely for the purpose for which it is provided; (b) not disclose Confidential Information to competitors of the Discloser, (c) not disclose such Confidential Information to any third party, and (d) protect such Confidential Information from unauthorized use and disclosure to the same extent that it protects its own Confidential Information of a similar nature, but using no less than a reasonable degree of care in consideration of the nature of the Confidential Information. However, Recipient may disclose Confidential Information to its employees, agents or contractors who need to know such Confidential Information in order to obtain or provide the Services hereunder so long as Recipient limits the scope of disclosure of Confidential Information to only that which is necessary under the circumstances, such third parties are subject to written confidentiality obligations substantively similar to this Agreement and are restricted to using the Confidential Information for the sole purpose of obtaining or providing the Services. Each Party will be responsible for any improper disclosure of Confidential Information by such Party's employees, agents, or contractors.
- 5.3 Recipient may disclose Confidential Information of the Discloser to the extent required to satisfy any legal requirement of a competent governmental or regulatory authority, provided that (to the extent permitted by law) it promptly advises the Discloser prior to making such disclosure and provides Discloser a reasonable opportunity to object to such disclosure or take such other action as it considers appropriate to protect the Confidential Information.
- 5.4 Within thirty (30) days of the termination of this Agreement, Recipient will return or destroy (and provide certification of such destruction) any materials in any medium that contains or refers to Discloser's Confidential Information. Subject to the confidentiality obligations herein, Recipient may retain copies of Discloser's Confidential Information to the extent required to document its performance or for compliance with applicable laws or regulations.
- 5.5 Customer shall take all necessary steps to ensure that the provisions of this Section are not violated by any employee, service provider, Permitted User or any other person under Customer's control or in its service.

6. Ownership; Restricted Rights

- 6.1 The Parties agree that, as between Customer and Genfare, Genfare retains ownership of and any and all of all Intellectual Property Rights and any information, materials, developments or deliverables created by Genfare and/or its licensors under this Agreement that are not expressly granted to Customer in this Agreement. If possible, Customer shall permanently erase or otherwise destroy the Software contained therein before recycling, discarding, or disposing of any media or hardware that contain any installed Software.
- 6.2 Customer retains ownership of all Customer specific data entered into and/or generated by Customer and its Permitted Users' use of the Services (the "Customer Data"). Provided, however, Customer shall have no rights to any data in Genfare's proprietary format, but Genfare shall reasonably cooperate with Customer to export Customer's data from the SaaS in a delimited TXT file at Customer's request.

- 6.3 Customer hereby grants Genfare a limited license to aggregate and/or anonymize the Customer Data during the Term of this Agreement and an unlimited, perpetual and irrevocable license to use, reproduce, and distribute such aggregated and/or anonymized Customer Data for any legal purpose. Notwithstanding the foregoing, Genfare shall own all usage data generated by the Services.
- 6.4 Certain features of the Services may require the use of Customer's name, logo, trademarks, and/or tradenames ("Customer Branding"). Should Customer's use of the Services require Customer Branding, Customer grants Genfare a license to reproduce, copy, distribute and use such Customer Branding in Genfare's provision of the Services. By submitting, posting or displaying Customer Branding through the Services or to Genfare, Customer grants Genfare a limited, worldwide, royalty-free, and non-exclusive license to use, copy, encode, store, archive, reproduce, edit, adapt, modify, translate, transmit, publish, publicly display, and distribute the Customer Branding for the limited purpose of providing Customer the Services during the Term of this Agreement and to store any archived instances of Customer Branding according to Genfare's then-current data management policy. CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER HAS THE RIGHT TO LICENSE THE CUSTOMER BRANDING TO GENFARE, AND IN THE EVENT CUSTOMER DOES NOT HAVE SUCH RIGHTS, CUSTOMER AGREES TO INDEMNIFY AND DEFEND GENFARE AGAINST CLAIMS ARISING OUT OF THE USE OF SUCH CUSTOMER BRANDING, EXCEPT TO THE EXTENT THAT SUCH CLAIM IS BASED ON A MODIFICATION OR ALTERATION MADE BY GENFARE.
- 6.5 Certain portions of the Services may be branded with Genfare's or its vendors' or service providers' trademarks, logos and copyright notices. Customer agrees that it will not hide, remove, modify or otherwise change any such trademarks, logos or notices.

7. Warranties; Disclaimers

- 7.1 Each Party warrants that it has the right and power to enter into this Agreement and to perform its obligations herein. Genfare hereby warrants that it has the right to provide the Services and grant the licenses to Customer in the manner provided in this Agreement.
- 7.2 Genfare warrants that the Services and Software shall materially conform to the specifications in the then-current Documentation for a period of ninety (90) days after Genfare first makes the Services and Software available for Customer's use. Genfare's sole obligation under this warranty (which shall be Customer's exclusive remedy) shall be to use reasonable efforts to correct demonstrated material defects in the Services or Software, and supply Customer with access to a corrected version of such Services or Software, or a commercially reasonable workaround as soon as practicable after Customer has notified Genfare of such defects. Genfare's warranty obligations hereunder shall not apply to the extent the nonconformity results from: (a) modifications to the Services or Software by anyone other than Genfare or its contractors, (b) use of the Services or Software contrary to the terms of this Agreement or the instructions in any related materials, or (c) the combination of the Services or Software with any third party hardware or software not expressly recommended or approved by Genfare. Genfare does not warrant any third party hardware or software utilized to deliver the Services, but will pass through any third party vendor's warranties to the extent permitted by the vendor.

If Genfare determines that a malfunction or error is due to the hardware or software of Customer or a third party, or out of date or unsupported versions of the Software, Genfare will so inform Customer, and it will be Customer's responsibility to obtain and pay for any repairs, updates or modifications required. Any of the above malfunctions will not relieve Customer of any of its obligations hereunder.

- 7.3 EXCEPT AS SPECIFICALLY SET FORTH ABOVE, TO THE MAXIMUM EXTENT ALLOWED BY LAW, THE SERVICES AND SOFTWARE ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT ALLOWED BY LAW, GENFARE AND ITS LICENSORS, VENDORS AND SERVICE PROVIDERS DO NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT, OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, AND GENFARE EXPRESSLY DISCLAIMS ANY AND ALL SUCH WARRANTIES.
- 7.4 GENFARE DOES NOT WARRANT THAT: (A) OPERATION OF ANY OF THE SERVICES OR SOFTWARE SHALL BE UNINTERRUPTED OR ERROR FREE, (B) FUNCTIONS CONTAINED IN THE SERVICES AND SOFTWARE SHALL MEET THE CUSTOMER'S REQUIREMENTS, OR (C) THE SERVICES OR SOFTWARE SHALL OPERATE IN COMBINATION WITH (I) OTHER HARDWARE OR SOFTWARE OTHER THAN HARDWARE AND SOFTWARE EXPRESSLY APPROVED OR RECOMMEND BY GENFARE IN WRITING, OR (II) UNSUPPORTED VERSIONS OF THE SOFTWARE.
- 7.5 Customer acknowledges and agrees that Genfare and its licensors are not responsible for: (i) the accuracy or integrity of any data submitted by Customer or its Permitted Users, (ii) the performance of Customer's or its Permitted User's equipment, (iii) delivery of services or connectivity provided by third parties to Customer and its Permitted Users, even if such third parties were identified by Genfare, or (iv) any downtime, loss or corruption of data that occurs as a result of transmitting or receiving data or viruses via the Internet.

8. Infringement Remedy

- 8.1 Should the Services, become, or in Genfare's opinion be likely to become, the subject of a claim of infringement of a patent, trade secret or copyright, Genfare may, in its sole discretion, (a) procure for Customer, at no cost to Customer, the right to continue to use the Services, (b) replace or modify the Services, at no cost to Customer, to make them non-infringing, provided that substantially the same functionality is provided by the replacement or modified Services, or (c) if in Genfare's judgment the right to continue to use the Services cannot be reasonably procured or the Services cannot reasonably be replaced or modified, terminate the subscription to use all or just the potentially infringing Services and grant Customer a pro-rated refund on any advance Subscription Fees paid for such potentially infringing portions of the Services for the remainder of the Subscription Term.
- 8.2 Customer shall forfeit all rights under this Section 8 if it alters or modifies the Services in any manner, or if such infringement is based upon the combination of the Services with any third party hardware or software.
- 8.3 Genfare will defend, indemnify, and hold Customer harmless from and against any loss, cost, and expense that Customer in connection with a third party claim that use of

the Services infringe any United States patent issued as of the Effective Date of this Agreement or any trade secret or copyright of others. Genfare's obligations under this indemnification are expressly conditioned on the following:

- (a) Customer must promptly notify Genfare in writing of any such claim;
- (b) Genfare or its vendor or service providers, as applicable, must have sole control of the defense of any such claim and of all negotiations for its settlement or compromise; and
- (c) Customer must reasonably cooperate with Genfare to facilitate the settlement or defense of the claim.

- 8.4 Notwithstanding anything herein to the contrary, Genfare shall have no liability for any claim of infringement based on the use or combination of the Services or Licensed Software with software or other materials not provided or expressly approved by Genfare.

9. Limitation of Liability

9.1 IN NO EVENT WILL CUSTOMER OR A GENFARE PARTY BE LIABLE TO THE PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES IN CONNECTION WITH THE SERVICES OR SOFTWARE OR THE PERFORMANCE OR NONPERFORMANCE OF SERVICES OR SOFTWARE, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL A GENFARE PARTY BE LIABLE TO CUSTOMER FOR ANY LOSS OF REVENUES, LOSS OF PROFITS, LOSS OF BUSINESS, OR LOSS OF DATA, ARISING OUT OF CUSTOMER'S USE OF, OR INABILITY TO USE, OR THE PERFORMANCE OR NONPERFORMANCE OF, THE SERVICES OR THE SOFTWARE. "GENFARE PARTY" MEANS ANY GENFARE OR ANY LICENSOR, VENDOR OR SERVICE PROVIDER OF GENFARE, INCLUDING WITHOUT LIMITATION ANY GATEWAY SERVICE PROVIDER, PROCESSING SERVICE PROVIDER, ACQUIRING BANK, OR PAYMENT NETWORK, OR ITS OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR AFFILIATES.

9.2 IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF THE GENFARE PARTIES UNDER THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED.

10. Miscellaneous

10.1 Conflicts. In the event of a conflict between the terms contained herein and the terms in an Attachment or Exhibit A, the order of precedence is: Attachment, the main body of the Agreement, Exhibit A.

10.2 Public Announcements. Customer grants Genfare and its affiliates the right to use Customer's name, logo, trademarks and/or trade names in press releases, product brochures, internal reports, shareholder reports, proposals and demos indicating that Customer is a customer of Genfare. All other public statements or releases shall require the mutual consent of the Parties.

- 10.3 Independent Contractor. The relationship of the Parties hereunder is that of independent contractors, and neither Party shall be considered to be a partner, joint venture, employer or employee of the other under this Agreement. This Agreement creates no agency in either Party, and neither Party has any authority whatsoever to bind the other Party in any transaction or make any representations on behalf of the other Party.
- 10.4 Survival. Neither expiration nor termination of this Agreement shall terminate those obligations and rights of the Parties pursuant to provisions of this Agreement which by their express terms are intended to survive and such provisions shall survive the expiration or termination of this Agreement. Without limiting the foregoing, the respective rights and obligations of the Parties under Sections 2.5, 3.4, 4.6, 5, 6, 7, 9 and 10 shall survive the expiration or termination of this Agreement regardless of when such termination becomes effective.
- 10.5 Amendment. No change or modification of this Agreement shall be valid unless in writing and signed by all Parties to this Agreement; provided, however, an Attachment can be updated through written confirmation of such terms through written or electronic correspondence.
- 10.6 Notice. Any notice or demand which is required or provided to be given under this Agreement shall be deemed to have been sufficiently given and received for all purposes when delivered by hand, confirmed facsimile transmission, or nationally recognized overnight courier, or five days after being sent by certified or registered mail, postage and charges prepaid, return receipt requested, to the addresses set forth in the opening paragraph with "Attn: President". Each Party may modify its notice address or "Attn:" Party by providing written notice in the manner described in this Section 11.6.
- 10.7 Assignment. Neither Party may assign this Agreement, or any of its interest herein, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that no such prior approval shall be required for an assignment in connection with a sale of all or substantially all of a Party's business related to the subject matter of this Agreement or any merger, sale of a controlling interest or other change of control of such Party. This Agreement shall apply to and bind the successors and permitted assigns of the Parties.
- 10.8 Force Majeure. Neither Party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God or the common enemy or earthquakes, floods, fires, epidemics, riots, telecommunications delays, failure of electrical power, lightning, national emergency, war, action of court or public authority, terrorist act, military action, civil disturbance, internet outages, failures or delay in transportation or communications. The Parties will promptly inform and consult with each other as to any of the above causes which in their judgment may or could be the cause of a delay in the performance of this Agreement.
- 10.9 Waiver. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision hereof.

10.10 Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms. With respect to any unenforceable provision, the applicable arbitrator or court shall deem the provision modified to the extent necessary, in such adjudicator's opinion, to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties set forth herein.

10.11 Entire Agreement. This Agreement supersedes all previous discussions, negotiations, understandings and agreements between the Parties with respect to its subject matter, and constitutes the entire Agreement between the Parties. This Agreement is a collaborative drafting effort and the provisions of the Agreement shall not be construed against a Party as the purported drafter. This Agreement may be executed in one or more counterparts, with signatures delivered by fax or emailed PDF documents, all of which counterparts when taken together shall comprise one instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

GENFARE

CUSTOMER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

GENFARE LINK SERVICES ATTACHMENT

SaaS Services	<p>Genfare Link, applicable modules are checked:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Admin Link <input checked="" type="checkbox"/> Report Link <input checked="" type="checkbox"/> Fare Link <input checked="" type="checkbox"/> Customer Care Link <input checked="" type="checkbox"/> Inventory Link <input checked="" type="checkbox"/> Asset Link (require latest generation Genfare hardware) <input checked="" type="checkbox"/> Card Check <input checked="" type="checkbox"/> Invoice <input checked="" type="checkbox"/> Real Time Link (require latest generation Genfare hardware) <input checked="" type="checkbox"/> eFare
Implementation Fee	\$57,000 due within thirty (30) days of the date the Services are made available for User Acceptance Testing.
Annual Subscription Fees	<p>Year 1: \$11,400</p> <p>Year 2: \$11,750</p> <p>Year 3: \$12,090</p>
Software Provided	Network Manager/Garage Data System
Payment Terms	<p>Implementation Fee will be payable within thirty (30) days of execution of this Agreement.</p> <p>Annual subscription fees will be paid prior to the beginning of each subscription year.</p>
Subscription Start Date	The date Genfare makes the Services available for user acceptance testing
Initial Subscription Term	One (1) year from Subscription Start Date
Maximum Number of Affiliated Users	The maximum number of Affiliated Users is 25
Affiliated Users	List entities which can have access to Genfare Link under the Customer's subscription

MOBILE LINK SERVICES ATTACHMENT

SaaS Services	Mobile Link, electronic validation.
One-Time Implementation Fee	N/A
Initial Subscription Term	One (1) year from Subscription Start Date
Subscription Start Date	The date Genfare makes the Services available for user acceptance testing
Annual Subscription Fees	N/A so long as Payment Processing Services described herein are contracted to Genfare.

PAYMENT PROCESSING SERVICES ATTACHMENT

Payment Processing Services	<input checked="" type="checkbox"/> eFare processing services <input checked="" type="checkbox"/> Mobile ticketing processing services <input checked="" type="checkbox"/> APOS processing services
Subscription Term	Customer's subscription to the Payment Processing Services listed above and further described in Exhibit B shall run concurrently with customer Term for their respective Genfare Link and Mobile Link services as described in the above attachments and in the Agreement.
Transaction Fees	Transaction fees as follows: \$0.05 + 5% of each transaction processed through the SaaS Services.
Payment Terms	Transaction Fees are payable in accordance with the terms of the Agreement.
Payment Processor	Chase Paymentech, processor provided by Genfare and subject to change.

EXHIBIT A Service Level Agreement

1. Scope of Work

3-Year Support Agreement Overview	Year 1	Year 2	Year 3
24/7 Support – Expedited service based on severity and impact	x	x	x
P1 - Production system is down, impacting all applications and associated business systems	x	x	x
P2 - Production system performance is degraded but operational; issue affects essential functions; or issue is blocking critical system deliverables	x	x	x
P3 - General product questions relating to development, feature issues or documentation	x	x	x
Free technical support for all break/fix issues	x	x	x
Free upgrades to all system-compatible updates (software and firmware)	x	x	x
Unlimited fare structure changes/modifications per year (8 weeks' notice)	x	x	x
3-day Onsite System Overview	x		
Full system overview	x		
Reconciliation review and audit	x		
Fare structure analysis and optimization	x		
Recommendations for opportunities to improve and fully optimize you fare collection system	x		
Customized training session on day 3	x		
Remote reconciliation review		x	
3-day Onsite Assessment w/Training			x
Review of year 1 onsite overview and year 2 reconciliation review and audit			x
Full system overview with comparison to last 2 years above			x
Reconciliation review			x
Fare structure analysis and optimization			x
Recommendations for opportunities to improve and fully optimize you fare collection system			x
Customized training session on day 3 (break out what's included)			x
Optional Managed Services			
Maintenance, Genfare employees are onsite providing day to day maintenance of your hardware	Optional	Optional	Optional
Reporting & Reconciliation, Genfare employees are onsite pulling reports, performing reconciliation reviews daily	Optional	Optional	Optional
Full-time or part-time	Optional	Optional	Optional
6-Month preventative maintenance update of hardware	Optional	Optional	Optional
Annual preventative maintenance update of hardware	Optional	Optional	Optional

*3 year scope of work detailed above is null and void if Customer terminates this Agreement and later re-engages Genfare for these services at a later date. For clarification, Customer cannot terminate in Year 2, then sign up again and receive the

Year 1 services, those services would not be available to Customer again until the term of this Agreement should have expired or entered Year 4.

2. Definitions

“Error” means any situation where the Services or the Software (a) does not operate in accordance with the Documentation; and/or (b) does not produce incorrect results; and/or (c) encounters any other problems or issues set out in the chart in Section 6.4 of this Exhibit.

“Resolution” or “Resolve” refers to actions taken to correct or provide a reasonable work-around for a reported issue by delivering new code or otherwise restoring the Services to a functional state. In the case of a work-around as a solution, Genfare shall continue working to more permanently resolve the Error until such Error is fully resolved.

“Standard Service Hours” are defined as Monday through Friday beginning at 8:30am and ending at 5:00pm Central Time, excluding federal, Customer, and Genfare holidays.

“Telephone Support” means oral responses by Genfare technicians to questions regarding (a) the functions of the Services, (b) the steps for Customer to follow in operating the Services, (c) the proper format for the input of Customer’s data or information, (d) steps to improve the efficiency of operation of the Services, (e) the interface of the Services, and any related system in Customer’s current technical environment, (f) the interface of the Services and other software, (g) the Documentation relating to the Services, and/or (h) changes to the operation of the Services due to the provision of a maintenance and/or support service to Customer.

3. SaaS or Software patches and upgrades

- 3.1 Genfare shall (i) develop, test, provide and/or implement all applicable “patches” or updates that become necessary to remedy the Errors in the Services or the Software and (ii) provide all version updates, software patches and error corrections necessary for the Services and the Software to maintain functionality.
- 3.2 Applicable Software updates will be made available to Customers as they are released. Customer’s involvement may be required as Genfare may need access to certain Customer equipment or systems to effectuate updates.
- 3.3 For Errors in the Software, prior to implementing any patches or upgrades, Genfare shall first notify Customer’s IT department in advance to schedule a time and date for the installation. Depending on the scope of the change, Customer may wish to back-up their Services prior to the software upgrade.
- 3.4 Genfare Support includes new features in modules subscribed to by the Customer, but does not include modules not subscribed to or new modules developed by Genfare.

4. Exceptions

- 4.1 The provisions of this Exhibit A shall not apply to issues arising from:
- (a) the negligence of Customer, its customers, employees, or representatives,
 - (b) any loss or damage resulting from a force majeure event (as set forth in Section 11.7 of this Agreement),
 - (c) alteration, misuse, or abuse of the Services or Software,
 - (d) use of the Services or Software contrary to the terms of this Agreement, or the instructions in any Documentation provided to the Customer,
 - (e) the combination of the Services or Software with any third party hardware or software not expressly recommended or approved by Genfare,
 - (f) any improper installation, operation or maintenance of the Services or Software by the Customer or a third party, including use of non-OEM parts in the Services and a Customer's failure to promptly install all patches, error corrections and updates provided by Genfare,
 - (g) Customer's failure to report a known Error in a timely manner (no more than seven (7) business days from identification of such Error), or
 - (h) a Genfare-supplied hardware failure (except to the extent that such hardware is under warranty).
- 4.2 Genfare will not provide Support or any associated services for the Customer's Oracle database environment. Oracle database adjustments, enhancements and/or recommendations will be communicated and passed to Customer for implementation. Genfare is not responsible for executing updates to maintenance for the Customer's network manager/Oracle database virtual environments, operating systems, database version, database allocation or similar Customer-provided resources.

5. Genfare and Customer Duties

Although Genfare shall be responsible for the Support, Customer shall be the Party that initially responds to all Errors. Genfare agrees to assist the Customer, as required and contracted by the Customer.

- 5.1 Genfare SHALL:
- (a) Provide remote support for the Services and Software, as required by this Agreement;
 - (b) Respond to and Resolve any Errors in accordance with the chart in Section 6.4;
 - (c) Perform the Support in a competent manner by qualified personnel;
 - (d) Ensure that the Services or Software will operate and function with updates, upgrades, modifications or fixes, that are provided by Genfare, including without limitation, software patches or bug fixes;
 - (e) Ensure that Genfare personnel or contractors are available to carry out the obligations of Genfare hereunder;
 - (f) Provide contact information for Genfare personnel, available to receive notices of Errors under Section 7.2 of this Exhibit; and

- (g) Notify Customer of any identified indication of deliberate tampering or patterns of damage not consistent with normal usage.

5.2 Genfare SHALL NOT:

- (a) Be responsible for any malfunction of Equipment, servers, computer equipment, communications infrastructure, cabling, networking capability or any other element or Errors that are not attributable to the Services or Software; or
- (b) Pay any claim pertaining to work done by or on behalf of Customer for removing modules or Equipment to be shipped to Genfare for repair.

5.3 Customer SHALL:

- (a) Provide any information reasonably requested by Genfare to understand and describe an Error in order to allow Genfare to carry out its duties hereunder;
- (b) Provide any access to Equipment or systems as reasonably requested by Genfare to provide patches or updates to Software;
- (c) Perform all preventative maintenance of Software and Equipment according to the Documentation;
- (d) Be entitled to use any third party to carry out all or part of the hardware maintenance of the Services, or to carry out such maintenance itself (Genfare shall have no obligation to correct Errors attributable to such third-party or self-performed maintenance under this Exhibit A);
- (e) Make all requests for support through a Customer's representative, or Customer's representative's substitute(s) or designee(s);
- (f) Provide appropriate personnel and support as is necessary for Genfare personnel to perform their duties, such as IT technical support, communications support, revenue service support and security personnel, flaggers and other proper personnel;
- (g) Inform Genfare of all Customer operating and security policies established for the safe, secure and proper interaction with the Services;
- (h) Be responsible for freight charges to Genfare, located in Elk Grove Village, IL, and all costs, expenses related thereto;
- (i) Be responsible for any Genfare travel expenses for on-site support;
- (j) Promptly notify Genfare when any change is made to the Services; and
- (k) Promptly (no later than 10 business days after receipt) install all patches, error corrections and updates provided by Genfare.
- (l) Customer shall provide the first level of support to its employees, staff, agents, contractors, riders or its Client's riders using Mobile Link.
- (m) Customer shall reconcile all reports on a monthly basis and notify Genfare of any discrepancies within thirty (30) days. Genfare shall not be liable for any amounts reported as a discrepancy if Customer does not reconcile on a monthly basis.

6. Support Response Time and Availability

6.1 Response Time.

Genfare shall make available an adequate number of personnel to ensure that the requirements hereunder, including, without limitation, all response times as described under Section 6.4, are met.

6.2 Initial Response.

Genfare shall provide an initial response (the "Initial Response") in accordance with Section 6.4 below. As part of the Initial Response Genfare shall:

- (a) Request access to the Services or any part thereof, other than to the actual TVM itself, in order to determine the nature of the reported Error. Genfare access must be coordinated through the primary Customer representative or his/her designate. Access will only be provided upon request and will be terminated upon Resolution of the Error. During said access, Genfare agrees to observation by Customer staff.
- (b) Determine the cause of the Error and the solution to the Error.
- (c) Provide Customer with an estimate of the time required to correct the reported Error in accordance with Section 6.4 below.

6.3 Support Availability. Telephone Support shall be available 24/7 via Genfare's support telephone numbers:

- (a) 847.871.1231 – 8:30am to 5:00pm CST
844.287.5234 – 5:01pm to 8:29am CST

6.4 Support Response Time and Availability.

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Issue Severity

Severity	Impact	Acknowledgement	Response Time Goal	Resolution Time Goal
P1	Production system is down, impacting all applications and associated business systems.	Less than 30 minutes	Less than 3 hours*	24 hours
P2	Production system performance is degraded, but operational; Issue affects essential functions; or Issue is blocking critical systems tests or deliverables.	Less than 30 minutes	Less than 4 hours*	24 hours
P3	General product questions relating to development, feature issues, or Documentation.	Less than 30 minutes	Less than 24 hours*	20 Business days

*Genfare will give the highest schedule priority to P1 issues, the second highest to P2 and third highest to P3. For issues self-reported by the Customer at a P1 or P2 issue, Genfare will review and if Genfare determines the issue is not P1 or P2, Genfare will reclassify the issue.

ALL RESPONSE TIMES CONTAINED IN THIS AGREEMENT ARE CALCULATED FROM THE TIME CUSTOMER MAKES AN INITIAL CALL FOR ERROR RESOLUTION. RESOLUTION TIMES ARE DEPENDENT UPON ACCESSIBILITY TO THE APPLICABLE SYSTEMS AS GRANTED BY THE CUSTOMER AND THE TIME PERIOD FOR DETERMINING

RESOLUTION SHALL NOT BEGIN UNTIL CUSTOMER HAS PROVIDED GENFARE ALL REQUIRED ACCESS TO ITS SYSTEMS, IF REQUIRED.

7. Help Desk Services

Genfare will provide Help Desk Services to assist Customer with use of the Services and assistance in resolving problems encountered by Customer.

7.1 Help Desk Services

- (a) Help Desk Services Contact Details:
- (b) Phone:
 - (i) 847.871.1231 – 8:30am to 5:00pm CST
 - 844.287.5234 – 5:01pm to 8:29am CST

Email: genfare.customercare@spx.com

- (c) Ticketing Procedures
 - (i) Each inquiry will be documented, assigned a ticket number and a confirmation email will be sent to the originator to confirm the request has been received.
 - (ii) Each ticket will be assigned to a technical support engineer to follow up and resolve each issue.
 - (iii) A technical support engineer will make contact according to the contact information within the ticket to work on the ticket, or to schedule a time to work on the ticket.

7.2 Customer Representatives (name, title, email and phone number):

- (a) Service Desk (701) 476-6700
- (b) Jordan Smith (701) 476-5940
- (c) Third party service contacts:

7.3 Communications protocol

- (a) In order to connect to the Customer's system and Resolve Errors in the Services or Software, Genfare must be able to reach the Customer Representative (or delegate), or Genfare will be unable to connect to the system to identify the root cause of, and subsequently Resolve, the reported Error.
- (b) Genfare may use the following tools to remotely access the Customer system:
 - (i) LogMeIn Rescue/Pro (default and preferred option)
 - (ii) TeamViewer
 - (iii) VPN (Cisco or Junos)

EXHIBIT B
PAYMENT PROCESSING SERVICES AGREEMENT

Pursuant to the Payment Processing Services Attachment, Customer elects through one of Genfare's third-party service providers the following services which may include one or more of (a) the processing of credit card, prepaid card and debit card (each a "Card") payments and related services ("Processing Services"); or the transport and reporting of certain data over certain wireless and other carrier networks to and from various credit and debit card payment processors (the "Gateway Services") (individually, and collectively referred to as "Payment Processing Services").

Genfare and Customer agree that the following terms and conditions shall govern Customer's rights and obligations with respect to any Payment Processing Services provided by Genfare:

1. Definitions.

- 1.1 **"Genfare Products"** shall mean the Equipment, Services and/or Software as purchased, licensed and/or used by the Customer.
- 1.2 **"Laws"** mean any state, federal, or local laws, rules, or regulations applicable to Customer.
- 1.3 **"Limited Acceptance Options"** means either (i) all Visa and MasterCard consumer credit cards and Visa and MasterCard commercial credit and debit cards; or (ii) Visa and MasterCard debit cards only (excluding credit cards).
- 1.4 **"Merchant Settlement Account"** means at least one bank account owned by Customer for the deposit and settlement of funds arising from the Payment Processing Services.
- 1.5 **"Payment Brand"** means any payment method provider whose payment method is accepted by Paymentech for processing, including, without limitation, Visa Inc., MasterCard International, Inc., Discover Financial Services, LLC, and other credit and debit card providers, debit network providers, gift card, and other stored value and loyalty program providers. Payment Brand also includes the Payment Card Industry Security Standards Council.
- 1.6 **"Payment Brand Marks"** means the brands, emblems, trademarks, and logos that identify a Payment Brand.
- 1.7 **"Payment Brand Rules"** means all published bylaws, rules, programs, and regulations, as they exist from time to time, of the Payment Brands.
- 1.8 **"Payment Instrument"** means an account, or evidence of an account, authorized and established between a Customer and a Payment Brand, or representatives or

members of a Payment Brand, that are accepted from Customers as payment for a good or service. Payment Instruments include, but are not limited to, credit and debit cards, stored value cards, loyalty cards, electronic gift cards, authorized account or access numbers, paper certificates, and credit accounts.

- 1.9 **“Payment Instrument Information”** means information related to a Customer or the Customer’s Payment Instrument that is obtained from the Customer’s Payment Instrument or from the Customer’s use of a Payment Instrument (e.g., a security code, a PIN number, credit limits, account balances, or the customer’s zip code when provided as part of an address verification system). Without limiting the foregoing, such information may include a the Payment Instrument account number and expiration date, the Customer’s name or date of birth, PIN data, security code data (such as CVV2 and CVC2), and any data read, scanned, imprinted, or otherwise obtained from the Payment Instrument, whether printed thereon, or magnetically, electronically, or otherwise stored thereon. For the avoidance of doubt, the data elements that constitute Payment Instrument Information shall be treated according to their corresponding meanings as “cardholder data” and “sensitive authentication data” as such terms are used in the then current PCI DSS.
- 1.10 **“Payment Network”** means a Card brand (e.g., Visa, MasterCard, Discover or other card brand).
- 1.11 **“Payment Network Rules”** means the then-current Payment Network operating rules and regulations.
- 1.12 **“Purchaser”** means the person or entity to whom a Payment Instrument is issued or who is otherwise authorized to use a Payment Instrument.
- 1.13 **“Retrieval Request”** means a request for information by a Customer or Payment Brand relating to a claim or complaint concerning a Transaction.
- 1.14 **“Security Standards”** are all rules, regulations, standards or guidelines adopted or required by the Payment Brands or the Payment Card Industry Security Standards Council relating to privacy, data security and the safeguarding, disclosure and handling of Card Information, including but not limited to the Payment Card Industry Data Security Standards (“PCI DSS”), Visa’s Cardholder Information Security Program (“CISP”), Discover’s Information Security & Compliance Program, American Express’s Data Security Operating Policy, MasterCard’s Site Data Protection Program (“SDP”), Visa’s Payment Application Best Practices (“PABP”), the Payment Card Industry’s Payment Application Data Security Standard (“PA DSS”), MasterCard’s POS Terminal Security program and the

Payment Card Industry PIN Entry Device Standard, in each case as they may be amended from time to time.

- 1.15 **“Transaction”** means a transaction conducted between Customer and Purchaser, or Genfare and Purchaser, utilizing a Payment Instrument in which consideration is exchanged (i) between the Customer and Purchaser, or (ii) between Genfare and Purchaser. Transaction also means the written or electronic record of a Transaction, including, without limitation, an authorization code or settlement record.
 - 1.16 **“Transaction Receipt”** means an electronic or paper record of a Transaction generated upon completion of a sale or Refund, a copy of which is presented to the Customer.
 - 1.17 **“Unattended Transactions”** means those Transactions where it is not physically possible for the Customer to examine each Payment Instrument used, such as Transactions at unattended points of sale, on-line, mail, telephone, pre-authorized or recurring Transactions.
2. Services. Genfare will arrange for Customer to receive and use the Payment Processing Services through Genfare’s hardware and/or software, will help manage the relationships between Customer and the Genfare’s third-party service providers, and provide limited support as provided herein. Customer acknowledges and agrees that Genfare is not a bank, a payment gateway or a payment processor, and does not directly provide the Payment Processing Services to Customer but instead facilitates Customer’s receipt of the Payment Processing Services under the terms of this Exhibit B. Customer agrees that Genfare shall be Customer’s exclusive provider of Payment Processing Services for the processing of payments by Purchaser’s and Customer’s use of the Genfare Products during the Term. If permitted pursuant to the Payment Brand Rules, Genfare may charge Purchasers a convenience fee for Purchaser’s use of the Payment Processing Services. Customer acknowledges and agrees that any Transaction made utilizing the Payment Processing Services shall not be submitted on behalf of a third party to the best of Customer’s knowledge. Customer agrees that implementation of any custom interchange rate(s) which Genfare or Customer may have negotiated, or may in the future negotiate, directly with the Payment Networks may require time and development work. For recurring Purchaser Transactions, Customer shall obtain the consent to periodically charge the Purchaser on a recurring basis and retain this permission for the duration of the recurring Transactions in order to provide it to the Payment Brands, the issuing bank of the Purchaser’s Payment Instrument, Genfare, as well as Genfare’s third-party service providers and its affiliates on request.
 3. Availability and Support for Payment Processing Services. Customer acknowledges that the Payment Processing Services are provided by third-party service providers and that Genfare makes no representation or warranty that the Payment Processing Services will be meet any availability or performance requirements. Any support offered by Genfare

regarding the Payment Processing Services is strictly limited to support for such services and will not include any support for Customer's hardware.

Support for the Payment Processing Services will be provided as follows:

- Customer shall be responsible for Tier 1 support to Purchasers.

3.1 Customer hereby authorizes Genfare or its designee to obtain, and grants Genfare the limited power of attorney to obtain information regarding the Account (including, without limitation, account balance and activity at any given time).

4. Compliance. Customer agrees that it shall only access and use the Payment Processing Services via the Genfare Products or as otherwise agreed to in writing between the parties and will use the Payment Processing Services solely in accordance with Required Conditions, Prohibited Businesses, Merchant Categories and Transaction Types set forth in Annex 1 of this Exhibit B. In addition, Customer hereby agrees to comply with (a) all applicable law (including applicable data security and privacy laws); (b) all applicable Payment Network Rules; (c) the written agreement between Customer and the third-party service provider providing some or all of the Payment Processing Services (each, a "Payment Services Agreement"); (d) the Payment Brand Rules; (e) the Security Standards; and (g) the policies and procedures of the Processing Services provider or the Gateway Service provider that are provided to Customer from time to time regarding Customer's use of the Processor Services or Gateway Services, respectively.
5. Merchant Payment Processing Instructions and Guidelines. As a condition of Customer's receipt of the Payment Processing Services, Customer must agree in writing to the Merchant Payment Processing Instructions and Guidelines attached hereto as Annex 2.
6. Fraud Losses, Chargebacks, Refunds, Fines, and Liabilities. Customer acknowledges and agrees that (i) it is solely responsible for all fraud losses it incurs in connection with the Services and that (ii) may be subject to reversals of previously settled Card Transactions ("Chargebacks") and to fees, charges, fines, costs, assessments, damages, liabilities, and amounts imposed as a result of its failure to comply with the terms of this Exhibit B, the Agreement, any Payment Network Rules, or any Laws (collectively "Deductions"). If Customer elects to make refunds of Card Transactions, Customer is solely responsible for such amounts and all fees relating thereto, but in no instance will Customer make such refunds by cash or cash equivalents.
7. Data Security. Customer agrees to, and to cause third parties acting as Customer's agent, implement and maintain commercially reasonable data security measures in view of the nature of the data being stored and transmitted, including but not limited to compliance with the Payment Network Rules and all applicable laws, including, without limitation, any and all confidentiality and security requirements of Payment Networks, including but not limited to the Payment Card Industry Data Security Standard. Without limiting the foregoing, Customer agrees that it is responsible for maintaining the security and integrity of its machines and terminals and will take such measures as are necessary for such protection, including but not limited to compliance with the applicable portions of the

Payment Card Industry Security Standards Council ("PCI-SSC") "Information Supplement: Skimming Prevention - Best Practices for Merchants" (available at www.pcisecuritystandards.org/documents/skimming_prevention_IS.pdf) and Payment Card Industry Unattended Payment Terminal Security Guidelines and such other relevant guidelines and best practices as are published or promulgated by the PCI-SSC or any successor thereto. Customer shall be fully and solely responsible for any damages, fines or fees incurred by Customer, Gateway Service provider, Processing Service provider or other processor retained by Customer, the acquiring bank, or any other party as a result of Customer's failure to comply with the foregoing or any other terms of this Exhibit B.

8. No License from Genfare. The Gateway Services are licensed by the Gateway Services provider and are not licensed or sublicensed by Genfare.
9. Customer Representations and Warranties.
 - 9.1 Customer represents and warrants that it will comply with all applicable data privacy laws, including the California Consumer Privacy Act if applicable.
 - 9.2 Customer represents and warrants that all information provided in the Application is true and correct in all respects at all times throughout the term of this Exhibit B.
 - 9.3 Customer represents and warrants that it has no knowledge or notice of information that would lead it to believe that the enforceability or collectability of Transactions will in any manner be impaired. Further, Customer has not submitted and will not submit a Transaction that is known or should be known to it to be either fraudulent, illegal, or damaging to any Payment Brand. Genfare may require Customer to provide an updated service application ("Application") at the time of renewal or other term extension or upon Genfare's request from time to time.
 - 9.4 Customer represents and warrants that it will promptly notify Genfare prior to any change in its legal name, organizational structure, ownership, principals, a change to Customer's bank account, or the filing of a bankruptcy or similar proceeding by or against it, and any failure to so notify Genfare of such event shall constitute grounds for termination of this Exhibit B or the Agreement. Customer hereby authorizes Genfare (and its designees, which may include Gateway Services provider, Processing Service provider, and the acquiring bank) to obtain credit reports and perform such credit checks on Customer, its principals and affiliates as Genfare or its third-party service provider deems advisable in its sole discretion at any time.
 - 9.5 Customer represents and warrants that its execution of and performance under this Exhibit B (i) in no way breaches, contravenes, violates, or in any manner conflicts with any of its other legal obligations, including its governing documents or any agreement with any third party; and (ii) has been duly authorized by all necessary

action and does not require any consent or other action by or in respect of any third party. Customer agrees that authorization of a Transaction indicates that the Payment Instrument (i) contains a valid account number and (ii) has an available credit balance to cover the amount of the Transaction.

10. Genfare Warranty and Disclaimer.

10.1 Notwithstanding anything to the contrary contained in the Agreement, Genfare makes no claims or warranties with respect to the Processing Services provider, the Processing Services, the Gateway Services provider, or the Gateway Services.

11. Indemnification. In addition to, and not in lieu of Customer's indemnification obligations contained elsewhere in the Agreement, Customer agrees that it shall indemnify Genfare against all fees, charges, fines, assessments, costs, damages and liabilities asserted by Gateway Services provider, Processing Service provider, any third-party processor, any acquiring bank, any Payment Network, or any governmental authority arising out of or related to Customer's use of the Gateway Services, Processing Services or other performance of this Exhibit B, except for any such fees, charges, fines, assessments, costs, damages and liabilities caused solely by Genfare's gross negligence or intentional misconduct.

12. Survival. The terms of this Exhibit B that expressly or by implication are intended to survive termination shall survive termination of this Exhibit.

13. Conflicts. In the event of a conflict between the terms contained in this Exhibit B, the terms in an Attachment and the Agreement, the order of precedence is: Attachment, Exhibit B, and then the main body of the Agreement.

ANNEX 1

Required Conditions, Prohibited Businesses, Merchant Categories and Transaction Types

A. Required Conditions: Customer represents and warrants that it shall:

- Accept all categories of Visa and MasterCard Payment Instruments (i.e. debit and credit cards) unless the customer has previously, through written notice, indicated election of one of the Limited Acceptance Options, as well as all foreign bank-issued Visa or MasterCard Payment Instruments;
 - If a Limited Acceptance Option is selected by Customer, then the Customer must display appropriate signage to indicate the details of the applicable Limited Acceptance Option
- Not engage in any practice that unfavorably discriminates against or provides unequal treatment of any Payment Brand relative to any other Payment Brand;
- Not set a dollar amount above or below which it refuses to honor otherwise valid Payment Instruments during the Subscription Term;
- Physically examine each Payment Instrument used at those attended points of sale to determine that the Payment Instrument presented is valid and has not expired;
- Notify Genfare, and to the extent possible its third-party service providers, of the intent to conduct Unattended Transactions;
- Ensure that there are appropriate procedures in place to confirm that each Unattended Transaction is made by the intended Purchaser;
- Not split a single Transaction into two or more Transactions to avoid or circumvent authorization limits or monitoring programs;
- Not accept Payment Instruments for the purchase of [scrip];
- Not require a Purchaser to complete a postcard or similar device that includes a Purchaser's Payment Instrument information;
- Not disburse or advance any cash to the Purchaser, itself, its representatives, agents or employees in connection with a Transaction
- Not accept payment for effecting credits to a Purchaser;
- Not make or have previously made a representation or agreement for the issuance of refunds except as stated in all applicable refund policies that have been published to Genfare and all Purchasers;
- Not accept or facilitate the acceptance of Payment Instruments in connection with installment plans;
- Execute any and all applications and documentation required by the Payment Brands and Genfare's third-party service providers and its affiliates;
- Not operate a Prohibited Business, nor fall within the Prohibited Merchant Category, nor submit a Prohibited Transaction, as these terms are defined in Annex 1 attached hereto;
- Maintain a refund policy and disclose such refund policy to Genfare, its third-party service providers, and Purchasers;
- Submit any change of its refund policy 14 days prior to the effective date of such change to Genfare and its third-party service providers;
- Prepare and deliver to Genfare and its relevant third-party service providers, Transactions reflecting any refund within 3 days of the Customer or Genfare approving such a refund;

- Not accept any payment from a Purchaser as consideration for issuing a refund;
- For recurring Transactions of a Purchaser, obtain the consent to periodically charge the Purchaser on a recurring basis and retain this permission for the duration of the recurring Transactions in order to provide it to the Payment Brands, the issuing bank of the Purchaser's Payment Instrument, Genfare, as well as Genfare's third-party service providers and its affiliates on request;
- Retain written documentation specifying the frequency of any recurring charges to a Purchaser and the duration of time during which such charges may be made;
- Not submit any recurring transaction after receiving a cancellation notice from a Purchaser or a notice from Genfare, its third-party service providers or any Payment Brand that a Purchaser's Payment Instrument is not to be honored;
- Offer Purchasers a data protection method such as 3-D Secure or Secure Sockets Layer (SSL);
- Maintain their respective Merchant Settlement Accounts for as long as they receive Payment Processing Services;
- Notify Genfare and its third-party service providers with no less than 5 days prior notice of an intent to close their respective Merchant Settlement Accounts
- Substitute another Merchant Settlement Account subsequent to the closure of any prior Merchant Settlement Account;
- Obtain an authorization code through a Genfare's third-party service provider for each Transaction;
- Have a valid agreement in effect with any applicable Payment Brand;
- Store and retain Transactions and Transaction Receipts in compliance with the Payment Brand Rules;
- If applicable, send Genfare and Genfare's relevant third-party service provider, via certified or overnight mail or confirmed fax, a written resolution of the investigation of a Retrieval Request, along with legible copies of any supporting documentation requested or required by the Retrieval Request;
- Exercise reasonable care to prevent disclosure or use of Payment Instrument Information;
- Not using Payment Brand Marks, other than as expressly authorized by the Payment Brands; and
- Use the Payment Brand Marks only to promote the services covered by the Payment Brand Marks by using them on decals, indoor and outdoor signs, advertising materials, and marketing materials, provided that all such uses are consistent with the Payment Brand Rules.

B. Prohibited Businesses and Business Activities:

- Adult-oriented products or services (of any media type, including Internet, telephone, printed material, etc.)
- Buyers clubs / Membership clubs
- Collection agencies engaged in the collection of Uncollectible Debt (as defined by the Payment Brands)
- Bankruptcy attorneys
- Credit repair agencies
- Sports forecasting or odds making
- Credit counseling or credit repair services

- Credit protection / Identity theft protection
- Direct marketing—subscription merchants
- Infomercial merchants
- Internet/MOTO pharmacies
- Internet/MOTO pharmacy referral sites
- Internet/MOTO Firearm or Weapon Sales
- Internet/MOTO Tobacco Sales
- Drug Paraphernalia
- Occult Materials
- Multi-level marketing businesses
- Inbound telemarketers
- Outbound telemarketers
- Prepaid phone cards
- Prepaid phone services
- Rebate-based businesses
- “Up-Sell” merchants
- Bill payments
- Escort services
- Gambling or betting, including lottery tickets, raffles, casino gaming chips, off-track betting, and wagers at race tracks
- Financial Institutions — Manual Cash Disbursements
- Financial Institutions — Automated Cash Disbursements
- Financial Institutions — Merchandise and Services
- Non-Financial Institutions — Money Orders, Foreign Currency, etc.
- Wire Transfer Money Orders
- High-Risk Merchants
- High-Risk Telemarketing Merchants
- Service Station Merchants
- Automated Fuel Dispensers (AFD)
- Any business model heavily reliant upon or solely or primarily based on any guaranteed “rebate”, “refund”, or “prize” associated with the sale of products or services

C. Prohibited Merchant Categories:

- Merchants domiciled, residing, or having a principal place of business outside of the U.S.
- Merchants engaged in any illegal activity, or any activity reasonably likely to create notoriety, cause harm or damage the reputation of Paymentech, Member or any Payment Brands
- Merchants listed on the VISA Terminated Merchant File, MasterCard MATCH, or any similar Payment Brand list

D. Prohibited Transaction types:

- Account Funding Transactions
- Dynamic Currency Conversion
- Quasi-Cash Transactions

- Purchase of a Scrip

YELLOW HIGHLIGHTING TO BE COMPLETED BY GENFARE
BLUE HIGHLIGHTING TO BE COMPLETED BY CUSTOMER

ANNEX 2
MERCHANT PAYMENT PROCESSING INSTRUCTIONS AND GUIDELINES

[Attached Separately]

(20)

January 25, 2021

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

Dear Commissioners:

On January 28, 2019 the MATBUS Facility Study was completed by Kadrmas, Lee & Jackson (KLJ), Inc. The study was received and filed by the Fargo City Commission. The study was developed to address several short, medium and long-range facility-related issues facing MATBUS (Transit).

On April 22, 2019 the Fargo City Commission approved contracts between the City of Fargo and KLJ, Inc. to (1) renovate the GTC above grade, (2) renovate the Jefferson Lines space within the GTC and (3) renovate the below grade parking facility.

In July 2019 it was determined there were only adequate funds to complete the *interior* GTC above grade renovations including Jefferson Lines and the below grade parking, delaying *exterior* GTC above grade renovations until funding was available. Funding to complete the GTC exterior above grade renovations has become available. The attached outlines the timeline and funding information for the full project.

The requested motion is to approve Amendment No. 6 with KLJ, Inc. and the Ground Transportation Center exterior above grade renovations as outlined in the attached. Thank you.

Sincerely,



Julie Bommelman
City of Fargo Transit Director
701-476-6737
jbommelman@cityoffargo.com

/enc



January 25, 2021

Comprehensive Overview of 2020-2021 Ground Transportation Center (GTC) Improvement Projects

Background: On January 2, 2019 the City Commission received the MATBUS Transit Facility Study to evaluate short- and long-range needs for the City of Fargo's existing transit facility, the Ground Transportation Center (GTC). This report was directed by the Metropolitan Council of Governments (Metro COG) and prepared by KLJ Engineering (KLJ) to inform and guide future decision making regarding these facilities. Recommendations regarding deferred maintenance, better utilization of the existing GTC facility footprint/square footage, and modernizing building utilities were key themes from the Transit Facility Study. It was determined that approximately 70% of the building's square footage was underutilized, and that a better alignment of the building program could increase efficiency of this existing asset.

Following the receipt of the Facility Study in early 2019, on July 15, 2019 the City Commission received an update and proposed plan of action from Cassie McNames, P.E., and Project Manager for KLJ Engineering, regarding Ground Transportation Center (GTC) improvement projects for the Transit portion of the facility (above-grade).

Items discussed and approved by the City Commission on July 15, 2019 included:

- Approval of GTC Deck Concept C – A short- to mid-range configuration to meet the needs of MATBUS until such time a more extensive site reconfiguration, or replacement site and facility, can be considered.
- Approval of additional repair cost estimates to support the overall GTC remodel for the Transit portion of the facility.
- Acknowledgement of the City's continued commitment to maintain the GTC structure in a state of good repair through a deferred maintenance schedule, to be prepared by KLJ.

Comprehensive Overview of GTC Transit (Above-Grade) Capital Improvements

Table 1 (below) contains the original estimated expenditures.

Table 1. Original Estimated Expenditures

Project Name	Fargo Project No.	A/E Fees	General Construction	Mechanical Construction	Electrical Construction	10% Contingency	Total Project Cost
GTC – Above-Grade	F18006 F17008	\$352,211.96	\$1,968,127.28	\$350,000.00	\$232,500.00	\$255,062.73	\$3,157,901.97
Total Federal:		\$2,526,321.58					
Total Local:		\$631,580.12					
Grand Total:		\$3,157,901.97					

Funding

In July 2019 there were insufficient local funds to complete the proposed GTC project. This funding reality necessitated a thorough review of the work proposed in this area of the project, and alternatives were produced to meet available revenue estimates. Table 2 (below) outlines the actual available revenue in July 2019 for designing and constructing the GTC project in 2020.

Table 2. "Modified Project" Consistent with Available Revenue

Project Name	Fargo Project No.	Total Project Cost
GTC – Above-Grade	F18006 F17008	\$2,217,911.72
		Total Federal: \$1,774,329.54
		Total Local: \$443,582.38
		Grand Total Modified Project: \$2,217,911.92

The Modified Project removed \$939,990.24 from the GTC project, and was consistent with NDDOT/FTA grant revenues available and the City's local match that had been budgeted and approved by the City Commission. The Modified Project included the following elements:

- Preserved security and safety upgrades for staff and Transit riders/public.
- Removed the exterior modifications for consideration at a later date. This option reduced a bulk set of projects that could be completed later.
- Removed deck revisions from the proposed project that can be considered in 2021-2022 with other exterior work.
- Increased space utilization and efficiencies. Transit was in need of additional administration space, which was accomplished in the Modified Project.

The Modified Project accomplished critical safety, security, and efficiency objectives at the GTC while conforming to budgetary constraints (i.e. available capital funds). Table 3-A is a summary of the revenue sources for the GTC improvements, and Table 3-B (following) was the proposed areas of cost for the original proposed project, and the Modified Project of October 2019.

Table 3-A. GTC Above-Grade Improvements by Revenue Source

Revenue Source (Funds)	Federal Share	Local Share	Total
NDDOT Contract No. 38181779 (City Code: F18006)	\$1,591,000	\$397,750	\$1,988,750
FTA Grant ND-2019-001-00 (City Code: F17008)	\$288,000	\$72,000	\$360,000
Total Revenue:	\$1,879,000	\$469,750	\$2,348,750

As shown above, sufficient capital funds were available to construct the Modified Project with its projected cost of \$2,217,911.72.

Table 3-B. GTC Estimated Above-Grade Improvements by Cost Center

Original Proposed Project Costs	Amount
General Construction	
General Requirements	\$237,000.00
Demolition	\$184,600.00
Concrete	\$16,073.00
Masonry	\$57,895.00
Metals	\$42,640.00
Wood and Plastics	\$80,606.00

Thermal and Moisture Protection	\$290,376.00
Openings/Doors and Windows	\$130,143.00
Finishes	\$122,841.00
Specialties	\$14,250.00
Furnishings	\$100,600.00
Special Construction	\$151,000.00
Deck Repairs and Renovations	\$329,232.50
Profit & Overhead	\$210,870.78
<i>Mechanical Construction</i>	\$350,000.00
<i>Electrical Construction</i>	\$232,500.00
Subtotal	\$2,550,627.28
10% Contingency	\$255,062.73
Architecture and Engineering Fees	\$352,211.96
Original Estimate of Cost:	\$3,157,901.97

Modified Project – Post-Budget Adjustments	
Remove Exterior Façade Improvements & Canopy Modifications	(\$537,632.00)
Deck renovations	(\$125,550.00)
Adjusted General Conditions	(\$66,318.20)
Profit	(\$79,581.84)
10% Contingency	(\$80,908.20)
Architecture and Engineering Fees	(\$50,000)
Sum of Budget Adjustments	(\$939,990.24)
Modified Project Estimate of Cost:	\$2,217,911.72

The GTC above-grade renovation project was bid in late 2019 and awarded in early 2020. Costs came in as follows:

Project Cost Summary: 3 Prime Contractors selected, Gast Construction, Rick Electric, Valley Services Mechanical		
Area of Work	Cost	
General Construction (Gast)	\$1,314,340.00	
Mechanical Construction (Valley Services)	\$353,537.00	
Electrical Construction	\$165,500.00	
A/E Fees	\$302,211.24	
Total Original Contract	\$2,135,588.24	

As the project progressed, unforeseen issues were identified, such as asbestos mitigation throughout the entire facility flooring and inadequate cabling. However, the full project, including the additional costs, were successfully completed as follows:

- Operations were temporarily moved to 401 3rd Ave N (the old Fargo Public Health Building).
- Relocating the fixed route dispatch center from the middle of the lobby area to the southeast corner of the GTC lobby allows better visibility for the dispatchers to control external bus movements and oversee the lobby area.
- The exterior bus stanchions have been removed and the existing canopy will be refurbished in 2021 to allow for more room on the deck for bus movements, fix the lighting issues which are causing glare/reflection situations at certain times of day and eliminate the issues with nesting birds.
- The bus deck has been reconfigured to allow buses to flow more easily and safely through the GTC, these changes will minimize any backing by buses.
- Repairs/replacement of the expansion joint surrounding the area.
- Removing the large conference room in the northeast corner of the GTC lobby and converting the space to the Jefferson offices.
- Changing main lobby north entrance – pocket doors have been installed vs the original swing doors, this enabled ease of entry to/from the GTC.
- Replacing the two (2) offices directly inside the lobby with one large conference room.
- Relocating the restrooms from the south side of the lobby to the east side of lobby, directly across from the GTC fixed route dispatch area.
- Construction of a ticketing area where fare media sales and customer interactions occur.
- All paratransit operations were moved from the Metro Transit Garage (MTG) to the GTC. One of the goals of relocation of paratransit is to cross train them with the fixed route dispatchers, who became City of Fargo employees December 28, 2020. With the blending of paratransit and fixed route dispatchers, we will increase the depth of knowledge and flexibility in customer service.
- Construction of an office area with four (4) offices, four (4) workstations for paratransit operations, and six (6) cubicles for Road Supervisors, Police/Security and expansion as needed.
- The Fargo Assistant Transit Director was moved to the GTC to oversee operations.

The net result of the construction is a larger lobby space, more lobby seating with the ability to access electrical and USB outlets, larger restrooms and much safer conditions. This initial interior portion of the project was substantially complete in early September 2020 and operations moved back to the GTC. With a variety of staff members moving to the GTC, much needed space was freed up at the Metro Transit Garage (MTG).

Finalize Exterior of the GTC Renovation Project:

The original project items we would like to have added back into this project are as follows: exterior furniture/planters/benches, replace roof (demo overhang, fascia rebuild, reroof), remaining deck revisions, replace canopies over deck area, upgrade exterior lighting to increase safety and mitigate window glare, repair/replace pedestrian deck areas to increase safety, any additional technology needs, painting and exterior signage.

KLJ, Inc. clearly analyzed and estimated this work, however, these costs will need to be updated. Remaining funding, combined with new funding, are summarized as follows: the funding in the CARES grant (\$1,798,024 – 100% federal funding), the remainder of a separate Federal Transit grant (\$116,703 – 80/20) and one NDDOT grant (\$350,000 – 80/20) will be utilized to cover portions of the renovation that were NOT covered by other funding sources for a grand total (federal and local) of \$2,264,726 (local share has been approved in the Transit budget). Please note a small portion of these funds have been utilized to finish a variety of unforeseen interior needs i.e. a PA system for dispatching and announcements, technology needs, and signage.

AMENDMENT TO ENGINEER-OWNER AGREEMENT
Amendment No. 6

Background Data

- a. Effective Date of Engineer-Owner Agreement: April 2019
- b. Engineer: Kadrmass, Lee & Jackson
- c. Owner: City of Fargo
- d. Project: GTC Remodel
- e. This Part of the Project: GTC Exterior Renovations

Nature of Amendment (check all that apply)

- ☒ Additional services to be performed by Engineer
- ☒ Modifications to services of Engineer
- ☐ Modifications to responsibilities of Owner
- ☒ Modifications to payment to Engineer
- ☒ Modifications to time(s) for rendering Services

Description of Modifications

KLJ's scope of services have been modified as identified in the Exhibit A.6 attached.

Agreement Summary

a. Original agreement amount:	\$332,740.08
b. Net change for prior amendments:	\$2,885.91
c. This amendment amount:	\$222,359.98
d. Adjusted Agreement amount:	\$557,985.97

Engineer and Owner hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is January 25, 2021.

ENGINEER: Kadrmas Lee & Jackson, Inc.

OWNER: City of Fargo

By: Mark Anderson

By: Tim Mahoney, MD

Title: Vice President, EPW

Title: Mayor

Date Signed: _____

Date Signed: _____



Contract Amendment No. 6
January 25, 2020
Architectural/Engineering Services
GTC Remodel
GTC Design Bid Build
Fargo, ND

Engineer's Services

The following modifications have been made to the scope of work included in the original contract between city of Fargo and KLJ dated April 2019. In October of 2019, the exterior renovations, including reroofing the building, reconfiguration of the exterior canopy and upgrading the exterior façade, were removed from the scope of work. It is our understanding that an additional \$2.2 million dollars has been secured to complete the design, bidding and construction of this work. Below is a summary of the scope of services to be provided by KLJ and our subconsultants.

a. GTC Exterior Remodel

A. Construction Documents

1. Scope of renovations to be considered are as follows:

- a. Create a designated smoking area at NW corner of the site adjacent to the existing transformer.
- b. Tint remaining exterior windows (i.e. windows not included with 2020 construction) and provide blinds on windows where identified by city.
- c. Provide additional sound damping between assistant transit director office and break room.
- d. Replace unit heater in the north vestibule.
- e. Add an automated PA system (including digital light release system) to the facility.
- f. Reconfiguration of exterior canopies utilizing the existing framing when feasible.
 - 1) Review of existing P/T deck to confirm new canopy layout doesn't overstress existing deck.
 - 2) Ground penetrating radar to identify locations of P/T tendons to accommodate anchor bolt placement for new canopy columns. It is anticipated there will be no more than 8 columns to locate.
- g. Re-roofing of the existing roof once canopy modifications are completed.
- h. Upgrade exterior fascia in areas along the building where canopies have been removed. This will include incorporation of exterior lighting that highlights the building and improves visibility and enclosing bottom of the canopy to prevent birds from nesting in the canopy. This will include demo roof overhang and rebuilding fascia around entire building.
- i. Deck repairs will include:
 - 1) Overlay replacement under the canopy, approximately 6,000sf.
 - 2) Overlay replacement for remaining GTC site (i.e. areas not replaced with 2020 construction) and Municipal Court site. This is estimated to be approximately 16,400sf.



- 3) Survey crew will shoot deck surface elevations to be utilized during construction to confirm elevation of deck rails.
 - j. Provide separation fence around IT equipment in new IT room created with 2020 construction.
 - k. Provide exterior furniture around facility.
 - l. Integrate pedestrian pathways including safety fencing and crosswalks to buses. Bus parking is anticipated to remain as delineated in 2020 construction.
 - m. Provide fresh paint for air handling units, beams, stanchions, edging, and fencing.
2. Hold a kick-off meeting with MATBUS at the onset of the project to review preliminary design completed in October 2019 and confirm scope of renovations to be performed under the current amendment.
3. An asbestos survey will be conducted during the design phase to identify asbestos containing materials that may be impacted as a result of the proposed renovations.
 - a. KLJ will visit and inspect all accessible areas of the structure to be impacted by proposed renovations. Perform a visual reconnaissance to identify the presence of suspect Asbestos-Containing Materials (ACM).
 - b. In each area that contains accessible potential ACM, representative samples will be collected. The sample locations will be recorded for inclusion in one final Asbestos Survey report. Sampling will involve destructive testing.
 - c. Homogeneous areas of building materials will be established, and the required number of samples will be collected per uniform sampling area square footage.
 - d. The bulk samples of suspect materials will be analyzed by a laboratory participating in the USEPA Laboratory Quality Control Program for Bulk Asbestos Samples (USEPA Round Robin) and National Institute of Standards (NIST), National Voluntary Laboratory Accreditation Program (NVLAP) in accordance with USEPA/NDDEQ regulations. The samples will be analyzed by polarized light microscopy (PLM) to determine the types of asbestos present as well as the percentage and identification of asbestos and other non-asbestos constituents. The techniques of analysis will be in accordance with Federal Register/Vol. 47 No. 130/Thursday, May 27, 1982/Rules and Regulations Appendix A, Interim Method for the Determination of Asbestos in Bulk Insulation Samples or any more current modification of technique that is approved by USEPA for analysis of bulk asbestos samples.
 - e. Following the reconnaissance, sampling and testing, KLJ will prepare an asbestos survey report. An electronic copy of the final written report will be provided to the city, NDDOT, and included in the bid documents. The report will include a summary of ACM encountered during the survey and the potential presence of ACM.
4. Integrate feedback from kick-off meeting and prepare 50% preliminary plans, specifications and opinions of cost to review with MATBUS at a preliminary design meeting.



5. Upon receipt of comments from preliminary design meeting, final recommendations will be moved forward into final design to prepare construction documents including plans and specifications for bidding and construction.
6. Prepare 90% plans and specifications for review with MATBUS.
7. Prepare final plans and specifications stamped and signed by design professionals licensed in the State of North Dakota. Deliver one electronic set of documents and one original signed set of documents to MATBUS.

B. Bidding Assistance

1. Provide front end specifications to be used for bidding purposes, including construction contracts and supplemental conditions. It is assumed the project will be bid with prime contracts for general construction, mechanical construction and electrical construction.
2. Prepare advertisement for bids to be coordinated with MATBUS.
3. Assemble bid documents and upload them to the appropriate plan rooms and builder's exchanges.
4. Issue addendums and field questions regarding changes or additional information to supplement project drawings and specifications.
5. Attend pre-bid meeting to be held at the GTC.
6. Attend the bid opening.
7. Compile a list of all bidders according to prime contracts for MATBUS and recommend those to be awarded contracts.
8. Issue Notice of Award to the bidders selected by MATBUS.
9. Assist MATBUS with setting up contract documents as required for each prime contract.
10. Issue Notice to Proceed with construction to the prime bidders awarded contracts.
11. Submit final plans to city of Fargo building inspections for plan review and permitting. Permits will be the responsibility of the contractor.

C. Construction Administration:

1. Answer questions and issue RFI's as necessary to clarify drawings or specifications.
2. Davis-Bacon wage rate interviews and submittals.
3. Shop drawing review.
4. Review of pay requests, preparation of change orders, and response to RFI's.
5. Attendance & administration of construction meetings. Construction meetings are anticipated to be held weekly for a maximum of six (6) months.
6. Weekly site visits during construction to review progress.
7. KLJ will perform one site visit prior to concrete placement to verify area is ready for concrete.
8. KLJ will provide continuous construction observation during overlay concrete pours. It is assumed no more than 14 pours will be completed and no more than 112 hours will be required.



9. Material testing for new overlay concrete, which is anticipated to include the following. It is assumed no more than 14 individual concrete pours will be required for the project.
 - a. 1-hour round trip travel time to and from the project or concrete plant for requested testing.
 - b. There will be up to 14 concrete pours, requiring our technician to be on site for 3 hours during each one.
 - c. Test air, slump, and unit weight at beginning of each pour.
 - d. Cast up to 56 total cylinders. Two from 1/3 point and two from 2/3 point of each pour, breaking two at 7 days and two at 28 days.
 - e. Run one gradation each on coarse and fine aggregate prior to initial pour.
 - f. Obtain and run moisture content on coarse and fine aggregate each day concrete is poured.
 - g. Provide a project assistant to project transmitting records.
 - h. Principal engineer will review the contract and consult on problem areas as needed.
 - i. A 24-hour notice will be needed to schedule the appropriate personnel.
10. KLJ will provide a survey crew to set rail elevations for up to 14 concrete pours.
11. Preparation of a punch list prior to substantial completion.
12. Final walkthrough.
13. Project Closeout.

D. Team responsibilities:

1. KLJ – Project Management, environmental planning, structural design, bidding assistance, and construction administration
2. Foss Architecture + Interiors – Architecture/Finishes, bidding assistance and construction administration
3. Vareberg Engineering – Electrical design, bidding assistance and construction administration
4. KFI Engineers – Mechanical design, bidding assistance and construction administration
5. Kimley-Horn – Pedestrian crosswalks/fencing and post-tension concrete analysis and anchorage, bidding assistance and construction administration
6. Braun Intertec – Ground penetrating radar and material testing for concrete overlay replacement

b. Anticipated Project Schedule

Contract Amendment Execution/Notice to Proceed	January 25, 2021
Kick-Off Meeting.....	Week of February 8, 2021
50% Design Meeting.....	Week of March 1, 2021
90% Design Meeting.....	Week of March 29, 2021
Final Construction Documents	Week of April 12, 2021
Advertise for Bid	April 14, 2021
Open Bids	May 12, 2021
Construction Administration	June – November 2021



c. Services Not Included

These services can be provided upon request and will be negotiated at the time services are rendered and will be address in an amendment to the contract.

- A. Post-tension concrete repairs.
- B. Reconfiguration of bus parking layout.
- C. Preparation of multiple bid packages for any tasks or re-bidding a bid package.
- D. Preparation of as-built drawings.
- E. Additional services, tasks, and meetings not described in tasks outlined above.
- F. Extended construction administration for construction duration in excess of the timelines included in the tasks outlined above.
- G. Material testing, construction observation and construction staking/survey beyond those services identified above.



ENGINEERING FEES

GTC REMODEL - Contract Amendment #6 (January 25, 2021)							
1.	Direct Labor	Hours	X	Rate	=	Project Cost	Total
	Contract Administrator	2	X	30	=	\$ 60.00	\$ 60.00
	Project Controls Specialist I	54	X	37	=	\$ 1,998.00	\$ 1,998.00
	Project Manager	300	X	59	=	\$ 17,700.00	\$ 17,700.00
	Engineer	218	X	45	=	\$ 9,810.00	\$ 9,810.00
	CAD Technician I	24	X	25	=	\$ 600.00	\$ 600.00
	Survey Technician	38	X	24	=	\$ 912.00	\$ 912.00
	Professional Land Surveyor	38	X	42	=	\$ 1,596.00	\$ 1,596.00
	GIS Analyst IV	2	X	52	=	\$ 104.00	\$ 104.00
	Environmental Planner II	26	X	29	=	\$ 754.00	\$ 754.00
	Environmental Planner IV	4	X	50	=	\$ 200.00	\$ 200.00
			X		=	\$ -	\$ -
			X		=	\$ -	\$ -
	Subtotal				=	\$ 33,734.00	\$ 33,734.00
2.	Overhead/Indirect Cost (expressed as indirect rate x direct labor)					185.16%	\$ 62,461.87
3.	Subcontractor Costs					\$ 112,120.61	\$ 112,120.61
4.	Materials and Supplies Costs					\$ 2,500.00	\$ 2,500.00
5.	Travel Costs					\$ -	\$ -
6.	Fixed Fee					12%	\$ 11,543.50
7.	Miscellaneous Costs						\$ -
	Total Cost				=		\$ 222,359.98

(21)

January 21, 2021

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

Subject: 2021 Chlorine Contract Award to Hawkins Water Treatment Group

Dear Commissioners:

Water Utility staff is seeking approval to award a contract for chlorine to Hawkins Water Treatment Group (Hawkins). Chlorine is a critical chemical for water treatment as a disinfectant and other purposes. The price will be \$524.40 per ton or about \$80,000 total for 2021.

The Fargo City Commission approved a bid award for chlorine at 524.40 per ton to DPC Industries on November 16, 2020. However, Water Utility personnel were notified in late-December 2020 that DPC Industries will not honor the chlorine contract and is no longer serving this region as a chlorine provider.

Hawkins is now the only other regional option in providing Fargo water plant with chlorine ton cylinders approved for water treatment. Hawkins has offered to match the DPC chlorine bid price of \$524.40 per ton for the remainder of 2021.

Your consideration is greatly appreciated in this matter.

Sincerely,



Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Award the 2021 contract to Hawkins Water Treatment Group for providing chlorine at \$524.40 per ton to the Water Treatment Plant.

REPORT OF ACTION

(23)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-20-C1

Type: Change Order #2

Location: 64th Ave S, 25th St – 33rd St

Date of Hearing: 1/19/2021

Routing

City Commission

Date

1/25/2021

PWPEC File

X

Project File

Dave Helland

The Committee reviewed the accompanying correspondence from Street Lighting Project Manager, Dave Helland, for Change Order #2 in the amount of \$3,947.43 which is for a vandal proof pedestrian tunnel lighting system.

Staff is recommending approval of Change Order #2 in the amount of \$3,947.43, bringing the total contract amount to \$5,211,422.32.

On a motion by Steve Sprague, seconded by Ben Dow, the Committee voted to recommend approval of Change Order #2 to Dakota Underground.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Change Order #2 in the amount of \$3,947.43, bringing the total contract amount to \$5,211,422.32 to Dakota Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Cass County Joint WRD Funds, Sales Tax & Special Assessments

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

Yes No

N/A

N/A

N/A

COMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☒☒☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☐☐☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

Brenda Derrig, City Engineer

☒☒☐

Kent Costin, Finance Director

☐☐☐

ATTEST:



Brenda E. Derrig, P.E.
 City Engineer

C: Kristi Olson



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

Memorandum

To: Members of PWPEC
From: Dave Helland, Project Manager Street Lighting
Date: January 13, 2021
Re: Improvement District No. BN-20-C1 – Change Order # 2

Background:

Improvement District No. BN-20-C1 is for new construction of paving and incidentals on 64th Avenue South from 25th Street to 33rd Street.

Dakota Underground is the Prime Contractor on this project and Scott's Electric is the electrical Sub-Contractor.

The attached Change Order #2 provides for a vandal proof pedestrian tunnel lighting system. Due to past history of tunnel lighting vandalism, a vandal proof lighting system will replace the previously designed lineal lighting with vandal proof housing/led lights.

Recommended Motion:

Approve Change Order #2 for the amount of \$3,947.43.

DJH/klb

Attachments

C: Thomas Knakmuhs

Improvement District No	BN-20-C1	Change Order No	2
Project Name	PCC Paving, Site Grading, Structures, Storm Sewer, Water Main Replacement, Street Lighting, Sidewalk		
Date Entered	1/13/2021	For	Dakota Underground Co Inc

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

EXPLANATION OF CHANGE: C.O. #2 Pedestrian Tunnel Lighting Upgrade

Pedestrian Tunnel: A vandal proof lighting system will replace the previously designed linear lighting with vandal proof housing/led lights.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Street Lighting	147	Extra - Street Lights	LS	0.00	0.00	0.00	0.00	1.00	3,947.43	3,947.43
Street Lighting Sub Total (\$)										3,947.43

Summary

Source Of Funding: Cass County Joint WRD Funds, Sales Tax Funds - Infrastructure - 420, Special Assessments

Net Amount Change Order # 2 (\$)	3,947.43
Previous Change Orders (\$)	55,929.27
Original Contract Amount (\$)	5,151,545.62
Total Contract Amount (\$)	5,211,422.32

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
09/29/2020	10/31/2020	0.00	0.00	09/26/2020	10/31/2020

Description

APPROVED

APPROVED DATE

For Contractor

Department Head

[Signature] 1/14/2021
[Signature] 1/20/21

Title

Project Manager

Mayor

Attest

REPORT OF ACTION

124

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-20-C1

Type: Change Order #3

Location: 64th Ave S, 25th St – 33rd St

Date of Hearing: 1/19/2021

Routing

City Commission

Date

1/25/2021

PWPEC File

X

Project File

Jake Rick

The Committee reviewed the accompanying correspondence from Traffic Project Manager, Jake Rick, for Change Order #3 in the amount of \$15,624.06, for additional work.

Staff is recommending approval of Change Order #3 in the amount of \$15,624.06, bringing the total contract amount to \$5,227,046.38.

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

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Change Order #3 in the amount of \$15,624.06, bringing the total contract amount to \$5,227,046.38 to Dakota Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Cass County Joint WRD Funds, Sales Tax & Special Assessments

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

Yes No

N/A

N/A

N/A

COMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☒☒☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

☒☒☐

Bruce Grubb, City Administrator

☐☐☐

Ben Dow, Director of Operations

☒☒☐

Steve Sprague, City Auditor

☒☒☐

Brenda Derrig, City Engineer

☒☒☐

Kent Costin, Finance Director

☐☐☐

ATTEST:



Brenda E. Derrig, P.E.
 City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Jake Rick, Project Manager (Traffic)
Date: January 11, 2021
Re: Improvement District No. BN-20-C1 – Change Order #3

Background:

Improvement District No. BN-20-C1 is for new construction of paving and incidentals on 64th Avenue South from 25th Street to 33rd Street South.

Dakota Underground is the Prime Contractor for this project and Scotts Electric is the electrical Sub-Contractor.

These 3 vaults are being added for future communications to City of Fargo future building along 64th Avenue South.

The attached Change Order #3 provides an additional bid item for these vaults.
-F&I Pull Box Polymer Concrete – 3 @ \$5,208.02 EA

Recommended Motion:

Approve Change Order #3 for the amount of \$15,624.06 to Dakota Underground.

Attachment

Invoice Dakota Underground
Signed Change Order Report

C: Tom Knakmuhs
Jeremy Gorden



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Improvement District No	BN-20-C1	Change Order No	3
Project Name	POC Paving, Site Grading, Structures, Storm Sewer, Water Main Replacement, Street Lighting, Sidewalk		
Date Entered	1/5/2021	For	Dakota Underground Co Inc

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

EXPLANATION OF CHANGE: Additional Fiber Vaults

IS Dept wanted splice vaults in a few location for communications to future City buildings.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Street Lighting	147	F&I Pull Box Polymer Conc	EA	0.00	0.00	0.00	3.00	3.00	5,208.02	15,624.06
Street Lighting Sub Total (\$)										15,624.06

Summary

Source Of Funding Cass County Joint WRD Funds, Sales Tax Funds - Infrastructure - 420, Special Assessments

Net Amount Change Order # 3 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
09/29/2020	10/31/2020	0.00	0.00	09/28/2020	10/31/2020

Description

APPROVED

For Contractor

APPROVED DATE

Department Head

(in CLUD)
(LO # 2

15,624.06
~~55,929.27~~
\$51,876.38

5,151,545.62
~~5,228,008.95~~

\$5,127,046.38

TLOO 1/20/21

[Signature] 1/5/2021
Dakota Underground



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Title	Mayor	Attest
<i>Rajeev Kumar</i>		

Dakota Underground Co.

4001 15th Ave N

Fargo, ND 58102 US

jared@dakotaunderground.net

www.dakotaunderground.net



INVOICE

BILL TO
City of Fargo Improvement District BN-20-C1

INVOICE 1078
DATE 11/18/2020
TERMS Net 30
DUE DATE 12/18/2020

SERVICE	DESCRIPTION	QTY	RATE	AMOUNT
Extra Work	Quazite Vaults Replace PVC Hand Hole (3 Total)	3	5,208.02	15,624.06

BALANCE DUE

\$15,624.06



671 S. 6th St. • PO Box 505 • Wahpeton, ND 58074 • Phone (701) 642-9244 • Fax (701) 642-9245

August 31st, 2020

To: Jared Heller
Dakota Underground
4001 15th Ave N
Fargo, ND 58102

Project: City of Fargo
BN-20-C1 64th Ave Project
Quazite Vault Install

Proposal to install a 30"X48"X48" Quazite vault in lieu of a 24" PVC hand hole at the intersection of 64th Ave S and 33rd St and at the intersection of 64th Ave S and 31st St per City of Fargo specifications.

\$4,734.56 per each location

10% GC Markup = \$473.56

Total per = \$5,208.02

We already have the PVC pull box, ring and cover as originally shown. We will turn these over to the City of Fargo for their stock.

If there are any questions regarding this proposal, please contact me at 701-642-9244 or scott@scottselectric.net.

Sincerely,

A handwritten signature in cursive script that reads "Scott Meyer".

Scott Meyer
President

REPORT OF ACTION

(25)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. AN-20-A1 Type: Final Balancing Change Order #1

Location: 9th to 10th Ave S, b/w 4th and 5th St S Date of Hearing: 1/19/2021

<u>Routing</u>	<u>Date</u>
City Commission	1/25/2021
PWPEC File	X
Project File	Jeremy Engquist

The Committee reviewed the accompanying correspondence from Project Manager, Jeremy Engquist, for Final Balancing Change Order #1 in the amount of \$1,162.00, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Final Balancing Change Order #1 in the amount of \$1,162.00, bringing the total contract amount to \$134,622.00.

On a motion by Steve Sprague, seconded by Ben Dow, the Committee voted to recommend approval of Final Balancing Change Order #1 to Key Contracting.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Final Balancing Change Order #1 in the amount of \$1,162.00, bringing the total contract amount to \$134,622.00 to Key Contracting.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: _____ Special Assessments _____

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


Yes	No
	N/A
	N/A
	N/A

COMMITTEE

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

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

ATTEST:


 Brenda E. Derrig, P.E.
 City Engineer

C: Kristi Olson

Improvement District No	AN-20-A1	Change Order No	1
Project Name	PC Concrete Alley Paving & Incidentals		
Date Entered	12/8/2020	For	Key Contracting Inc

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

EXPLANATION OF CHANGE: Final Balancing Change Order

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Paving	6	Subgrade Preparation	SY	1,052.00	0.00	1,052.00	12.00	1,064.00	4.00	48.00
	7	Remove Pavement All Thicknesses All Types	SY	18.00	0.00	18.00	2.00	20.00	55.00	110.00
	8	Remove Driveway All Thicknesses All Types	SY	70.00	0.00	70.00	-6.00	64.00	18.00	-108.00
	9	Rem & Repl Curb & Gutter	LF	8.00	0.00	8.00	22.00	30.00	100.00	2,200.00
	11	F&I Driveway 6" Thick Reinf Conc	SY	52.00	0.00	52.00	12.00	64.00	76.00	912.00
	12	F&I Pavement 7" Thick Asph	SY	18.00	0.00	18.00	2.00	20.00	100.00	200.00
	13	Casting to Grade - w/Conc	EA	4.00	0.00	4.00	-1.00	3.00	500.00	-500.00
	14	Mulching Type 1 - Hydro	SY	200.00	0.00	200.00	-170.00	30.00	5.00	-850.00
	15	Seeding Type B	SY	200.00	0.00	200.00	-170.00	30.00	5.00	-850.00
	Paving Sub Total (\$)									1,162.00

Summary

Source Of Funding

Net Amount Change Order # 1 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

1,162.00
0.00

133,460.00
134,622.00





**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
10/16/2020		0.00	0.00	10/16/2020	

APPROVED  For Contractor	APPROVED DATE  Department Head Mayor
Title VP Key Contracting	1/20/21

Attest

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(26)

Improvement District No. PN-18-B1 Type: Negative Final Balancing Change Order #3

Location: 23 Ave S, 42 to 38 St & 41 St, 23 to 24 Ave S Date of Hearing: 1/19/2021

<u>Routing</u>	<u>Date</u>
City Commission	<u>1/25/2021</u>
PWPEC File	<u>X</u>
Project File	<u>Jeremy Engquist</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jeremy Engquist, for Negative Final Balancing Change Order #3 in the amount of -\$155,786.24, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #3 in the amount of -\$155,786.24, bringing the total contract amount to \$2,660,509.36.

On a motion by Steve Sprague, seconded by Ben Dow, the Committee voted to recommend approval of Negative Final Balancing Change Order #3 to Dakota Underground.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Negative Final Balancing Change Order #3 in the amount of -\$155,786.24, bringing the total contract amount to \$2,660,509.36 to Dakota Underground.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: Infrastructure Funds & Special Assessments

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

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

COMMITTEE

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

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

ATTEST:


 Brenda E. Derrig, P.E.
 City Engineer

C: Kristi Olson



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Improvement District No	PN-18-B1	Change Order No	3
Project Name	PC Concrete Paving, Concrete Curb and Gutter, Asphalt Pavement & Incidentals		
Date Entered	1/5/2021	For	Dakota Underground Co Inc

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

EXPLANATION OF CHANGE: Final Balancing Change Order

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Underground	2	Remove Pipe All Sizes All Types	LF	180.00	0.00	180.00	-13.00	167.00	30.00	-390.00
	8	F&I Pipe 15" Dia Reinf Conc	LF	43.00	0.00	43.00	-3.00	40.00	57.00	-171.00
	9	F&I Pipe w/GB 15" Dia Reinf Conc	LF	233.00	0.00	233.00	-3.00	230.00	63.00	-189.00
	12	Connect Pipe to Exist Structure	EA	6.00	0.00	6.00	-1.00	5.00	880.00	-880.00
Underground Sub Total (\$)										-1,630.00
Paving	13	Temp Fence - Safety	LF	500.00	0.00	500.00	-500.00	0.00	2.50	-1,250.00
	14	Remove Pavement All Thicknesses All Types	SY	2,800.00	0.00	2,800.00	-16.00	2,784.00	14.00	-224.00
	15	Remove Sidewalk All Thicknesses All Types	SY	530.00	0.00	530.00	53.00	583.00	7.00	371.00
	16	Remove Curb & Gutter	LF	850.00	0.00	850.00	134.00	984.00	5.00	670.00
	20	Subcut	CY	2,500.00	0.00	2,500.00	-1,317.00	1,183.00	5.00	-6,585.00
	21	Subgrade Preparation	SY	19,600.00	0.00	19,600.00	-575.00	19,025.00	2.10	-1,207.50
	22	F&I Woven Geotextile	SY	19,600.00	0.00	19,600.00	-575.00	19,025.00	1.25	-718.75
	23	F&I Class 5 Agg - 8" Thick	SY	2,400.00	0.00	2,400.00	-136.00	2,264.00	7.50	-1,020.00
	24	F&I Class 5 Agg - 12" Thick	SY	17,200.00	0.00	17,200.00	-315.00	16,885.00	10.20	-3,213.00
	25	F&I Curb & Gutter Standard (Type II)	LF	8,600.00	0.00	8,600.00	-5.00	8,595.00	18.50	-92.50
	26	F&I Pavement 10" Thick Doweled Conc	SY	14,300.00	0.00	14,300.00	-1,583.00	12,717.00	70.00	-110,810.00
	27	F&I Edge Drain 4" Dia PVC	LF	5,300.00	0.00	5,300.00	-94.00	5,206.00	6.00	-564.00



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Paving										
28	F&I Median Nose - Conc	SY	30.00	0.00	30.00	47.20	77.20	150.00	7,080.00	
29	F&I Sidewalk 4" Thick Reinf Conc	SY	4,100.00	0.00	4,100.00	-310.00	3,790.00	37.00	-11,470.00	
30	F&I Sidewalk 6" Thick Reinf Conc	SY	300.00	0.00	300.00	190.00	490.00	42.00	7,980.00	
32	F&I Impressioned 4" Thick Reinf Conc	SY	1,250.00	0.00	1,250.00	-74.00	1,176.00	73.50	-5,439.00	
33	F&I Impressioned 8" Thick Reinf Conc	SY	250.00	0.00	250.00	29.00	279.00	77.00	2,233.00	
36	F&I Asphalt Cement PG 58-34	GAL	14,000.00	0.00	14,000.00	-2,408.62	11,591.38	3.10	-7,466.72	
37	F&I Aggregate for Asph Pavement FAA 43	TON	1,000.00	0.00	1,000.00	-5.44	994.56	41.50	-225.76	
42	F&I Hydrant Ext. 6" High	EA	3.00	0.00	3.00	-2.00	1.00	680.00	-1,360.00	
43	F&I Hydrant Ext. 12" High	EA	3.00	0.00	3.00	-2.00	1.00	775.00	-1,550.00	
44	Inlet Protection - Existing Inlet	EA	20.00	0.00	20.00	-2.00	18.00	150.00	-300.00	
45	Inlet Protection - New Inlet	EA	9.00	0.00	9.00	-1.00	8.00	150.00	-150.00	
46	Temp Construction Entrance	EA	3.00	0.00	3.00	-3.00	0.00	1,000.00	-3,000.00	
49	Construction Signing	SF	70.00	0.00	70.00	-70.00	0.00	46.00	-3,220.00	
119	* Remove Chain link Fence	LS	0.00	0.00	0.00	1.00	1.00	957.00	957.00	
Paving Sub Total (\$)									-140,575.23	
Landscaping										
50	Mulching Type 1 - Hydro	SY	26,000.00	0.00	26,000.00	-7,810.00	18,190.00	0.31	-2,421.10	
51	Mulching Type 2 - Straw	SY	1,500.00	0.00	1,500.00	-1,500.00	0.00	0.22	-330.00	
52	Seeding Type B	SY	26,000.00	0.00	26,000.00	-936.00	25,064.00	0.31	-290.16	
53	Seeding Type C	SY	1,500.00	0.00	1,500.00	-1,500.00	0.00	0.31	-465.00	
54	F&I Perf Tree Drain SDR 35 - 4" Dia PVC	LF	380.00	0.00	380.00	-76.00	304.00	10.00	-760.00	
Landscaping Sub Total (\$)									-4,266.26	
Signing										
57	F&I Diamond Grade Cubed	SF	49.50	0.00	49.50	117.60	167.10	31.00	3,645.60	
58	F&I Engineering Grade	SF	14.30	0.00	14.30	-12.80	1.50	27.00	-345.60	
59	F&I High Intensity Prismatic	SF	140.00	0.00	140.00	-96.20	43.80	31.00	-2,982.20	
60	F&I Sign Assembly	EA	5.00	0.00	5.00	-4.00	1.00	70.00	-280.00	
61	F&I Sign Assembly & Anchor	EA	26.00	0.00	26.00	5.00	31.00	100.00	500.00	
120	* Reset Existing Signs	LS	0.00	0.00	0.00	1.00	1.00	605.00	605.00	
Signing Sub Total (\$)									1,142.80	



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Pavement Markings	63	F&I Grooved Plastic Film 16" Wide	LF	175.00	0.00	175.00	-120.00	55.00	23.00	-2,760.00
	64	F&I Grooved Plastic Film 24" Wide	LF	892.00	0.00	892.00	-60.00	832.00	36.00	-2,160.00
	65	F&I Grooved Contrast Film 7" Wide	LF	2,688.00	0.00	2,688.00	-1,131.00	1,557.00	10.80	-12,214.80
	66	F&I Grooved Plastic Film Message	SF	368.00	0.00	368.00	-22.00	346.00	37.00	-814.00
	67	F&I Grooved Contrast Film 11" Wide	LF	1,361.00	0.00	1,361.00	-252.00	1,109.00	16.00	-4,032.00
	68	Paint Epoxy Message	SF	150.00	0.00	150.00	225.00	375.00	15.00	3,375.00
	117	* Paint Epoxy Line 4" Wide	LF	0.00	0.00	0.00	1.00	1.00	3,157.44	3,157.44
Pavement Markings Sub Total (\$)										-15,448.36
Street Lighting	71	F&I Base 6' Deep Reinf Conc	EA	6.00	0.00	6.00	1.00	7.00	1,220.00	1,220.00
	72	F&I Base 7' Deep Reinf Conc	EA	9.00	0.00	9.00	3.00	12.00	1,270.00	3,810.00
	74	F&I Conductor #6 USE Cu	LF	14,490.00	0.00	14,490.00	948.00	15,438.00	1.54	1,459.92
	75	F&I Innerduct 1.5" Dia	LF	4,768.00	0.00	4,768.00	-429.00	4,339.00	3.10	-1,329.90
	76	F&I Luminaire Type A	EA	11.00	0.00	11.00	1.00	12.00	245.00	245.00
	77	F&I Luminaire Type B	EA	23.00	0.00	23.00	3.00	26.00	385.00	1,155.00
	78	F&I Pull Box	EA	3.00	0.00	3.00	-1.00	2.00	1,545.00	-1,545.00
Street Lighting Sub Total (\$)										5,015.02
Traffic Signals	81	F&I Pull Box PVC	EA	17.00	0.00	17.00	-1.00	16.00	1,220.00	-1,220.00
	84	F&I Ped Push Button Post	EA	3.00	0.00	3.00	1.00	4.00	1,170.00	1,170.00
	85	F&I Signal Standard Type V 17.5' High	EA	2.00	0.00	2.00	-1.00	1.00	590.00	-590.00
	88	F&I Foundation Type V	EA	2.00	0.00	2.00	-1.00	1.00	2,350.00	-2,350.00
	106	F&I Conduit 1.5" Dia	LF	79.00	0.00	79.00	41.00	120.00	7.50	307.50
	107	F&I Conduit 2" Dia	LF	5,224.00	0.00	5,224.00	143.00	5,367.00	5.40	772.20
	118	* Changing Fargo Type B cabinet from a TS1 to a TS2 cabinet. Price is \$1595.00 + 7.5% sale tax = \$1714.63	LS	0.00	0.00	0.00	1.00	1.00	1,886.09	1,886.09
Traffic Signals Sub Total (\$)										-24.21
* NC Items										-155,786.24

Summary



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Source Of Funding

Net Amount Change Order # 3 (\$)	-155,786.24
Previous Change Orders (\$)	14,068.20
Original Contract Amount (\$)	2,802,227.40
Total Contract Amount (\$)	2,660,509.36

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
06/01/2020	07/15/2020	0.00	0.00	06/01/2020	07/15/2020

Description

APPROVED

APPROVED DATE

For Contractor

Department Head

Title

Mayor

Attest

[Signature] 1/6/2021

Dakota Underground

Project Manager

[Signature] 1/20/21

(27)

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. PR-20-E1 Type: Negative Final Balancing Change Order #1

Location: Citywide Date of Hearing: 1/19/2021

<u>Routing</u>	<u>Date</u>
City Commission	<u>1/25/2021</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Hoogland</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Hoogland, for Negative Final Balancing Change Order #1 in the amount of -\$48,835.11, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #1 in the amount of -\$48,835.11, bringing the total contract amount to \$1,263,123.56.

On a motion by Steve Sprague, seconded by Ben Dow, the Committee voted to recommend approval of Negative Final Balancing Change Order #1 to Border States Paving Inc.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Negative Final Balancing Change Order #1 in the amount of -\$48,835.11, bringing the total contract amount to \$1,263,123.56 to Border States Paving Inc.

PROJECT FINANCING INFORMATION:

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

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<input checked="" type="checkbox"/>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Bruce Grubb, City Administrator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Kent Costin, Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:



Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Improvement District No	PR-20-E1	Change Order No	1
Project Name	Asphalt Mill & Overlay & Incidentals		
Date Entered	1/8/2021	For	Border States Paving Inc

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

EXPLANATION OF CHANGE: Final

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

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Section 3	1	Repair Inlet	EA	5.00	0.00	5.00	10.00	15.00	389.00	3,890.00
	2	F&I Repair Band 4" thru 12" Dia	EA	4.00	0.00	4.00	3.00	7.00	883.00	2,649.00
	3	Rem & Repl Curb & Gutter	LF	5,000.00	0.00	5,000.00	157.50	5,157.50	42.00	6,615.00
	4	Adjust Curb & Gutter - Mud/Sand Jack	LF	5,000.00	0.00	5,000.00	-540.00	4,460.00	11.50	-6,210.00
	5	F&I Valley Gutter Reinf Conc	SY	63.00	0.00	63.00	-35.42	27.58	88.30	-3,127.59
	6	Remove Valley Gutter Reinf Conc	SY	63.00	0.00	63.00	11.87	74.87	20.00	237.40
	7	F&I Sidewalk 4" Thick Reinf Conc	SY	50.00	0.00	50.00	37.93	87.93	66.20	2,510.97
	8	F&I Sidewalk 6" Thick Reinf Conc	SY	115.75	0.00	115.75	13.06	128.81	71.50	933.79
	9	Remove Sidewalk All Thicknesses All Types	SY	116.00	0.00	116.00	90.12	206.12	20.00	1,802.40
	10	Adjust Driveway - Mud/Sand Jack	SF	3,000.00	0.00	3,000.00	1,104.00	4,104.00	3.15	3,477.60
	11	Rem & Repl Driveway 6" Thick Reinf Conc	SY	50.00	0.00	50.00	-50.00	0.00	71.50	-3,575.00
	12	Rem & Repl Driveway 7" Thick Reinf Conc	SY	50.00	0.00	50.00	86.32	136.32	98.80	8,528.42
	13	F&I Det Warn Panels Cast Iron	SF	340.00	0.00	340.00	-28.00	312.00	53.60	-1,500.80
	14	F&I Aggregate for Asph Pavement FAA 43	TON	6,200.00	0.00	6,200.00	472.73	6,672.73	40.00	18,909.20
	15	F&I Asphalt Cement PG 58S-34	TON	336.00	0.00	336.00	34.29	370.29	520.00	17,830.80
	16	Rem & Repl Casting - Inlet	EA	3.00	0.00	3.00	-3.00	0.00	494.00	-1,482.00
	17	Rem & Repl Casting - Self Leveling	EA	5.00	0.00	5.00	1.00	6.00	1,520.00	1,520.00



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Section 3									
18	Casting to Grade - no Conc	EA	22.00	0.00	22.00	-1.00	21.00	207.00	-207.00
19	GV Box to Grade - no Conc	EA	12.00	0.00	12.00	1.00	13.00	89.30	89.30
20	Rem & Repl Pavement 10" Thick Asph	SY	300.00	0.00	300.00	-244.00	56.00	56.00	-13,664.00
22	Mill / Grind Asphalt Pvmnt 1" to 2" Thick	SY	7,420.00	0.00	7,420.00	260.88	7,680.88	1.60	417.41
23	Mill / Grind Asphalt Pvmnt 2" to 4" Thick	SY	11,232.00	0.00	11,232.00	-0.23	11,231.77	3.00	-0.69
24	Sodding	SY	500.00	0.00	500.00	-83.87	416.13	26.30	-2,205.78
25	Paint Epoxy Line 4" Wide	LF	510.00	0.00	510.00	34.00	544.00	2.85	96.90
26	Paint Epoxy Line 8" Wide	LF	133.00	0.00	133.00	17.00	150.00	12.60	214.20
29	F&I Detection Preformed Loop	EA	3.00	0.00	3.00	-1.00	2.00	1,940.00	-1,940.00
72	* seeding and bonded fiber mulch instead of the sod	LS	0.00	0.00	0.00	1.00	1.00	2,425.92	2,425.92
Section 3 Sub Total (\$)									
Section 4									
30	Repair Inlet	EA	5.00	0.00	5.00	-2.00	3.00	389.00	-778.00
31	F&I Repair Band 4" thru 12" Dia	EA	1.00	0.00	1.00	-1.00	0.00	883.00	-883.00
32	Rem & Repl Curb & Gutter	LF	1,000.00	0.00	1,000.00	-340.25	659.75	42.00	-14,290.50
33	Adjust Curb & Gutter - Mud/Sand Jack	LF	1,000.00	0.00	1,000.00	282.00	1,282.00	11.50	3,243.00
34	F&I Sidewalk 4" Thick Reinf Conc	SY	20.00	0.00	20.00	51.78	71.78	66.20	3,427.84
35	F&I Sidewalk 6" Thick Reinf Conc	SY	148.60	0.00	148.60	-64.79	83.81	71.50	-4,632.49
36	Remove Sidewalk All Thicknesses All Types	SY	135.70	0.00	135.70	-2.18	133.52	20.00	-43.60
37	Adjust Driveway - Mud/Sand Jack	SF	1,000.00	0.00	1,000.00	524.00	1,524.00	3.15	1,650.60
38	Rem & Repl Driveway 6" Thick Reinf Conc	SY	50.00	0.00	50.00	-50.00	0.00	71.50	-3,575.00
39	F&I Det Warn Panels Cast Iron	SF	168.00	0.00	168.00	12.00	180.00	53.60	643.20
40	F&I Aggregate for Asph Pavement FAA 43	TON	1,560.00	0.00	1,560.00	76.91	1,636.91	40.00	3,076.40
41	F&I Asphalt Cement PG 58S-34	TON	86.00	0.00	86.00	7.78	93.78	520.00	4,045.60
42	Rem & Repl Casting - Inlet	EA	2.00	0.00	2.00	-2.00	0.00	494.00	-988.00
43	Rem & Repl Casting - Self Leveling	EA	15.00	0.00	15.00	-2.00	13.00	1,520.00	-3,040.00
45	Rem & Repl Pavement 9" Thick Asph	SY	100.00	0.00	100.00	-100.00	0.00	56.00	-5,600.00



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Section 4		46	Mill / Grind Asphalt Pvmnt Along Curb	LF	6,532.00	0.00	6,532.00	-23.00	6,509.00	1.50	-34.50
		47	Mill / Grind Asphalt Pvmnt 1" to 2" Thick	SY	633.00	0.00	633.00	44.85	677.85	2.50	112.13
		48	Sodding	SY	200.00	0.00	200.00	-200.00	0.00	26.30	-5,260.00
		71	* seeding and bonded fiber mulch behind curbs and by ada ramps in place of sod.	LS	0.00	0.00	0.00	1.00	1.00	2,490.56	2,490.56
		Section 4 Sub Total (\$)									-20,435.76
Section 5		50	Repair Inlet	EA	13.00	0.00	13.00	-13.00	0.00	389.00	-5,057.00
		51	F&I Repair Band 14" thru 24" Dia	EA	9.00	0.00	9.00	-9.00	0.00	1,310.00	-11,790.00
		52	F&I Repair Band 27" thru 36" Dia	EA	4.00	0.00	4.00	-4.00	0.00	1,790.00	-7,160.00
		53	Rem & Repl Curb & Gutter	LF	500.00	0.00	500.00	-358.10	141.90	42.00	-15,040.20
		54	F&I Sidewalk 6" Thick Reinf Conc	SY	20.00	0.00	20.00	-20.00	0.00	71.50	-1,430.00
		55	Remove Sidewalk All Thicknesses All Types	SY	20.00	0.00	20.00	-20.00	0.00	20.00	-400.00
		56	Rem & Repl Driveway 7" Thick Reinf Conc	SY	100.00	0.00	100.00	-100.00	0.00	98.80	-9,880.00
		57	F&I Det Warn Panels Cast Iron	SF	20.00	0.00	20.00	-20.00	0.00	53.60	-1,072.00
		58	F&I Aggregate for Asph Pavement FAA 43	TON	1,300.00	0.00	1,300.00	-201.47	1,098.53	40.00	-8,058.80
		59	F&I Asphalt Cement PG 58H-34	TON	72.00	0.00	72.00	-10.89	61.11	570.00	-6,207.30
		60	Rem & Repl Casting - Inlet	EA	1.00	0.00	1.00	-1.00	0.00	494.00	-494.00
		61	Casting to Grade - no Conc	EA	6.00	0.00	6.00	-1.00	5.00	207.00	-207.00
		62	GV Box to Grade - no Conc	EA	1.00	0.00	1.00	-1.00	0.00	92.00	-92.00
		63	Mill / Grind Asphalt Pvmnt Along Curb	LF	4,767.00	0.00	4,767.00	-72.50	4,694.50	1.50	-108.75
		64	Mill / Grind Asphalt Pvmnt 1" to 2" Thick	SY	445.00	0.00	445.00	62.60	507.60	2.50	156.50
		65	Paint Epoxy Line 4" Wide	LF	4,081.00	0.00	4,081.00	28.00	4,109.00	2.85	79.80
		66	Paint Epoxy Line 8" Wide	LF	845.00	0.00	845.00	-351.30	493.70	6.20	-2,178.06
		69	F&I Detection Preformed Loop	EA	1.00	0.00	1.00	1.00	2.00	1,940.00	1,940.00
		70	* seeding & bonded fiber mulch behind curb	LS	0.00	0.00	0.00	1.00	1.00	364.02	364.02
		Section 5 Sub Total (\$)									-56,634.79
		Grand Total (\$)									-48,835.11

* NC Items



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Summary

Source Of Funding	
Net Amount Change Order # 1 (\$)	-48,835.11
Previous Change Orders (\$)	0.00
Original Contract Amount (\$)	1,311,958.68
Total Contract Amount (\$)	1,263,123.56

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
09/25/2020		0.00	0.00	09/25/2020	
Description					

APPROVED

John P. ...

For Contract **BORDER STATES PAVING, INC**

Title **PM / Estimator**

APPROVED DATE

Department Head

Mayor

Attest

1/20/21



January 20, 2021

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. BR-21-A1

Dear Commissioners:

Bids were opened at 11:45 AM on Wednesday, January 20, 2021, for Water Main Replacement, Street Reconstruction & Incidentals, Improvement District No. BR-21-A1, located on 7th Avenue North from University Drive to Broadway and on 11th Street North from 6th Avenue to 7th Avenue.

The bids were as follows:

Northern Improvement Co.	\$3,516,249.36
KPH, Inc.	\$3,753,819.85
Dakota Underground Co.	\$3,888,492.55
Engineer's Estimate	\$3,523,290.50

The special assessment escrow is not required.

One protest was received amounting to less than 1% of the Improvement District. We recommend that the protest be declared insufficient and the contract be awarded to Northern Improvement Co. in the amount of \$3,516,249.36 as the lowest and best bid.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Knakmuhs', located below the word 'Sincerely,'.

Thomas Knakmuhs, P.E.
Assistant City Engineer

TAK/klb



ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # BR-21-A1

Water Main Replacement, Street Reconstruction & Incidentals

7th Ave. N. from University Drive to Broadway.
11th St. N. from 6th Ave. to 7th Ave.

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

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

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

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

Water Main Replacement, Street Reconstruction & Incidentals Improvement District # BR-21-A1 of the City of Fargo, North Dakota.

Line Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
Sanitary Sewer				
1 Remove Manhole	EA	4.00	1,155.00	4,620.00
2 Remove Pipe All Sizes All Types	LF	125.00	16.00	2,000.00
3 F&I Manhole 4' Dia Reinf Conc	EA	3.00	7,350.00	22,050.00
4 F&I Pipe w/GB SDR 26 - 6" Dia PVC	LF	1,070.00	69.00	73,830.00
5 Bore Pipe SDR 26 - 6" Dia PVC	LF	265.00	62.00	16,430.00
6 F&I Pipe w/GB SDR 26 - 12" Dia PVC	LF	125.00	84.00	10,500.00
7 F&I Pipe C900 DR 18 - 6" Dia PVC	LF	40.00	55.00	2,200.00
8 Connect Sewer Service	EA	45.00	1,260.00	56,700.00
9 Repair Pipe w/GB 12" Dia	EA	3.00	7,875.00	23,625.00
10 Eliminate Sewer Service	EA	2.00	3,885.00	7,770.00
11 Clean Pipe All Sizes All Types	LF	1,972.00	3.15	6,211.80
Sanitary Sewer Total				225,936.80
Water Main Replacement				
12 Remove Pipe All Sizes All Types	LF	2,284.00	10.50	23,982.00
13 F&I Pipe w/GB C900 DR 18 - 6" Dia PVC	LF	115.00	68.00	7,820.00
14 F&I Pipe w/GB C900 DR 18 - 8" Dia PVC	LF	320.00	84.00	26,880.00
15 F&I Pipe w/GB C900 DR 18 - 10" Dia PVC	LF	181.00	89.00	16,109.00
16 F&I Pipe w/GB C900 DR 18 - 12" Dia PVC	LF	660.00	99.00	65,340.00
17 F&I Pipe w/GB C900 DR 18 - 16" Dia PVC	LF	1,841.00	117.60	216,501.60
18 F&I Hydrant	EA	5.00	5,092.50	25,462.50
19 F&I Fittings C153 Ductile Iron	LB	5,635.00	5.78	32,570.30
20 F&I Gate Valve 6" Dia	EA	9.00	1,470.00	13,230.00
21 F&I Gate Valve 8" Dia	EA	2.00	2,021.25	4,042.50
22 F&I Gate Valve 10" Dia	EA	2.00	3,118.50	6,237.00
23 F&I Gate Valve 12" Dia	EA	3.00	6,825.00	20,475.00
24 F&I Gate Valve 16" Dia	EA	4.00	13,755.00	55,020.00
25 Furnish Temp Water Svc	EA	48.00	1,050.00	50,400.00
26 F&I Pipe w/GB 1" Dia Water Service	LF	909.00	46.00	41,814.00
27 F&I Pipe w/GB 1.25" Dia Water Service	LF	109.00	49.50	5,395.50
28 F&I Pipe w/GB 1.5" Dia Water Service	LF	141.00	52.00	7,332.00
29 F&I Pipe w/GB 2" Dia Water Service	LF	43.00	58.00	2,494.00
30 Rem & Repl CS & Box 1" Dia	EA	39.00	990.00	38,610.00
31 Rem & Repl CS & Box 1.25" Dia	EA	3.00	1,040.00	3,120.00
32 Rem & Repl CS & Box 1.5" Dia	EA	5.00	1,100.00	5,500.00
33 Rem & Repl CS & Box 2" Dia	EA	2.00	1,155.00	2,310.00



ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # BR-21-A1

Water Main Replacement, Street Reconstruction & Incidentals

34 Bore Pipe 1" Dia Water Service	LF	200.00	35.00	7,000.00
35 F&I Pipe 2" Dia Water Service	LF	141.00	42.00	5,922.00
36 Connect Water Service	EA	48.00	785.00	37,680.00
37 Eliminate Water Service	EA	10.00	2,040.00	20,400.00
38 F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	100.00	5.25	525.00
39 F&I 1-1/4" Trench Found Rock 14" thru 24" Dia	LF	100.00	5.25	525.00
40 Plug Pipe 10" Dia	EA	1.00	525.00	525.00
Water Main Replacement Total				743,222.40

Storm Sewer

41 Remove Manhole	EA	6.00	1,050.00	6,300.00
42 Remove Inlet	EA	17.00	265.00	4,505.00
43 Remove Pipe All Sizes All Types	LF	460.00	10.50	4,830.00
44 F&I Inlet - Round (RDI) Reinf Conc	EA	4.00	1,890.00	7,560.00
45 F&I Inlet - Single Box (SBI) Reinf Conc	EA	15.00	2,470.00	37,050.00
46 F&I Inlet - Manhole (MHI) 4' Dia Reinf Conc	EA	1.00	3,990.00	3,990.00
47 F&I Manhole 4' Dia Reinf Conc	EA	1.00	4,620.00	4,620.00
48 F&I Manhole 8' Dia Reinf Conc	EA	1.00	7,674.99	7,674.99
49 Modify Manhole	EA	1.00	4,620.00	4,620.00
50 Repair Manhole	EA	4.00	3,045.00	12,180.00
51 Connect Pipe to Exist Structure	EA	11.00	785.00	8,635.00
52 Connect Pipe to Exist Pipe	EA	7.00	315.00	2,205.00
53 F&I Pipe w/GB SDR 26 - 12" Dia PVC	LF	490.00	68.00	33,320.00
54 F&I Pipe w/GB 15" Dia Reinf Conc	LF	8.00	79.00	632.00
55 F&I Pipe w/GB 18" Dia Reinf Conc	LF	8.00	90.00	720.00
56 F&I Pipe w/GB 24" Dia Reinf Conc	LF	8.00	100.00	800.00
57 F&I Crossing Chamber 4' Dia Reinf Conc	EA	1.00	2,930.00	2,930.00
Storm Sewer Total				142,571.99

Paving

58 Traffic Control - Type 2	LS	1.00	56,000.00	56,000.00
59 Remove Curb & Gutter	LF	5,445.00	5.50	29,947.50
60 Remove Pavement All Thicknesses All Types	SY	10,485.00	13.00	136,305.00
61 Remove Sidewalk All Thicknesses All Types	SY	2,465.00	12.50	30,812.50
62 Remove Driveway All Thicknesses All Types	SY	1,095.00	12.50	13,687.50
63 Subgrade Preparation	SY	12,355.00	8.00	98,840.00
64 F&I Woven Geotextile	SY	12,355.00	1.85	22,856.75
65 F&I Edge Drain 4" Dia PVC	LF	5,475.00	9.00	49,275.00
66 F&I Class 5 Agg - 8" Thick	SY	965.00	16.00	15,440.00
67 F&I Class 5 Agg - 12" Thick	SY	11,390.00	17.15	195,338.50
68 F&I Curb & Gutter Standard (Type II)	LF	5,455.00	28.00	152,740.00
69 F&I Pavement 9" Thick Doweled Conc	SY	9,475.00	88.90	842,327.50
70 F&I Asphalt Pavement FAA 43 w/ PG58H-34	TON	331.50	135.00	44,752.50
71 F&I Sidewalk 4" Thick Reinf Conc	SY	2,818.00	45.00	126,810.00
72 F&I Sidewalk 6" Thick Reinf Conc	SY	171.00	51.00	8,721.00
73 F&I Det Warn Panels Cast Iron	SF	431.00	44.00	18,964.00
74 F&I Impressioned 6" Thick Reinf Conc	SY	105.00	106.00	11,130.00



ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # BR-21-A1

Water Main Replacement, Street Reconstruction & Incidentals

75 F&I Driveway 6" Thick Reinf Conc	SY	1,070.00	54.50	58,315.00
76 Boulevard Grading	SY	5,200.00	6.00	31,200.00
77 Seeding Type C	SY	5,200.00	1.65	8,580.00
78 Mulching Type 1 - Hydro	SY	5,200.00	0.35	1,820.00
79 Weed Control Type B	SY	5,200.00	0.09	468.00
80 Stormwater Management	LS	1.00	10,000.00	10,000.00
81 Inlet Protection - Existing Inlet	EA	56.00	195.00	10,920.00
82 Inlet Protection - New Inlet	EA	20.00	195.00	3,900.00
83 Casting to Grade - w/Conc	EA	39.00	875.00	34,125.00
84 Casting to Grade - Blvd	EA	2.00	425.00	850.00
85 Casting to Grade - no Conc	EA	1.00	560.00	560.00
86 GV Box to Grade - w/Conc	EA	9.00	365.00	3,285.00
87 GV Box to Grade - Blvd	EA	6.00	365.00	2,190.00
88 GV Box to Grade - no Conc	EA	7.00	75.00	525.00
89 F&I Flat MH Cover 8" Thick Reinf Conc	EA	1.00	2,205.00	2,205.00
90 Rem & Repl Casting - Floating Manhole	EA	9.00	1,365.00	12,285.00
91 Rem & Repl Casting - Self Leveling	EA	1.00	1,460.00	1,460.00
92 Rem & Repl Casting - Std Manhole	EA	2.00	575.00	1,150.00
93 F&I Casting - Water Service	EA	7.00	180.00	1,260.00
94 Temp Fence - Safety	LS	1.00	10,500.00	10,500.00
95 Remove Tree	EA	2.00	1,000.00	2,000.00
96 F&I Decid Tree 2" Dia	EA	20.00	565.00	11,300.00
Paving Total				2,062,845.75

11th St Tower Stub

97 Remove Pavement All Thicknesses All Types	SY	253.00	12.50	3,162.50
98 Remove Curb & Gutter	LF	30.00	8.50	255.00
99 Remove Driveway All Thicknesses All Types	SY	27.00	12.50	337.50
100 Install Interior Drop	EA	1.00	5,355.00	5,355.00
101 F&I Pipe w/GB SDR 26 - 4" Dia PVC	LF	36.00	79.00	2,844.00
102 F&I Pipe w/GB C900 DR 18 - 16" Dia PVC	LF	152.00	116.00	17,632.00
103 F&I Pipe w/GB C900 DR 18 - 20" Dia PVC	LF	42.00	210.00	8,820.00
104 F&I Tapping Sleeve & Valve 10"x10"	EA	1.00	5,250.00	5,250.00
105 F&I Fittings C153 Ductile Iron	LB	693.00	10.50	7,276.50
106 F&I Gate Valve 16" Dia	EA	1.00	15,750.00	15,750.00
107 F&I Curb & Gutter Standard (Type II)	LF	30.00	35.00	1,050.00
108 F&I Driveway 7" Thick Reinf Conc	SY	27.00	57.75	1,559.25
109 F&I Woven Geotextile	SY	264.00	2.00	528.00
110 F&I Class 5 Agg - 8" Thick	SY	264.00	16.00	4,224.00
111 F&I Asphalt Pavement FAA 43 w/ PG58H-34	TON	126.50	135.00	17,077.50
11th St Tower Stub Total				91,121.25

Street Lighting

112 Relocate Street Light	EA	1.00	1,575.00	1,575.00
113 Remove Street Light	EA	2.00	160.00	320.00
114 F&I Feed Point	EA	1.00	8,925.00	8,925.00
115 Remove Feed Point	EA	1.00	70.00	70.00



ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # BR-21-A1

Water Main Replacement, Street Reconstruction & Incidentals

116 F&I Base 6' Deep Reinf Conc	EA	1.00	840.00	840.00
117 Remove Base	EA	1.00	525.00	525.00
118 F&I Conductor #6 USE Cu	LF	1,746.00	2.10	3,666.60
119 F&I Innerduct 1.5" Dia	LF	587.00	7.35	4,314.45
120 F&I Luminaire Type A	EA	3.00	630.00	1,890.00
121 F&I Pull Box	EA	1.00	1,050.00	1,050.00
122 Remove Pull Box	EA	1.00	160.00	160.00
Street Lighting Total				23,336.05
Traffic Signals				
123 Remove Foundation Type IV/Combo	EA	1.00	6,300.00	6,300.00
124 Remove Pull Box PVC	EA	1.00	210.00	210.00
125 Salvage Signal Standard Type V	EA	1.00	475.00	475.00
126 Remove Foundation Type V	EA	1.00	525.00	525.00
127 Remove Signal Standard Type IV/Combo	EA	3.00	800.00	2,400.00
128 F&I Pull Box PVC	EA	3.00	840.00	2,520.00
129 Salvage Signal Cable	LS	1.00	630.00	630.00
130 F&I Pull Box Polymer Conc	EA	2.00	4,200.00	8,400.00
131 F&I Ped Push Button & Sign	EA	8.00	725.00	5,800.00
132 F&I Ped Push Button Post	EA	4.00	840.00	3,360.00
133 F&I Foundation Type IV/Combo	EA	1.00	4,200.00	4,200.00
134 F&I Ped Head 1 Sect Countdown w/LED Mtd	EA	8.00	790.00	6,320.00
135 F&I Head 3 Sect w/12" LED MA Mtd	EA	5.00	1,050.00	5,250.00
136 F&I Head 3 Sect w/12" LED Post Mtd	EA	2.00	1,260.00	2,520.00
137 F&I Head 5 Sect Cluster w/12" LED MA Mtd	EA	1.00	2,100.00	2,100.00
138 F&I Detection Preformed Loop	EA	7.00	1,890.00	13,230.00
139 F&I PTZ Camera System	EA	1.00	7,875.00	7,875.00
140 F&I Signal Cable CAT 6	LF	68.00	4.20	285.60
141 F&I Signal Cable AWG 18/4	LF	227.00	1.60	363.20
142 F&I Signal Cable AWG 14/2	LF	972.00	1.90	1,846.80
143 F&I Signal Cable AWG 14/7	LF	103.00	2.65	272.95
144 F&I Signal Cable AWG 14/20	LF	623.00	4.20	2,616.60
145 F&I Signal Cable 3M Opticom	LF	262.00	1.90	497.80
146 F&I Signal Cable Loop Lead-in	LF	500.00	1.60	800.00
147 F&I Fiber Optic Cable	LF	2,200.00	2.65	5,830.00
148 F&I Fiber Optic Terminations & Equip	LS	1.00	8,400.00	8,400.00
149 F&I Emerg Veh Pre-emption Components	LS	1.00	6,825.00	6,825.00
150 F&I Conduit 1" Dia	LF	32.00	6.30	201.60
151 F&I Conduit 2" Dia	LF	1,104.00	7.35	8,114.40
152 F&I Conduit 4" Dia	LF	65.00	10.50	682.50
153 F&I Signal Standard Type V 10' High	EA	2.00	2,625.00	5,250.00
154 Install Signal Standard Combo - 31' MA	EA	1.00	4,725.00	4,725.00
155 Install Signal Standard Combo - 34' MA	EA	1.00	4,725.00	4,725.00
156 F&I Signal Standard Combo - 24' MA	EA	1.00	1,525.00	1,525.00
157 Install Traffic Signal Interim System	LS	2.00	26,775.00	53,550.00
Traffic Signals Total				178,626.45



ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # BR-21-A1

Water Main Replacement, Street Reconstruction & Incidentals

Pavement Markings

158 F&I Grooved Contrast Film 11" Wide	LF	300.00	19.75	5,925.00
159 F&I Grooved Contrast Film 7" Wide	LF	1,315.00	12.85	16,897.75
160 F&I Contrast Tape Messages	SF	128.00	50.40	6,451.20
161 F&I Grooved Plastic Film 8" Wide	LF	45.00	11.55	519.75
162 F&I Methacrylate 16" Wide	LF	22.00	45.15	993.30
163 F&I Methacrylate 24" Wide	LF	54.00	62.00	3,348.00
164 Paint Epoxy Message	SF	72.00	26.25	1,890.00
Pavement Markings Total				36,025.00

Signage

165 F&I High Intensity Prismatic	SF	77.70	23.10	1,794.87
166 F&I Diamond Grade Cubed	SF	104.00	27.30	2,839.20
167 F&I Sign Assembly & Anchor	EA	37.00	174.30	6,449.10
168 F&I Sign Assembly	EA	15.00	98.70	1,480.50
Signage Total				12,563.67

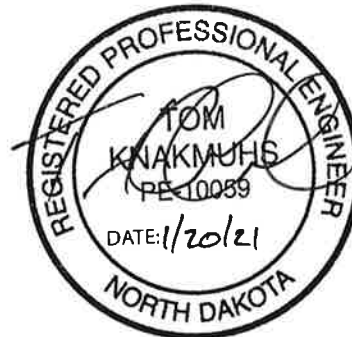
Total Construction in \$ 3,516,249.36

Engineering	10.00 %	351,624.94
Legal & Misc	3.00 %	105,487.48
Contingencies	5.00 %	175,812.47
Administration	4.00 %	140,649.97
Interest	4.00 %	140,649.97
Total Estimated Costs		4,430,474.19
Utility Funds - Wastewater - 521		1,029,420.00
Utility Funds - Water - 501		1,300,320.00
State Funds - Other ND		326,047.10
Special Assessments		1,774,687.60
Unfunded Costs		-0.51

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

Date: 01/20/2021


Tom Knakmuhs
Assistant City Engineer



286

January 20, 2021

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. BR-21-C1

Dear Commissioners:

Bids were opened at 11:45 AM on Wednesday, January 20, 2021, for Water Main Replacement, Storm Sewer, Street Reconstruction & Incidentals, Improvement District No. BR-21-C1, located on 21st Avenue South from Gold Drive to the east side of 15th Street.

The bids were as follows:

Border States Paving, Inc.	\$3,097,221.28
Dakota Underground Co.	\$3,256,748.76
Northern Improvement Co.	\$3,274,860.72
KPH, Inc.	\$3,390,983.50

Engineer's Estimate	\$3,363,000.00
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The special assessment escrow is not required.

This office recommends award of the contract to Border States Paving, Inc. in the amount of \$3,097,221.28 as the lowest and best bid. No protests have been received.

Sincerely,



Thomas Knakmuhs, P.E.
Assistant City Engineer

TAK/klb



ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # BR-21-C1

Water Main Replacement, Storm Sewer, Street Reconstruction & Incidentals

21 Ave S from Gold Drive to the east side of 15 St.

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

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

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

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

Water Main Replacement, Storm Sewer, Street Reconstruction & Incidentals Improvement District # BR-21-C1 of the City of Fargo, North Dakota.

Line Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
SANITARY SEWER				
1 Remove Pipe All Sizes All Types	LF	305.00	10.10	3,080.50
2 F&I Pipe w/GB SDR 35 - 12" Dia PVC	LF	305.00	90.70	27,663.50
3 Connect Pipe to Exist Structure	EA	1.00	1,010.00	1,010.00
4 Connect Pipe to Exist Pipe	EA	7.00	504.00	3,528.00
5 F&I Pipe w/GB SDR 26 - 6" Dia PVC	LF	105.00	90.70	9,523.50
6 Connect Sewer Service	EA	5.00	756.00	3,780.00
7 Clean Pipe All Sizes All Types	LF	1,419.00	3.00	4,257.00
SANITARY SEWER Total				52,842.50
WATER MAIN REPLACEMENT				
8 Remove Pipe - Asbestos Cement	LF	1,890.00	15.10	28,539.00
9 Connect Pipe to Exist Pipe	EA	7.00	1,160.00	8,120.00
10 F&I Hydrant	EA	7.00	4,950.00	34,650.00
11 F&I Hydrant Ext. 6" High	EA	1.00	907.00	907.00
12 F&I Hydrant Ext. 12" High	EA	1.00	1,010.00	1,010.00
13 F&I Fittings Ductile Iron	LB	2,799.00	5.55	15,534.45
14 F&I Pipe w/GB C900 DR 18 - 6" Dia PVC	LF	280.00	75.60	21,168.00
15 F&I Pipe w/GB C900 DR 18 - 8" Dia PVC	LF	2,600.00	79.60	206,960.00
16 F&I Pipe w/GB C900 DR 18 - 10" Dia PVC	LF	260.00	91.70	23,842.00
17 F&I Pipe w/GB C900 DR 18 - 16" Dia PVC	LF	82.00	126.00	10,332.00
18 F&I Gate Valve 6" Dia	EA	8.00	1,340.00	10,720.00
19 F&I Gate Valve 8" Dia	EA	7.00	1,740.00	12,180.00
20 F&I Gate Valve 10" Dia	EA	1.00	2,510.00	2,510.00
21 F&I Gate Valve 16" Dia	EA	1.00	13,200.00	13,200.00
22 F&I Insulation 2" Thick	SY	14.00	50.40	705.60
23 Connect Water Service	EA	6.00	776.00	4,656.00
24 F&I Pipe w/GB 1.5" Dia Water Service	LF	31.00	65.50	2,030.50
25 F&I Pipe w/GB 2" Dia Water Service	LF	195.00	68.60	13,377.00
26 Rem & Repl CS & Box 1.5" Dia	EA	1.00	796.00	796.00
27 Rem & Repl CS & Box 2" Dia	EA	5.00	1,060.00	5,300.00
28 Furnish Temp Water Svc	EA	7.00	4,030.00	28,210.00
29 F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	200.00	10.10	2,020.00
WATER MAIN REPLACEMENT Total				446,767.55
RAW WATER TRANSMISSION MAIN				
30 Remove Manhole	EA	1.00	1,110.00	1,110.00
31 Connect Pipe to Exist Pipe	EA	2.00	9,580.00	19,160.00
32 F&I Pipe w/GB C900 DR 18 - 30" Dia PVC	LF	6.00	302.00	1,812.00



ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # BR-21-C1

Water Main Replacement, Storm Sewer, Street Reconstruction & Incidentals

33	F&I Pipe w/GB C900 DR 25 - 36" Dia PVC	LF	2,985.00	222.00	662,670.00
34	F&I Fittings Ductile Iron	LB	9,260.00	6.45	59,727.00
35	F&I Controlled Density Fill	LS	1.00	90,700.00	90,700.00
RAW WATER TRANSMISSION MAIN Total					835,179.00
STORM SEWER					
36	Remove Pipe All Sizes All Types	LF	385.00	12.10	4,658.50
37	Remove Manhole	EA	3.00	706.00	2,118.00
38	Remove Inlet	EA	7.00	151.00	1,057.00
39	Connect Pipe to Exist Structure	EA	1.00	796.00	796.00
40	Connect Pipe to Exist Pipe	EA	4.00	403.00	1,612.00
41	F&I Inlet - Single Box (SBI) Reinf Conc	EA	3.00	2,420.00	7,260.00
42	F&I Inlet - Double Box (DBI) Reinf Conc	EA	8.00	3,780.00	30,240.00
43	F&I Inlet - Manhole (MHI) 4' Dia Reinf Conc	EA	2.00	2,720.00	5,440.00
44	F&I Inlet - Manhole (MHI) 6' Dia Reinf Conc	EA	1.00	4,840.00	4,840.00
45	F&I Manhole 4' Dia Reinf Conc	EA	3.00	2,960.00	8,880.00
46	F&I Manhole 5' Dia Reinf Conc	EA	2.00	3,900.00	7,800.00
47	F&I Manhole 6' Dia Reinf Conc	EA	2.00	4,660.00	9,320.00
48	F&I Pipe w/GB 15" Dia Reinf Conc	LF	68.00	63.50	4,318.00
49	F&I Pipe w/GB 18" Dia Reinf Conc	LF	890.00	66.50	59,185.00
50	F&I Pipe w/GB 21" Dia Reinf Conc	LF	350.00	69.60	24,360.00
51	F&I Pipe w/GB 24" Dia Reinf Conc	LF	360.00	73.60	26,496.00
52	F&I Pipe w/GB 30" Dia Reinf Conc	LF	370.00	93.80	34,706.00
53	F&I 1-1/4" Trench Found Rock 14" thru 24" Dia	LF	100.00	10.10	1,010.00
54	F&I 1-1/4" Trench Found Rock 27" thru 36" Dia	LF	50.00	10.10	505.00
STORM SEWER Total					234,601.50
PAVING					
55	Remove Pavement All Thicknesses All Types	SY	10,600.00	16.10	170,660.00
56	Remove Curb & Gutter	LF	3,040.00	4.30	13,072.00
57	Remove Driveway All Thicknesses All Types	SY	597.00	10.20	6,089.40
58	Remove Sidewalk All Thicknesses All Types	SY	790.00	8.00	6,320.00
59	Remove Tree	EA	10.00	644.00	6,440.00
60	F&I Bare Root Decid Tree 2" Dia	EA	33.00	594.00	19,602.00
61	Relocate Mailbox	EA	1.00	435.00	435.00
62	Subgrade Preparation	SY	12,000.00	1.85	22,200.00
63	F&I Woven Geotextile	SY	12,000.00	1.50	18,000.00
64	F&I Class 5 Agg - 12" Thick	SY	12,000.00	15.00	180,000.00
65	F&I Edge Drain 4" Dia PVC	LF	6,000.00	8.50	51,000.00
66	F&I Curb & Gutter Mountable (Type I)	LF	6,000.00	21.20	127,200.00
67	F&I Asphalt Pavement FAA 43 w/ PG58H-34	TON	5,300.00	72.00	381,600.00
68	F&I Sidewalk 4" Thick Reinf Conc	SY	1,300.00	45.90	59,670.00
69	F&I Sidewalk 5" Thick Reinf Conc	SY	1,900.00	48.00	91,200.00
70	F&I Sidewalk 6" Thick Reinf Conc	SY	190.00	52.00	9,880.00
71	F&I Impressed 5" Thick Reinf Conc	SY	650.00	86.20	56,030.00
72	F&I Det Warn Panels Cast Iron	SF	104.00	49.40	5,137.60
73	F&I Driveway 7" Thick Reinf Conc	SY	920.00	58.40	53,728.00



ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # BR-21-C1

Water Main Replacement, Storm Sewer, Street Reconstruction & Incidentals

74 F&I Flat MH Cover 8" Thick Reinf Conc	EA	1.00	1,010.00	1,010.00
75 Repair Inlet Floor & Invert	EA	2.00	1,250.00	2,500.00
76 Casting to Grade - Blvd	EA	2.00	148.00	296.00
77 Casting to Grade - no Conc	EA	10.00	619.00	6,190.00
78 Casting to Grade - w/Conc	EA	15.00	754.00	11,310.00
79 GV Box to Grade - Blvd	EA	11.00	123.00	1,353.00
80 GV Box to Grade - no Conc	EA	7.00	653.00	4,571.00
81 Rem & Repl Casting - Std Manhole	EA	2.00	706.00	1,412.00
82 Rem & Repl Casting - Self Leveling	EA	6.00	1,490.00	8,940.00
83 Boulevard Grading	SY	7,500.00	6.55	49,125.00
84 Seeding Type C	SY	7,500.00	0.74	5,550.00
85 Mulching Type 1 - Hydro	SY	7,500.00	0.35	2,625.00
86 Weed Control Type B	SY	7,500.00	0.08	600.00
87 Stormwater Management	LS	1.00	11,300.00	11,300.00
88 Silt Fence - Standard	LF	2,300.00	2.35	5,405.00
89 Inlet Protection - Existing Inlet	EA	11.00	196.00	2,156.00
90 Inlet Protection - New Inlet	EA	14.00	196.00	2,744.00
91 Temp Construction Entrance	EA	4.00	1,150.00	4,600.00
92 F&I Traffic Surface Gravel	TON	175.00	34.60	6,055.00
93 Traffic Control - Type 1	LS	1.00	5,170.00	5,170.00
94 Construction Signing	SF	18.00	11.20	201.60
			PAVING Total	1,411,377.60
SIGNING				
95 F&I Diamond Grade Cubed	SF	37.00	21.20	784.40
96 F&I High Intensity Prismatic	SF	45.30	19.10	865.23
97 F&I Sign Assembly	EA	5.00	47.80	239.00
98 F&I Sign Assembly & Anchor	EA	12.00	90.20	1,082.40
99 Relocate Sign Assembly	EA	2.00	133.00	266.00
			SIGNING Total	3,237.03
STREET LIGHTS				
100 Remove Street Light	EA	8.00	212.00	1,696.00
101 Remove Base	EA	8.00	531.00	4,248.00
102 Remove Feed Point	EA	3.00	53.10	159.30
103 Relocate Street Light	EA	1.00	2,650.00	2,650.00
104 F&I Base 5' Deep Reinf Conc	EA	20.00	637.00	12,740.00
105 F&I Base 6' Deep Reinf Conc	EA	1.00	849.00	849.00
106 F&I Pull Box	EA	1.00	849.00	849.00
107 F&I Innerduct 1.5" Dia	LF	4,358.00	4.25	18,521.50
108 F&I Conductor #6 USE Cu	LF	12,798.00	1.35	17,277.30
109 F&I Luminaire Type A	EA	20.00	292.00	5,840.00
110 F&I Luminaire Type B	EA	4.00	424.00	1,696.00
111 F&I Light Standard Type A	EA	20.00	1,910.00	38,200.00
112 F&I Feed Point	EA	1.00	8,490.00	8,490.00
			STREET LIGHTS Total	113,216.10
			Total Construction in \$	3,097,221.28



ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # BR-21-C1

Water Main Replacement, Storm Sewer, Street Reconstruction & Incidentals

Engineering	10.00 %	309,722.13
Legal & Misc	3.00 %	92,916.64
Contingencies	5.00 %	154,861.06
Administration	4.00 %	123,888.85
Interest	4.00 %	123,888.85
Total Estimated Costs		3,902,498.81
Utility Funds - Wastewater - 521		646,380.00
Utility Funds - Water - 501		1,524,081.79
Sales Tax Funds - Infrastructure - 420		0.00
State Funds - Other ND		859,076.82
Special Assessments		872,960.39
Unfunded Costs		-0.19

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

Date: 01/21/2021

Assistant City Engineer

