

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at [www.FargoND.gov/streaming](http://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](http://www.FargoND.gov/citycommission).

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, December 27, 2022).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. Letter of Support for the LADs, LLC project to the ND Opportunity Fund.
- 2. Amendment to the Findings of Fact, Conclusions and Order for the property located at 509 21st Street North.
- 3. Access Easements (Street, Flood Protection Levee, Storm Sewer and Access Road) with Southeast Cass Water Resource District.
- 4. 2022 CIP revisions.
- 5. Awarding of the Master Services Agreements for Electrical Services (RFP23014).
- 6. Awarding of E-Procurement Software (RFQ23031).
- 7. Awarding of the construction contract for Fire Station No. 2 Addition (AFB22182).
- 8. Purchase of Service Agreement with the ND Department of Health and Human Services, Behavioral Health Division for opioid or stimulant misuse prevention activities.
- 9. Amendment to Purchase of Service Agreement with the ND Department of Health and Human Services for substance abuse prevention activities and strategies.
- 10. Agreement for Provision of Health Services for Cass County.
- 11. Eide Bailly End-User Agreement.
- 12. Change Order No. 1 in the amount of \$10,920.00 for the Dangerous Building located at 437 23rd Street South (QF22113).
- 13. Agreement with Fargo Moorhead Towing for junk vehicle removal.
- 14. Resolution Approving Plat of Westrac Fourth Addition.
- 15. Consulting Agreement with czb, LLC for the Growth Plan (RFP22106).
- 16. Agreements with the following for 2023 contracted Forestry Services:

- a. Cougar Tree Care, Inc. for Tree and Stump Removal Services - 2023
  - b. All-Terrain Ground Maintenance for Landscape Maintenance Services – 2023.
  - c. Paul Bunyan Nurseries for Tree Injection Services – 2023.
17. Mass Transit Agreements with the City of West Fargo for 2022 and 2023.
  18. Bills.
  19. Memorandum of Offer to Landowner for Permanent Easements (Sanitary Sewer, and Street and Utility) with Lisa M. Madsen (Improvement District No. SN-22-A1).

**REGULAR AGENDA:**

20. **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).**
21. **\*Public Input Opportunity\* - PUBLIC HEARINGS - 5:15 pm:**
  - a. Application for a Class “CWM” Alcoholic Beverage License for ZaChase LLC d/b/a Crafty Taps to be located at 3902 13th Avenue South; continued from the 12/27/22 Regular Meeting.
    1. Class CW Liquor License Agreement.
22. Public Health Update.
23. Presentation of the City of Fargo hiring practices.
24. Overview of the 2022 Downtown Fargo Business Improvement District.
25. Recommendation for Federal Aid Transportation Project Applications for the Years 2026 and 2027.
26. Recommendation for appointments to the Board of Health.
27. Liaison Commissioner Assignment Updates.

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

Minutes are available on the City of Fargo website at [www.FargoND.gov/citycommission](http://www.FargoND.gov/citycommission).




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**City Administration**  
225 4th Street North  
Fargo, ND 58102

## MEMORANDUM

**TO:** Fargo City Commission

**FROM:** Jim Gilmour, Director of Strategic Planning and Research 

**DATE:** January 4, 2023

**SUBJECT:** Letter of Support for LADs, LLC

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

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

LADs, LLC is a real estate holding company formed to build and own an office building in Fargo, ND. The entity is owned by four individuals who operate independent investment services firms in Fargo. The four individuals currently lease 5,000 square feet of office space in Fargo. They are in need of additional space due to growth and are planning to build a new 6,624-square-foot office building in Fargo. The building will be owner-occupied by their respective investment services firms. The proposed project will allow the four individuals to expand their businesses and hire additional employees within the City of Fargo.

### Recommended Motion

Provide a letter in support for the LADs, LLC project and the North Dakota Opportunity Fund providing match of the Bank of ND interest buy down program.

**CITY ATTORNEY**  
Nancy J. Morris

**ASSISTANT CITY ATTORNEYS**

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

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January 5, 2023

Board of City Commissioners  
City Hall  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

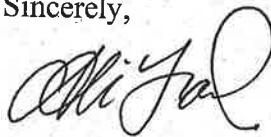
**RE: Dangerous Building located at 509 21<sup>st</sup> Street North, Fargo, North Dakota**

Dear Commissioners,

Enclosed for your review and approval is the proposed Amendment to the Findings of Fact and Conclusions and Order regarding the dangerous building at 509 21<sup>st</sup> Street North. At its December 12<sup>th</sup>, 2022 meeting, the report presented by Shawn Ouradnik, city of Fargo Building Inspections Director, was approved by the Board. As such, the City Attorney's Office was directed to prepare the appropriate Amendment to the Findings of Fact and Conclusions and Order.

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

Sincerely,



Alissa R. Farol  
Assistant City Attorney

Enclosure

cc: Shawn Ouradnik, Inspections Department



**AMENDMENT TO**  
**THE FINDINGS OF FACT, CONCLUSIONS AND ORDER**

This **AMENDMENT** amends the **FINDINGS OF FACT AND CONCLUSIONS AND ORDER** for the property located at 509 21<sup>st</sup> Street North, Fargo, North Dakota, 58102 (hereinafter "Subject Property"), issued on October 31, 2022 by the Board of City Commissioners of the City of Fargo (hereinafter "Board").

**WHEREAS**, on October 31, 2022, a hearing was held before the Board regarding Subject Property, and at said hearing the Board declared Subject Property to be a "dangerous building"; and

**WHEREAS**, on December 12, 2022, Emily Walter, attorney for Wilmington Savings Fund Society, FSB, as Trustee of Wampus Mortgage Loan Trust (hereinafter "Wilmington") appeared before the Board and testified that Subject Property is currently in transition of ownership due to the foreclosure action (File No. 09-2022-CV-01218), and said action is still ongoing; and

**WHEREAS**, since ownership of the property is in transition, the Board approved extending the original demolition deadline of December 30, 2022 to June 1, 2023 so that Wilmington may secure ownership and perform any necessary work on Subject Property so that it is code compliant and no longer considered a dangerous building by the opinion of the Building Official or demolish Subject Property.

**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. That on October 31, 2022, the Board found that the building located on Subject Property (509 21<sup>st</sup> Street North, Fargo, North Dakota 58102) was a "dangerous building" and ordered its demolition on or before December 30, 2022.

2. Wilmington has acknowledged this finding and waives any right to appeal.

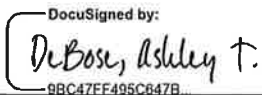
3. Wilmington had requested an extension of time to (1) secure ownership; (2) obtain all necessary permits; and (3) perform the necessary work to Subject Property so that it is code compliant and no longer a dangerous building by the opinion of the Building Official; or demolish Subject Property on or before June 1, 2023.

4. The Board considered and approved this request on December 12, 2022.

5. All other Findings of Fact and Conclusions and Order previously entered on October 31, 2022 shall remain in full force and effect.

DATED this 29 day of December, 2022.

**WILMINGTON SAVINGS FUND, FSB,  
AS TRUSTEE OF WAMPUS MORTGAGE  
LOAN TRUST**

By  DocuSigned by:  
98C47FF495C847B

Its \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**BOARD of CITY COMMISSIONERS to the  
CITY OF FARGO,**  
a North Dakota municipal corporation

By \_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

ATTEST:

\_\_\_\_\_  
Steven Sprague, City Auditor

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(3)

Project No: BN-22-C1

Type: Approval of Easement

Location: Laverne's 2<sup>nd</sup> Addition

Date of Hearing: 12/19/2022

RoutingDate

City Commission

1/9/2023

PWPEC File

X

Project File

Roger Kluck

The Committee reviewed a communication from Roger Kluck, Engineer II Storm Sewer/Floodplain, regarding easement documents with SE Cass Water Resources to support the development of Laverne's 2<sup>nd</sup> Addition. This project installs the infrastructure needed for the development of Laverne's 2<sup>nd</sup> Addition north of 28<sup>th</sup> Avenue to 32<sup>nd</sup> Avenue North and east of 45<sup>th</sup> Street. The project includes installation of 28<sup>th</sup> Avenue North over Drain 40, installation of flood control levee along the east side of Drain 40 from 28<sup>th</sup> Avenue to 32<sup>nd</sup> Avenue North, and the installation of a regional storm lift station and outfall that will lie within SE Cass properties. SE Cass Water Resource Board approved the easements on December 13, 2022.

Engineering requests PWPEC's recommendation for Commission approval of the easement documents and authorize the Mayor to sign the documents.

On a motion by Bruce Grubb, seconded by Tim Mahoney, the Committee voted to recommend approval of the easement documents for Laverne's 2<sup>nd</sup> Addition.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the easement documents to include authorization for the Mayor to sign the documents.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: \_\_\_\_\_

Yes No

Developer meets City policy for payment of delinquent specials

N/A

Agreement for payment of specials required of developer

N/A

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

N/A

COMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☒☒☐☐

Nicole Crutchfield, Director of Planning

☒☒☐☐

Mark Williams

Steve Dirksen, Fire Chief

☒☒☐☐

Michael Redlinger, Interim City Administrator

☒☒☐☐

Bruce Grubb

Ben Dow, Director of Operations

☒☒☐☐

Steve Sprague, City Auditor

☐☐☐☐

Brenda Derrig, City Engineer

☒☒☐☐

Terri Gayhart, Finance Director

☐☐☐☐

ATTEST:

C: Kristi Olson



Brenda E. Derrig, P.E.  
City Engineer



**Engineering Department**  
225 4<sup>th</sup> Street North  
Fargo, ND 58102  
Phone: 701.241.1545 | Fax: 701.241.8101  
Email [feng@FargoND.gov](mailto:feng@FargoND.gov)  
[www.FargoND.gov](http://www.FargoND.gov)

## Memorandum

**To:** Members of PWPEC  
**From:** Roger E. Kluck, PE, CFM,  
Engineer II Storm Sewer/Floodplain  
**Date:** December 15, 2022  
**Re:** Project No. BN-22-C1 Laverne's 2<sup>nd</sup> Addition Easements

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This project installs the infrastructure for developing properties within Laverne's 2<sup>nd</sup> Addition north of 28<sup>th</sup> Avenue North to 32<sup>nd</sup> Avenue North and east of 45<sup>th</sup> Street North. The project includes installation of 28<sup>th</sup> Avenue North over Drain 40, installation of flood control levee along the east side of Drain 40 from 28<sup>th</sup> Avenue North to 32<sup>nd</sup> Avenue North, and the installation of a regional storm lift station and outfall that will lie within SE Cass properties. SE Cass has given preliminary approval to the project items that lie within SE Cass property. Fargo has developed the necessary legal descriptions for SE Cass to use with their standard easement documentation. These documents are attached for reference. These documents go to the SE Cass Water Resource Board December 13, 2022 for approval.

Engineering would request PWPEC's recommendation for Commission approval of the easement documents and authorize the Mayor to sign the documents.

### **Recommended Motion:**

Recommend approval of the easement documents to include authorization for the Mayor to sign the documents.

Attachments

**ACCESS EASEMENT**  
(Street Easement)

THIS EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2022, 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. 40 ("Drain 40") a legal assessment drain.

B. A portion of Drain 40 is located within a subdivision known as "LAVERNE'S 2ND ADDITION" within the City's municipal boundaries.

C. The City owns, operates, and maintains 28th Avenue North (the "City Street"); a portion of the City Street is within LAVERNE'S 2ND ADDITION, and intersects Drain 40 on portions of the District's Drain 40 right of way.

D. The District has agreed to convey an easement to the City for purposes of the construction, operation, and maintenance of the City Street, including a box culvert, over and through Drain 40, 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  
Access Easement  
28th Avenue North*

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## AGREEMENT

1. **The 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 survey and legal description attached as **Exhibit A.**

The property described above is the "Easement Property." The District does not warrant fee simple ownership of the Easement Property and only conveys those rights to the City permitted under North Dakota law that are consistent with the District's rights in the Easement Property.

2. **Easement Rights.** The City's easement rights are limited to access, ingress, and egress rights upon, over, and across the Easement Property for the City and the City's officers, agents, representatives, employees, and contractors, and other invitees, including the rights to construct, operate, inspect, maintain, alter, repair, replace, reconstruct, modify, and remove the City Street, including a box culvert, for the benefit of the City and, in the City's discretion, the public. The City may not use the Easement Property for any other purpose, and the City's use, access, ingress, and egress rights regarding the Easement Property and the City Street will not disrupt or interfere with Drain 40 or the District's use of the Easement Property and will not impede or impact the structural integrity of Drain 40. The City is solely responsible for the construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, modification, and removal of the City Street and associated appurtenances, at the City's sole cost. The City's access under this Easement extends to for the City and the City's officers, agents, representatives, employees, and contractors, and other invitees, including the public's use of the City Street.

3. **Flood Protection Priority and Use.** The parties understand and agree that Drain 40 is a public facility that provides important public benefits to residents of Cass County, including residents of the City, and further agree the District's use of Drain 40, including the Easement Property, as a drainage facility takes priority over any other use of the Easement Property, including the City's use of the Easement Property for the purposes permitted under this Easement.

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 40 for drainage, flood protection, or other emergency purposes may require and include temporary disruptions or interference with the City Street. The District will use reasonable care to avoid any damages to the City Street and related appurtenances; however, the District will not be liable or responsible for any damages resulting from any construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, modification, or improvement of Drain 40 by the District, its officers, agents, representatives, employees, consultants, or contractors.

*Southeast Cass Water Resource District  
City of Fargo  
Access Easement  
28th Avenue North*

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5. **Improvements and Repairs to the Easement Property.** Any improvements or repairs to the Easement Property, including to the City Street and associated appurtenances, are subject to the following:

a. Prior to the City's construction, reconstruction, or other improvements of the City Street or associated appurtenances, 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 City Street and all related appurtenances at the City's sole cost.

c. The City will obtain the District's prior written consent prior to commencing any structural repairs, modifications, or improvements to the City Street and associated appurtenances on or adjacent to the 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 City Street and associated appurtenances in a manner that ensures adequate drainage, with a finished grade that drains the City Street and shoulders, and that does not result in ponding in or on Drain 40.

e. With the exception of the City Street and related appurtenances, the City will not construct any improvements in, upon, under, over, or across any portion of the Easement Property; the City will not place any fixtures, equipment, or other personal property on any portion of the 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 Easement Property; the City will not encumber any portion of the Easement Property; and the City will not otherwise alter any portion of the Easement Property without prior consent from the District; the District will not unreasonably withhold consent.

f. The City will repair the 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 City Street 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 Easement Property as near 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 40 or the District's use of the Easement Property, at the City's sole cost.

*Southeast Cass Water Resource District  
City of Fargo  
Access Easement  
28th Avenue North*

Page 4

6. **Term.** The rights granted under this Easement are permanent and will only terminate if necessary to protect the integrity of Drain 40; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 40; 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 City Street and associated appurtenances or the Easement Property 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 City Street and associated appurtenances or the Easement Property by the City or the City's officers, consultants, contractors, agents, representatives, employees, or other invitees, including the public; 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 City Street or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the 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.



*Southeast Cass Water Resource District  
City of Fargo  
Access Easement  
28th Avenue North*

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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.

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.

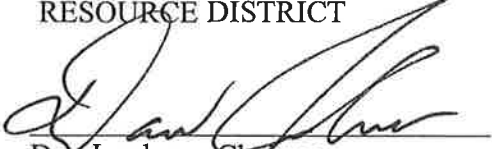
[Signatures appear on the following pages.]

*Southeast Cass Water Resource District  
City of Fargo  
Access Easement  
28th Avenue North*


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SOUTHEAST CASS WATER  
RESOURCE DISTRICT

By:

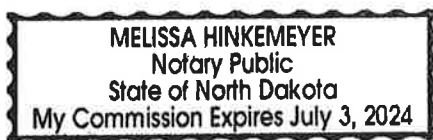
  
Dan Jacobson, Chairman

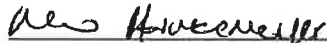
ATTEST:

  
Carol Harbeke Lewis  
Secretary-Treasurer

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

On this 20<sup>th</sup> day of December, 2022, 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  
Access Easement  
28th Avenue North*

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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 \_\_\_\_\_, 2022, 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 descriptions contained in this document were drafted by:

Brent W. Wacha, LS-5068  
Houston Engineering, Inc.  
1401 - 21st Avenue North  
Fargo, North Dakota 58102

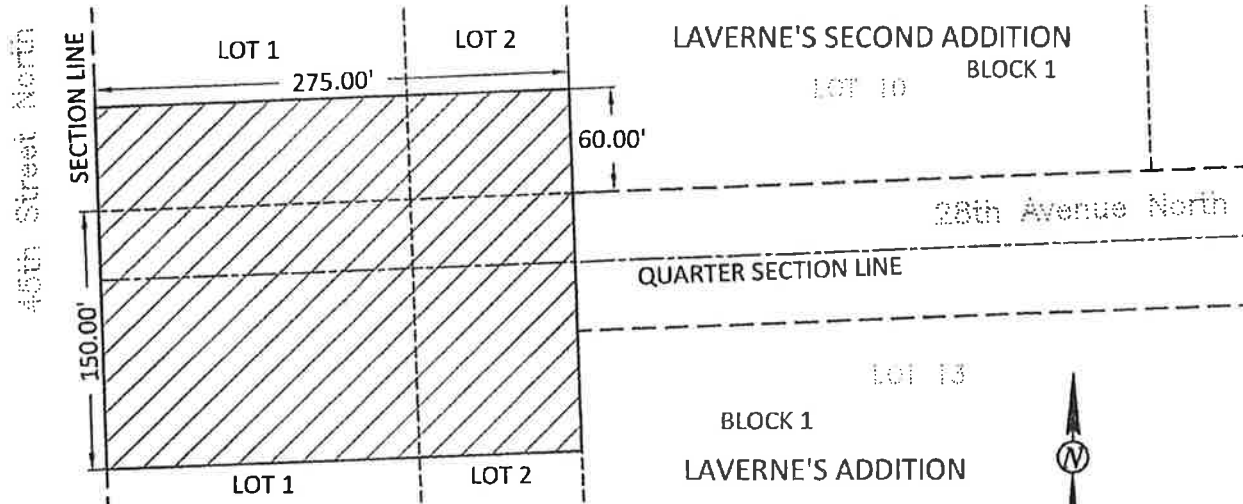
*Southeast Cass Water Resource District  
City of Fargo  
Access Easement  
28th Avenue North*

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**EXHIBIT A**

Legal Description and Survey of the Easement Property

# EXHIBIT A



## Description:

A tract of land in LAVERNE'S ADDITION and LAVERNE'S SECOND ADDITION to the City of Fargo in the Northwest Quarter of Section 27, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota more particularly described as follows:

The north 150.00' of Lots 1 and 2, Block 1 of said LAVERNE'S ADDITION to the City of Fargo.

TOGETHER WITH

The south 60.00' of Lots 1 and 2, Block 1 of said LAVERNE'S SECOND ADDITION to the City of Fargo.

Said tract contains 57,751 square feet, more or less.

## LEGEND

- PERMANENT EASEMENT
- LOT LINE
- STREET R/W



## PERMANENT EASEMENT

LAVERNE'S ADDITION & LAVERNE'S SECOND ADDITION  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

ENGINEERING DEPT.

DRAWN BY: BWV

APPROVED BY: BWV

DATE: NOVEMBER 8, 2022

SHEET 1 OF 1

FILE NAME: T:\Engineering\Survey\Descriptions\1404927\BN-22-C1\BN-22-C1\_Utility\_Easmts.dwg

**ACCESS EASEMENT**  
(Flood Protection Levee)

THIS EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2022, 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. 40 ("Drain 40"), a legal assessment drain; portions of Drain 40 are located within the City's municipal boundaries.
- B. The City wishes to construct, operate, and maintain a flood protection levee along Drain 40 on property owned or controlled by the District (the "Levee").
- C. The District has agreed to convey an easement to the City for purposes of the construction, operation, and maintenance of the Levee, 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:

**AGREEMENT**

1. **The Levee 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 survey and legal description attached as **Exhibit A.**

The property described above is the "Levee Property." The District does not warrant fee simple ownership of the Levee Property and only conveys those rights to the City permitted under North Dakota law that are consistent with the District's rights in the Levee Property.

*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Flood Protection Levee*

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2. **Easement Rights.** Under this Easement, the District grants to the City and the City's officers, employees, agents, representatives, consultants, and contractors a permanent and perpetual easement upon, over, in, under, across, and through the Levee Property for the following purposes: installing, constructing, inspecting, maintaining, reconstructing, altering, repairing, replacing, operating, improving, modifying, and removing the Levee; 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 Levee 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 the Levee, together with all necessary and reasonable rights of ingress and egress to and from the Levee Property. The City is solely responsible for the installation, construction, inspection, maintenance, reconstruction, alteration, repair, replacement, operation, improvement, modification, and removal of the Levee at the City's sole cost.

3. **Drainage Priority and Use.** The parties understand and agree that Drain 40 is a public facility that provides drainage benefits and other important public benefits to Cass County and its residents, including the City and residents of the City, and further agree the District's use of Drain 40, including the Levee Property, as a drainage facility takes priority over any other use of the Levee Property, including the City's use of the Levee Property for the Levee.

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 40 for drainage, flood protection, or other emergency purposes may require and include temporary disruptions or interference with the Levee or the City's interest in the Levee Property. The District will use reasonable care to avoid any damages to the Levee and associated appurtenances; 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 40 by the District, its officers, agents, representatives, employees, consultants, or contractors. In the event any reconstruction, modification, or improvement of Drain 40 requires any modifications to the Levee or associated appurtenances, the City will modify or relocate the Levee at the City's expense and, if necessary, the parties will amend this Easement for purposes of redefining the "Levee Property."

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

a. Prior to the City's construction, reconstruction, or other improvements of the Levee, 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 Levee and related appurtenances at the City's sole cost.

*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Flood Protection Levee*

Page 3

c. The City will obtain the District's prior written consent prior to commencing any structural repairs, modifications, or improvements to the Levee on or adjacent to the Levee 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 Levee in a manner that ensures adequate drainage of the Levee Property, with a finished grade that drains the Levee Property, and that does not result in ponding in or on Drain 40.

e. With the exception of the Levee and related appurtenances, the City will not construct any improvements in, upon, under, over, or across any portion of the Levee Property; the City will not place any fixtures, equipment, or other personal property on any portion of the Levee 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 Levee Property; the City will not encumber any portion of the Levee Property; and the City will not otherwise alter any portion of the Levee Property without prior consent from the District; the District will not unreasonably withhold consent.

f. The City will repair the Levee 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 Levee 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 Levee 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 40 or the District's use of the Levee 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 40; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 40; 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 from Drain 40, at the City's sole cost.



*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Flood Protection Levee*

Page 4

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 Levee 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 Levee 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 Levee or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the Levee 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.

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.

*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Flood Protection Levee*

**Page 5**

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.

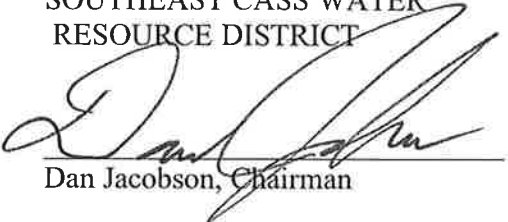
[Signatures appear on the following pages.]

***Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Flood Protection Levee***

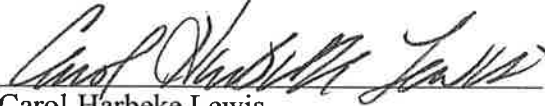
Page 6

SOUTHEAST CASS WATER  
RESOURCE DISTRICT

By:

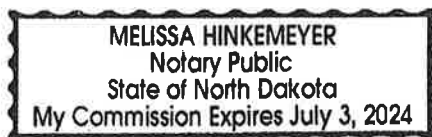
  
Dan Jacobson, Chairman


ATTEST:

  
Carol Harbeke Lewis  
Secretary-Treasurer

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

On this 20<sup>th</sup> day of December, 2022, 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  
Easement - Drain 40  
Flood Protection Levee*

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 \_\_\_\_\_, 2022, 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 descriptions contained in this document were drafted by:

Brent W. Wacha, LS-5068  
Houston Engineering, Inc.  
1401 - 21st Avenue North  
Fargo, North Dakota 58102

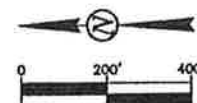
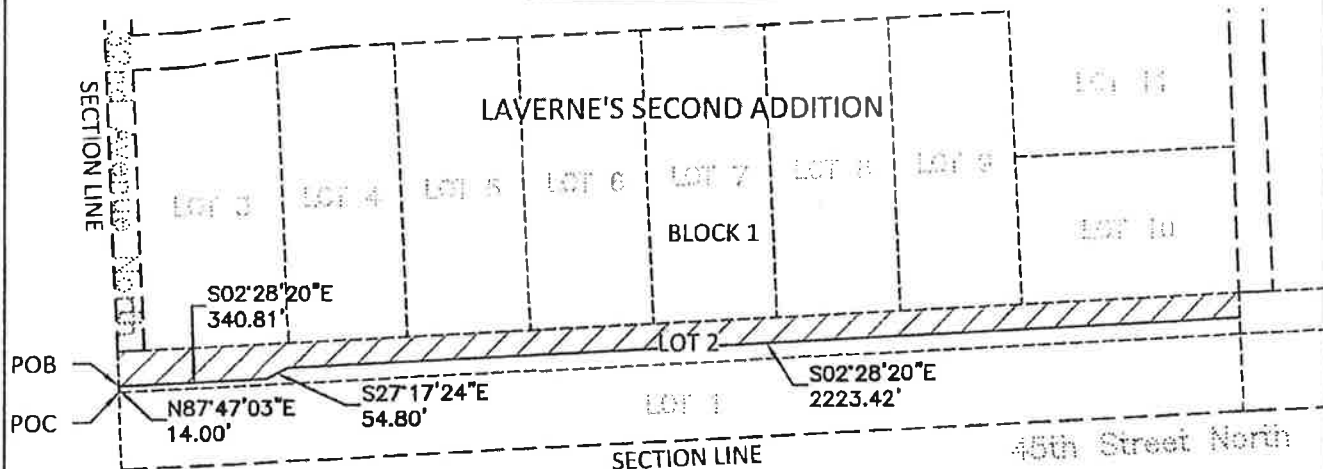
*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Flood Protection Levee*

**Page 8**

**EXHIBIT A**

Legal Description and Survey of the Levee Property

# EXHIBIT A



BEARINGS BASED ON  
CITY OF FARGO GROUND COORDINATE  
SYSTEM, DECEMBER 1992

## Description:

A tract of land in Lot 2, Block 1 of LAVERNE'S SECOND ADDITION to the City of Fargo in the Northwest Quarter of Section 27, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota lying easterly of the following described line:

Commencing at the northwest corner of said Lot 2; thence North 87°47'03" East, on the north line of said Lot 2, a distance of 14.00 feet to the point of beginning; thence South 02°28'20" East, parallel with the west line of said Lot 2, a distance of 340.81 feet; thence South 27°17'24" East a distance of 54.80 feet; thence South 02°28'20" East, parallel with the west line of said Lot 2, a distance of 2,223.42 feet to the south line of said Lot 2 and there terminating.

Said tract contains 160,017 square feet, more or less.

## LEGEND

- PERMANENT EASEMENT
- LOT LINE
- STREET R/W



ENGINEERING DEPT.

## PERMANENT EASEMENT

LOT 2, BLOCK 1, LAVERNE'S SECOND ADDITION  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: BWW

APPROVED BY: BWW

DATE: OCTOBER 31, 2022

SHEET 1 OF 1

FILE NAME: T:\Engineering\Survey\Descriptions\1404927\0N-22-C1\0N-22-C1\_Utility\_Esrmts.dwg

**ACCESS EASEMENT**  
(Storm Sewer)

THIS EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2022, 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. 40 ("Drain 40"), a legal assessment drain; portions of Drain 40 are located within the City's municipal boundaries.

B. The City wishes to construct, operate, and maintain a lift station and stormwater outfall that will discharge into Drain 40, and related storm sewer infrastructure (collectively, the "Storm Sewer Infrastructure"), on property owned or controlled by the District.

C. The District has agreed to convey an easement to the City for purposes of the construction, operation, and maintenance of the Storm Sewer Infrastructure, 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:

**AGREEMENT**

1. **The Storm Sewer 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 survey and legal description attached as **Exhibit A.**

The property described above is the "Storm Sewer Property." The District does not warrant fee simple ownership of the Storm Sewer Property and only conveys those rights to the City permitted under North Dakota law that are consistent with the District's rights in the Storm Sewer Property.

*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Storm Sewer*

Page 2

2. **Easement Rights.** Under this Easement, the District grants to the City and the City's officers, employees, agents, representatives, consultants, and contractors a permanent and perpetual easement upon, over, in, under, across, and through the Storm Sewer Property for the following purposes: installing, constructing, inspecting, maintaining, reconstructing, altering, repairing, replacing, operating, improving, modifying, and removing the 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 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 the Storm Sewer Infrastructure, together with all necessary and reasonable rights of ingress and egress to and from the Storm Sewer 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 Infrastructure at the City's sole cost.

3. **Drainage Priority and Use.** The parties understand and agree that Drain 40 is a public facility that provides drainage benefits and other important public benefits to Cass County and its residents, including the City and residents of the City, and further agree the District's use of Drain 40, including the Storm Sewer Property, as a drainage facility takes priority over any other use of the Storm Sewer Property, including the City's use of the Storm Sewer Property for the Storm Sewer Infrastructure.

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 40 for drainage, flood protection, or other emergency purposes may require and include temporary disruptions or interference with the Storm Sewer Infrastructure or the City's interest in the Storm Sewer Property. The District will use reasonable care to avoid any damages to the Storm Sewer Infrastructure and associated appurtenances; 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 40 by the District, its officers, agents, representatives, employees, consultants, or contractors. In the event any reconstruction, modification, or improvement of Drain 40 requires any modifications to the Storm Sewer Infrastructure or associated appurtenances, the City will modify or relocate the Storm Sewer Infrastructure at the City's expense and, if necessary, the parties will amend this Easement for purposes of redefining the "Storm Sewer Property."

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

- a. Prior to the City's construction, reconstruction, or other improvements of the Storm Sewer Infrastructure, 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.



*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Storm Sewer*

**Page 3**

b. The City will operate and maintain the Storm Sewer Infrastructure and related appurtenances at the City's sole cost.

c. The City will obtain the District's written consent prior to commencing any structural repairs, modifications, or improvements to the Storm Sewer Infrastructure on or adjacent to the Storm Sewer 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 Infrastructure in a manner that ensures adequate drainage of the Storm Sewer Property, with a finished grade that drains the Storm Sewer Property, and that does not result in ponding in or on Drain 40.

e. With the exception of the Storm Sewer Infrastructure and related appurtenances, the City will not construct any improvements in, upon, under, over, or across any portion of the Storm Sewer Property; the City will not place any fixtures, equipment, or other personal property on any portion of the Storm Sewer 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 Property; the City will not encumber any portion of the Storm Sewer Property; and the City will not otherwise alter any portion of the Storm Sewer Property without prior consent from the District; the District will not unreasonably withhold consent.

f. The City will repair the Storm Sewer 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 Infrastructure 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 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 40 or the District's use of the Storm Sewer 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 40; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 40; 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 from Drain 40, at the City's sole cost.

*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Storm Sewer*

Page 4

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 Infrastructure 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 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 Infrastructure or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the Storm Sewer 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.

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.

*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Storm Sewer*

**Page 5**

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.

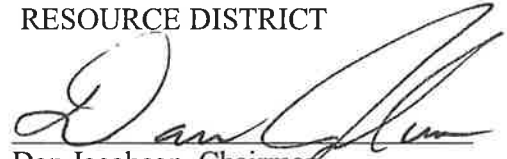
[Signatures appear on the following pages.]

*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Storm Sewer*


Page 6

SOUTHEAST CASS WATER  
RESOURCE DISTRICT

By:

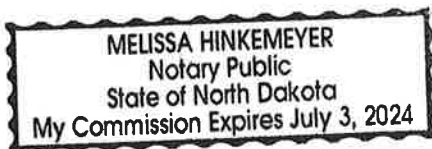
  
Dan Jacobson, Chairman


ATTEST:

  
Carol Harbeke Lewis  
Secretary-Treasurer

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

On this 20<sup>th</sup> day of December, 2022, 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  
Easement - Drain 40  
Storm Sewer*

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 \_\_\_\_\_, 2022, 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 descriptions contained in this document were drafted by:

Brent W. Wacha, LS-5068  
Houston Engineering, Inc.  
1401 - 21st Avenue North  
Fargo, North Dakota 58102

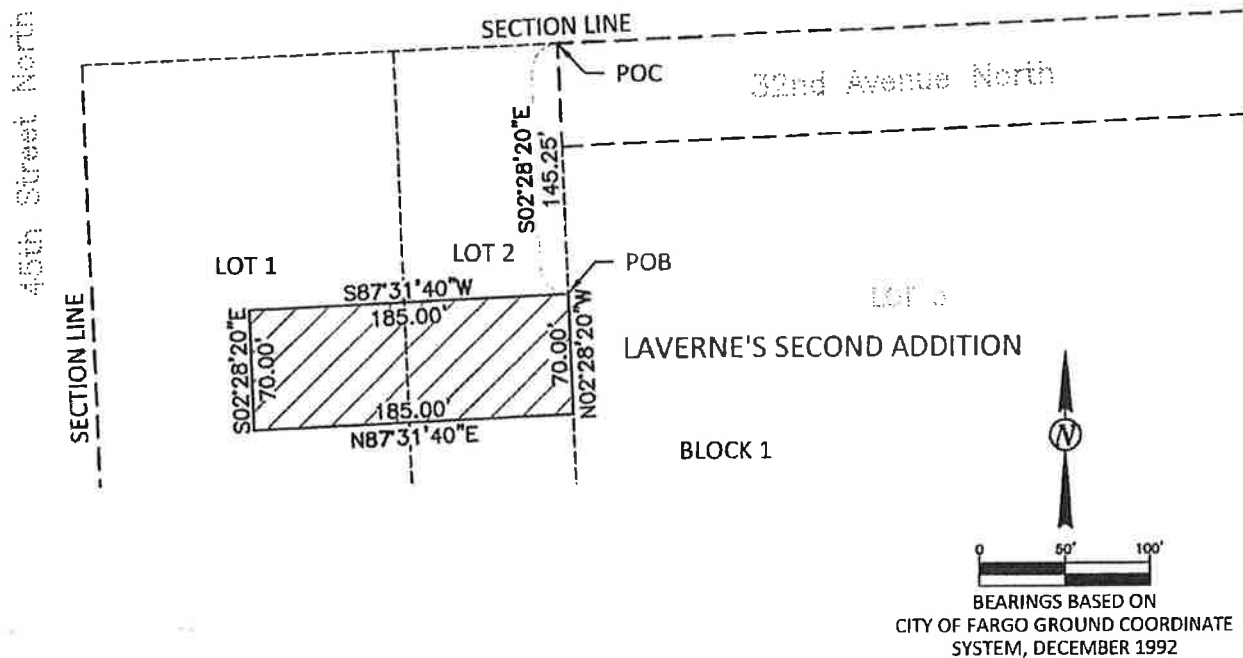
*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Storm Sewer*

**Page 8**

**EXHIBIT A**

Legal Description and Survey of the Storm Sewer Property

# EXHIBIT A



## Description:

A tract of land in Lots 1 and 2, Block 1 of LAVERNE'S SECOND ADDITION to the City of Fargo in the Northwest Quarter of Section 27, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota more particularly described as follows:

Commencing at the northeast corner of said Lot 2; thence South 02°28'20" East, on the east line of said Lot 2, a distance of 145.25 feet to the point of beginning; thence South 87°31'40" West, perpendicular to said east line, a distance of 185.00 feet; thence South 02°28'20" East, parallel with said east line, a distance of 70.00 feet; thence North 87°31'40" East, perpendicular to said east line, a distance of 185.00 feet to a point on said east line; thence North 02°28'20" West, on said east line, a distance of 70.00 feet to the point of beginning.

Said tract contains 12,950 square feet, more or less.

## LEGEND

- PERMANENT EASEMENT
- LOT LINE
- STREET R/W



ENGINEERING DEPT.

## PERMANENT EASEMENT

LOTS 1 & 2, BLOCK 1, LAVERNE'S SECOND ADDITION  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: BWV

APPROVED BY: BWV

DATE: NOVEMBER 8, 2022

SHEET 1 OF 1

FILE NAME: T:\Engineering\Survey\Descriptions\1404927\BN-22-C1\BN-22-C1\_Utility\_Easmts.dwg

**ACCESS EASEMENT**  
(Access Road)

THIS EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2022, 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. 40 ("Drain 40"), a legal assessment drain; portions of Drain 40 are located within the City's municipal boundaries.

B. Under a separate easement, the District granted the City authority to install storm sewer infrastructure on portions of the District's Drain 40 right of way; in addition, the City has requested an easement to install and maintain an access road across a portion of the District's Drain 40 right of way (the "Access Road") for purposes of accessing the City's storm sewer infrastructure, on property owned by the District.

C. The District has agreed to convey an easement to the City for purposes of the construction, operation, and maintenance of the Access Road, 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:

**AGREEMENT**

1. **The Access Road 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 survey and legal description attached as **Exhibit A.**



*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Access Road*

Page 2

The property described above is the "Access Road Property." The District does not warrant fee simple ownership of the Access Road Property and only conveys those rights to the City permitted under North Dakota law that are consistent with the District's rights in the Access Road Property.

2. **Easement Rights.** Under this Easement, the District grants to the City and the City's officers, employees, agents, representatives, consultants, and contractors a permanent and perpetual easement upon, over, in, under, across, and through the Access Road Property for the following purposes: installing, constructing, inspecting, maintaining, reconstructing, altering, repairing, replacing, operating, improving, modifying, and removing the Access Road; 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 Access Road 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 the Access Road, together with all necessary and reasonable rights of ingress and egress to and from the Access Road Property. The parties agree the Access Road is not a public street for use by the general public and the City will limit access to the City and the City's officers, employees, agents, representatives, consultants, and contractors. The City is solely responsible for the installation, construction, inspection, maintenance, reconstruction, alteration, repair, replacement, operation, improvement, modification, and removal of the Access Road at the City's sole cost.

3. **Drainage Priority and Use.** The parties understand and agree that Drain 40 is a public facility that provides drainage benefits and other important public benefits to Cass County and its residents, including the City and residents of the City, and further agree the District's use of Drain 40, including the Access Road Property, as a drainage facility takes priority over any other use of the Access Road Property, including the City's use of the Access Road Property for the Access Road.

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 40 for drainage, flood protection, or other emergency purposes may require and include temporary disruptions or interference with the Access Road or the City's interest in the Access Road Property. The District will use reasonable care to avoid any damages to the Access Road and associated appurtenances; 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 40 by the District, its officers, agents, representatives, employees, consultants, or contractors. In the event any reconstruction, modification, or improvement of Drain 40 requires any modifications to the Access Road or associated appurtenances, the City will modify or relocate the Access Road at the City's expense and, if necessary, the parties will amend this Easement for purposes of redefining the "Access Road Property."

*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Access Road*

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5. **Improvements and Repairs to the Access Road Property.** Any improvements or repairs to the Access Road Property are subject to the following:

a. Prior to the City's construction, reconstruction, or other improvements of the Access Road, 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 Access Road and related appurtenances at the City's sole cost.

c. The City will obtain the District's written consent prior to commencing any structural repairs, modifications, or improvements to the Access Road on or adjacent to the Access Road 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 Access Road in a manner that ensures adequate drainage of the Access Road Property, with a finished grade that drains the Access Road Property, and that does not result in ponding in or on Drain 40.

e. With the exception of the Access Road and related appurtenances, the City will not construct any improvements in, upon, under, over, or across any portion of the Access Road Property; the City will not place any fixtures, equipment, or other personal property on any portion of the Access Road 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 Access Road Property; the City will not encumber any portion of the Access Road Property; and the City will not otherwise alter any portion of the Access Road Property without prior consent from the District; the District will not unreasonably withhold consent.

f. The City will repair the Access Road 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 Access Road 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 Access Road 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 40 or the District's use of the Access Road Property, at the City's sole cost.

*Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
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6. **Term.** The rights granted under this Easement are permanent and will only terminate if necessary to protect the integrity of Drain 40; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over Drain 40; 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 from Drain 40, 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 Access Road 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 Access Road 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 Access Road or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the Access Road 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  
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Access Road*

**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.

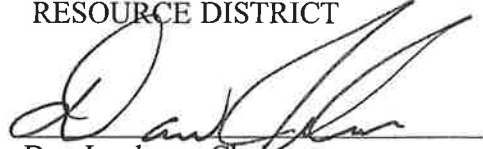
[Signatures appear on the following pages.]

***Southeast Cass Water Resource District  
City of Fargo  
Easement - Drain 40  
Access Road***

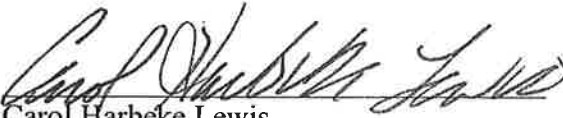
Page 6

SOUTHEAST CASS WATER  
RESOURCE DISTRICT

By:

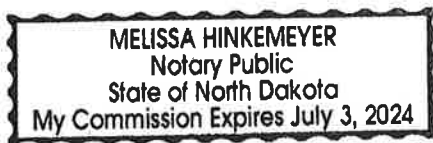
  
Dan Jacobson, Chairman

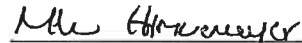
ATTEST:

  
Carol Harbeke Lewis  
Secretary-Treasurer

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

On this 26<sup>th</sup> day of December, 2022, 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  
Easement - Drain 40  
Access Road*

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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 \_\_\_\_\_, 2022, 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 descriptions contained in this document were drafted by:

Brent W. Wacha, LS-5068  
Houston Engineering, Inc.  
1401 - 21st Avenue North  
Fargo, North Dakota 58102

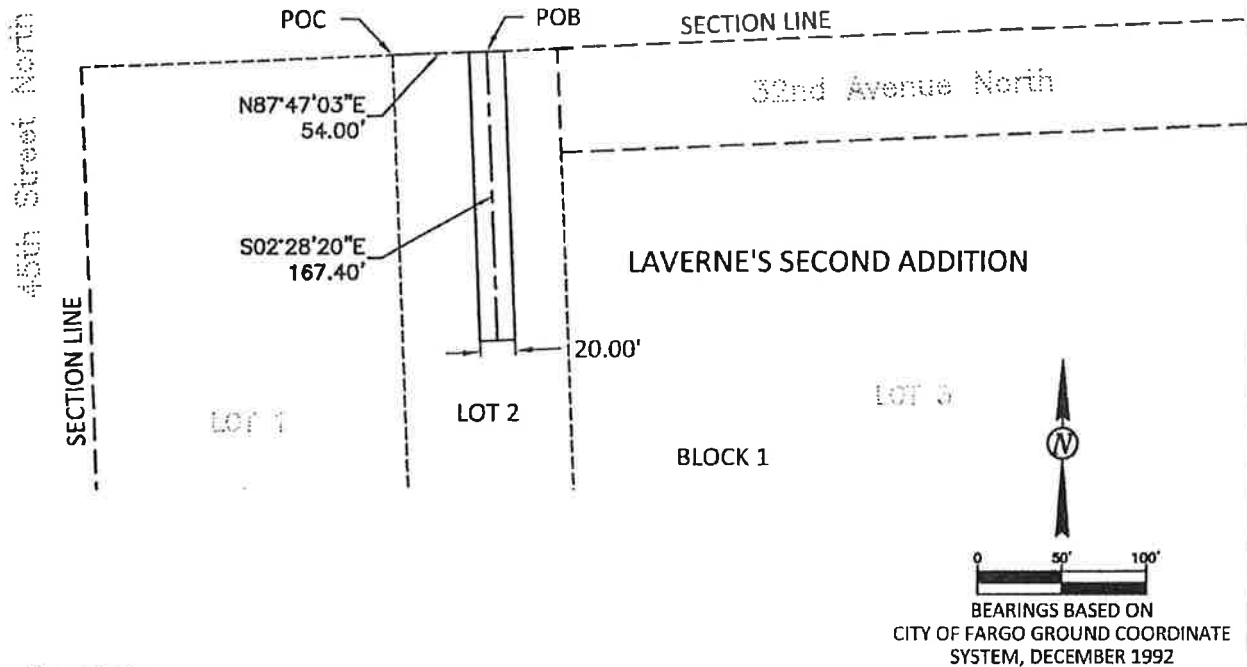
*Southeast Cass Water Resource District  
City of Fargo  
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**EXHIBIT A**

Legal Description and Survey of the Access Road Property

# EXHIBIT A



## Description:

A 20.00 foot wide strip of land in Lot 2, Block 1 of LAVERNE'S SECOND ADDITION to the City of Fargo in the Northwest Quarter of Section 27, Township 140 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota centered on the following described line:

Commencing at the northwest corner of said Lot 2; thence North 87°47'03" East, on the north line of said Lot 2, a distance of 54.00 feet to the point of beginning; thence South 02°28'20" East, parallel with the west line of said Lot 2, a distance of 167.40 feet and there terminating.

Sidelines of said strip shall be lengthened or shortened so as to terminate on the north line of said Lot 2 on the north and on a line perpendicular to the centerline of said strip passing through the point of termination on the south.

Said strip contains 3,348 square feet, more or less.

## LEGEND

- PERMANENT EASEMENT
- LOT LINE
- STREET R/W



ENGINEERING DEPT.

## PERMANENT EASEMENT

LOTS 2, BLOCK 1, LAVERNE'S SECOND ADDITION  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: BWV

APPROVED BY: BWV

DATE: NOVEMBER 9, 2022

SHEET 1 OF 1

FILE NAME: T:\Engineering\Survey\Descriptions\1404927\BN-22-C1\BN-22-C1\_Utility\_Easmts.dwg



## REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(4)

Type: 2022 CIP Revisions

Location: Various Locations

Date of Hearing: 1/3/2023

Routing

City Commission

Date1/9/2023

PWPEC File

X

Project Files

Tom Knakmuhs

The Committee reviewed the accompanying correspondence from Assistant City Engineer, Tom Knakmuhs, regarding final revisions to the 2022 CIP.

There were a number of revisions made throughout the year to the 2022 CIP; projects were added, the size and scope of some projects changed, and some projects that were initially planned were ultimately not bid in 2022. Some projects not bid were still being developed and are expected to be bid in 2023, and some projects did not advance for various reasons.

The following projects should be removed from 2022 CIP:

- **TR-22-A1** (Traffic Signal Maintenance – Citywide) - Combined with SL-22-A1.
- **BN-22-H1** (New Development – Nelson Property) - Developer did not request infrastructure. Uncertain if infrastructure will be requested in 2023.
- **AN-22-A1** (Alley Paving – 9 Ave N to 10 Av N between 2 St & 3 St) - Petitioned by more than 50% of benefiting properties.
- **AN-22-B1** (Alley Paving – 3 Ave N to 4 Ave N between 7 St & 8 St) - Petitioned by more than 50% of benefiting properties.
- **UR-22-A1** (Water Service Lowering and/or Replacement) - Project funded with Water Utility Funds and due to other projects coming in over initial estimate it was decided to not advance this project.
- **MS-22-A0** (Public Information Coordinator Services) - Engineering Department did not require additional assistance in 2022.

The following projects should be moved from 2022 CIP to 2023 CIP:

- **PR-22-B1** (Concrete Spot Repairs – Citywide) – Project still being developed.
- **DR-21-A1** (Drainage Repairs – 64<sup>th</sup> Ave S Outfall) – Staff working to secure necessary easements.
- **RR-19-A1** (Railroad Quiet Zone – 7 Ave N & 16 St) – Engineering firm hired for the development of this project. Plans nearly complete and have been submitted to BNSF for approval. Staff working to acquire necessary easements/right of way for this project.
- **BN-22-E1** (New Development – Duda Property) – City is working on an annexation plat and the developer is working to plat their land. Infrastructure request is anticipated in 2023.
- **SN-22-A1** (Sidewalks – 25<sup>th</sup> St S from 64<sup>th</sup> Ave to 73<sup>rd</sup> Ave) – Project still being developed.
- **QR-22-A1** (North Broadway Bridge Demolition) – Project being led by Clay County and will be bid in January 2023.

On a motion by Tim Mahoney, seconded by Steve Sprague, the Committee voted to recommend approval of the CIP revisions.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the 2022 CIP revisions.

PWPEC 1/3/2023  
2022 CIP Revisions  
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PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Various

|  |                      |
|--|----------------------|
|  | <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>                           |
|--|-------------------------------------|-------------------------------------|--------------------------|--|
|  |                                     |                                     |                          | <u><input checked="" type="checkbox"/></u> |
| Tim Mahoney, Mayor                       | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Nicole Crutchfield, Director of Planning | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> |  |
| Steve Dirksen, Fire Chief                | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Michael Redlinger, City Administrator    | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Ben Dow, Director of Operations          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Steve Sprague, City Auditor              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Brenda Derrig, City Engineer             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Tom Knakmuhs                               |
| Terri Gayhart, Finance Director          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |

ATTEST:

  
\_\_\_\_\_  
Tom Knakmuhs, P.E.  
Assistant City Engineer



# Memorandum

To: PWPEC

From: Tom Knakmuhs, Assistant City Engineer

Date: 12/20/2022

Re: 2022 Capital Improvement Plan Recap and Revisions

Below is a summary of the 2022 CIP as approved by City Commission on December 13, 2021.

| Project                            | Preliminary Estimated Costs |                    |                      |                     | Funding                 |                     |                     |                     |
|------------------------------------|-----------------------------|--------------------|----------------------|---------------------|-------------------------|---------------------|---------------------|---------------------|
|                                    | Construction                | Misc. Costs        | Fees and Contingency | Total               | Outside Funding Sources | Flood Sales Tax     | Special Assessments | City Funds          |
| Federal Aid Projects               | \$11,591,851                | \$2,578,132        | \$1,854,696          | \$16,024,679        | \$5,508,620             | \$0                 | \$7,955,207         | \$2,560,853         |
| Utility Repl/Street Recon Projects | \$5,355,614                 | \$0                | \$1,392,460          | \$6,748,073         | \$0                     | \$0                 | \$2,444,612         | \$4,303,461         |
| Flood Control Projects             | \$15,710,000                | \$3,716,000        | \$1,596,200          | \$21,022,200        | \$0                     | \$21,022,200        | \$0                 | \$0                 |
| Pavement Preservation Projects     | \$9,835,000                 | \$0                | \$2,557,100          | \$12,392,100        | \$0                     | \$0                 | \$5,015,749         | \$7,376,351         |
| Storm Sewer Utility Projects       | \$1,148,572                 | \$0                | \$287,786            | \$1,436,357         | \$113,357               | \$0                 | \$0                 | \$1,323,000         |
| Traffic and Streetlight Projects   | \$2,675,000                 | \$0                | \$695,500            | \$3,370,500         | \$220,500               | \$0                 | \$1,575,000         | \$1,575,000         |
| New Development Projects           | \$21,145,713                | \$1,022,414        | \$5,437,594          | \$27,605,721        | \$1,036,351             | \$0                 | \$24,852,984        | \$1,716,385         |
| Alley Paving Projects              | \$200,000                   | \$0                | \$52,000             | \$252,000           | \$0                     | \$0                 | \$252,000           | \$0                 |
| Sidewalk Projects                  | \$1,132,000                 | \$0                | \$294,320            | \$1,426,320         | \$0                     | \$0                 | \$555,660           | \$870,660           |
| Miscellaneous Projects             | \$725,000                   | \$0                | \$172,900            | \$897,900           | \$0                     | \$0                 | \$0                 | \$645,900           |
| <b>Total 2022 CIP =</b>            | <b>\$69,518,749</b>         | <b>\$7,316,546</b> | <b>\$14,340,556</b>  | <b>\$91,175,851</b> | <b>\$7,130,828</b>      | <b>\$21,022,200</b> | <b>\$42,651,213</b> | <b>\$20,371,610</b> |

There were a number of revisions made throughout the year to the 2022 CIP; Projects were added, the size and scope of some projects changed, and some projects that were initially planned were ultimately not bid in 2022. Some of the projects that were not bid are still being developed and are expected to be bid in 2023, and some projects did not advance for various reasons.

**The following projects should be from the 2022 CIP for the reasons listed below:**

TR-22-A1 (Traffic Signal Maintenance - Citywide):

This project was combined with SL-22-A1. This project should be removed from the 2022 CIP.

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Page 2

BN-22-H1 (New Development – Nelson Property):

This project was included in the 2022 CIP with the anticipation that the developer would be requesting infrastructure in 2022. The developer did not request infrastructure and it is uncertain whether or not infrastructure will be requested in 2023. This project should be removed from the 2022 CIP.

AN-22-A1 (Alley Paving – 9 Ave N to 10 Ave N between 2 St N and 3 St N):

This project was petitioned by more than 50% of the benefiting properties. The Engineering Department designed and bid the project. The Engineer's Estimate was \$73,095 and the low bid was \$77,890. Unfortunately the project received protests from more than 50% of the benefiting properties and bids were rejected. This project should be removed from the 2022 CIP.

AN-22-B1 (Alley Paving – 3 Ave N to 4 Ave N between 7 St N and 8 St N):

This project was petitioned by more than 50% of the benefiting properties. This alley is adjacent to a redevelopment project and adjacent to a reconstruction project that was completed in 2022. Because of those adjacent projects, the Engineering Department thought it would be best to wait until 2023 to advance this project. This project should be removed from the 2022 CIP and was already included in the 2023 CIP.

UR-22-A1 (Water Service Lowering and/or lead replacement):

This project is funded with Water Utility Funds and due to other projects coming in over initial estimate it was decided to not advance this project. This project should be removed from the 2022 CIP.

MS-22-A0 (Public Information Coordinator Services):

This project was included in the 2022 CIP in the event the city needed additional assistance communicating with the public during any of our projects. The Engineering Department did not require additional assistance in 2022. This project should be removed from the 2022 CIP.

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Page 3

**The following projects should be moved from the 2022 CIP to the 2023 CIP for the reasons listed below:**

PR-22-B1 (Concrete Spot Repairs City Wide):

This project is still being developed and should be moved from the 2022 CIP to the 2023 CIP.

DR-21-A1 (Drainage Repairs – 64<sup>th</sup> Ave S outfall):

Staff is working to secure the necessary easements for this project. This project should be moved from the 2022 CIP to the 2023 CIP.

RR-19-A1 (Railroad Quiet Zone – 7<sup>th</sup> Ave N and 16<sup>th</sup> St N):

The Engineering Department hired an engineering firm for the development of this project. The plans are nearly complete and have been submitted to BNSF for approval. The Engineering Department is also working to acquire the necessary easements/right-of-way for this project. This project should be moved from the 2022 CIP to the 2023 CIP.

BN-22-E1 (New Development – Duda Property):

This project was included in the 2022 CIP with the anticipation that the developer would be requesting infrastructure in 2022. The city is working on an annexation plat and the developer is working to plat their land. We anticipate an infrastructure request in 2023. This project should be moved from the 2022 CIP to the 2023 CIP.

SN-22-A1 (Sidewalks: 25<sup>th</sup> St S from 64<sup>th</sup> Ave S to 73<sup>rd</sup> Ave S):

This project is still being developed and should be moved from the 2022 CIP to the 2023 CIP.

QR-22-A1 (North Broadway Bridge Demolition):

This project is being led by Clay County and will be bid in January 2023. This project should be moved from the 2022 CIP to the 2023 CIP.

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Below is a summary of the 2022 CIP taking into account changes in project scope, added projects, and removal of projects as previously mentioned in this memo:

| Project                            | Actual Costs at Time of Project Award |                    |                      |                      | Funding                 |                     |                     |                     |
|------------------------------------|---------------------------------------|--------------------|----------------------|----------------------|-------------------------|---------------------|---------------------|---------------------|
|                                    | Construction                          | Misc. Costs        | Fees and Contingency | Total                | Outside Funding Sources | Flood Sales Tax     | Special Assessments | City Funds          |
| Federal Aid Projects               | \$19,964,186                          | \$2,578,132        | \$3,194,270          | \$25,736,588         | \$7,938,393             | \$0                 | \$7,955,207         | \$9,842,988         |
| Utility Repl/Street Recon Projects | \$5,426,646                           | \$0                | \$1,410,928          | \$6,837,574          | \$0                     | \$0                 | \$2,444,612         | \$4,392,962         |
| Flood Control Projects             | \$15,223,969                          | \$3,780,170        | \$1,545,118          | \$20,549,258         | \$0                     | \$20,476,413        | \$0                 | \$72,845            |
| Pavement Preservation Projects     | \$10,949,268                          | \$0                | \$2,846,810          | \$13,796,077         | \$0                     | \$0                 | \$5,487,114         | \$8,308,963         |
| Storm Sewer Utility Projects       | \$850,599                             | \$0                | \$206,496            | \$1,057,095          | \$73,301                | \$0                 | \$0                 | \$983,794           |
| Traffic and Streetlight Projects   | \$1,899,118                           | \$0                | \$493,771            | \$2,392,889          | \$431,873               | \$0                 | \$351,312           | \$1,609,704         |
| New Development Projects           | \$45,482,941                          | \$1,022,414        | \$11,728,368         | \$58,233,723         | \$2,758,314             | \$0                 | \$51,857,541        | \$3,617,868         |
| Alley Paving Projects              | \$0                                   | \$0                | \$0                  | \$0                  | \$0                     | \$0                 | \$0                 | \$0                 |
| Sidewalk Projects                  | \$1,745,960                           | \$0                | \$440,675            | \$2,186,635          | \$385,000               | \$0                 | \$1,147,944         | \$870,660           |
| Miscellaneous Projects             | \$157,900                             | \$0                | \$41,054             | \$198,954            | \$0                     | \$0                 | \$0                 | \$198,954           |
| <b>Total 2022 CIP =</b>            | <b>\$101,700,587</b>                  | <b>\$7,380,716</b> | <b>\$21,907,489</b>  | <b>\$130,988,792</b> | <b>\$11,628,256</b>     | <b>\$20,476,413</b> | <b>\$69,243,730</b> | <b>\$29,640,393</b> |

A more comprehensive summary can be found in the attachments to this memo, but I think it is worth highlighting a couple of differences between the initially approved CIP and the end-of-year CIP.

- As we discussed previously this year, the project cost for 32<sup>nd</sup> Ave S from 33<sup>rd</sup> St S to 22 St S (the only project listed under the category “Federal Aid Projects”) ended up being significantly higher than initially anticipated. This was due to the complexity of the project and construction inflation/material shortages.
  - The total project cost increased from \$16M to \$25.7M
    - City funds increased from \$2.6M to \$9.8M
    - Special assessments did not increase
- The “New Development Projects” category was significantly larger than initially anticipated.
  - Total costs were initially anticipated to be approximately \$21.1M
  - Actual total costs ended up being approximately \$58.2M
- The total 2022 CIP increased from approximately \$91.2M to \$131M.
  - This increase will generate \$3.7M more in engineering and admin fees than what was initially anticipated. This increase in revenue goes to the general fund.

PWPEC  
2022 CIP Revisions  
Page 5

**Recommended Motion:**

Approve the removal of TR-22-A1 (combined with SL-22-A1), BN-22-H1, AN-22-A1, AN-22-B1, UR-22-A1, and MS-22-A0 from the 2022 CIP and approve moving PR-22-B1, DR-21-A1, RR-19-A1, BN-22-E1, SN-22-A1, and QR-22-A1 to the 2023 CIP.

**Attachments:**

- 2022 CIP as approved by Commission on 12/13/2021
- 2022 CIP to date with removal of projects listed above
- 2023 CIP as approved by Commission on 12/12/2022
- 2023 CIP as approved by Commission on 12/12/2022 with the addition of PR-22-B1, DR-21-A1, RR-19-A1, BN-22-E1, SN-22-A1, and QR-22-A1











| Project Information                       |                | Contractor Data |                    | Mile Data   |           | Total City |                 | District Ranking Points |                       | Special |              | Local Roads |                  |
|---|----------------|-----------------|--------------------|-------------|-----------|------------|-----------------|-------------------------|-----------------------|---------|--------------|-------------|------------------|
| Project Name                              | Project Number | Contractor Name | Contractor Address | Mile Number | Mile Date | Total City | Total City Date | District Ranking Points | District Ranking Date | Special | Special Date | Local Roads | Local Roads Date |
| <p><b>2023 Total for All Projects</b></p> |                |                 |                    |             |           |            |                 |                         |                       |         |              |             |                  |



[illegible]

5

## Memorandum

**To:** Board of City Commissioners  
**From:** Bekki Majerus, Director of Facilities Management  
**Date:** January 9, 2023  
**Re:** Master Service Agreements for Electrical Services (RFP23014)

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Historically, City of Fargo divisions have operated independently when sending out Requests for Proposals and entering into agreements for facilities services. This results in having multiple RFPs and Agreements or Contracts with the same contractor that are very similar in nature, but limited in scope by building or division.

In an effort to create efficiencies in purchasing, Facilities Management worked with the Finance Department to map out a process to pre-qualify vendors for common facilities services used across the entire City of Fargo organization. The process includes publishing a public Request for Qualifications, review by a selection committee to determine qualification against the published criteria, and entering into a Master Service Agreement with the approved vendor(s) which will allow all Divisions to utilize the vendor(s). This process is in line with the Purchasing Policy. The Master Service Agreement has been reviewed by the City Attorney.

Facilities Management published a Request for Qualifications (RFQ) on November 9, 2022. This RFQ was specifically for Electrical Services. Submissions were opened and reviewed on November 21, 2022. Three Electrical Contractors were pre-qualified through this process. Those contractors are:

- JDP Electric
- Parsons Electric
- Sun Electric Inc

The Agreements do not guarantee any work with the City of Fargo, nor does this process exclude other electrical contractors from future work with the City of Fargo.

Facilities Management is requesting the Commission's approval of the Master Service Agreements with the three vendors. The Agreements are attached for your review.

**Recommended Action:** Approve Master Services Agreements with JDP Electric, Parsons Electric and Sun Electric Inc.

**Master Services Agreement  
Between  
City of Fargo  
and JDP Electric**

This Master Services Agreement (the "Agreement," which includes all attached schedules), effective January 1, 2023 ("Effective Date"), is entered into by and between JDP Electric (the "Vendor"), having a principal place of business at 803 28th Street South, Fargo, North Dakota 58103, and City of Fargo (the "City"), a North Dakota municipal corporation, having a principal place of business at 225 4<sup>th</sup> Street North, Fargo, North Dakota 58102 (each a "Party" and collectively, the "Parties").

**1. TERM**

The term of this Agreement will be (3) three years from the Effective Date, with (2) optional one-year extensions.

**2. STATEMENT OF WORK**

A Summary of all services the Vendor is able to provide under this Agreement is described in the Statement of Work form ("Statement of Work") attached hereto as Attachment A. Vendor hereby agrees to complete work pursuant to a work request, awarded bid, and/or awarded proposal. Neither this Agreement or the Statement of Work is a commitment by the City to issue the vendor any work requests, bids or proposals. The work request, Request for Bid (RFB) or Request for Proposal (RFP) shall describe the specific scope of services for a particular project. Any services provided by the Vendor under this agreement are referred to as "Services."

**3. MATERIALS**

Vendor shall furnish all materials, supplies, tools, equipment, and transportation required to provide services or deliverables required under Statements of Work. Vendor shall provide all available material safety data sheets for City approval prior to use of materials.

**4. LIEN WAIVER**

Vendor shall submit its lien waivers and obtain and submit lien waivers from all subcontractors and material suppliers with invoices Vendor submits to City. City's obligation to pay invoices will be contingent upon receipt of applicable lien waivers.

**5. COMPENSATION**

The Parties shall negotiate rates annually. Negotiated Rate Sheet ("Rate Sheet") for the current Agreement year is attached as Attachment B. If a new rate sheet is not negotiated by December 31 of the current Agreement year, the Rate Sheet shall carry forward for the next year. Vendor

shall not charge and the City will not pay for any services performed without a work request, awarded bid or awarded proposal. Except as otherwise provided, undisputed invoices shall be payable within 30 calendar days after the receipt of the invoice. Invoices shall be e-mailed to [FinanceAPAR@FargoND.gov](mailto:FinanceAPAR@FargoND.gov).

6. OWNERSHIP OF DOCUMENTS

Vendor's work product reimbursed by the City, including all data, documents, results, ideas, developments and inventions that Vendor conceives or uses during the course of its performance under this Agreement shall be the City's property, unless otherwise agreed.

7. INDEPENDENT CONTRACTOR

The relationship between the Parties shall, within the context of this Agreement, be that of an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. The Vendor shall, at all times during the term of this Agreement, perform the duties and responsibilities herein. Neither Party is an agent of the other Party and is not authorized to make any representation contract, or contract commitment on behalf of the other Party.

8. NO CONFLICTS OF INTEREST

Vendor must disclose any actual, apparent, or potential Conflict of Interest to the City prior to execution of this Agreement if a conflict of interest arises or appear to arise during the term of this Agreement, contractor agrees to abide by any reasonable mitigation plan developed with or by the City. "Conflict of Interest" means any activity, interest, or relationship of Vendor or any of its officers, directors, affiliates, or principals that may compromise that person's ability to render impartial assistance or advice to the City or that may give rise to legal or reputational concerns or any competitive advantage unfair to the City.

9. CONFIDENTIALITY

The Vendor agrees to not, directly or indirectly, disclose, make known, divulge, publish, or communicate any confidential information to any person, firm, or corporation without consent unless that disclosure is authorized under North Dakota law.

10. INSURANCE

a. Vendor will obtain and maintain the following insurance coverage, naming the City of Fargo as an additional insured, via commercial insurance:

i. Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. \$5,000,000 each occurrence.

ii. Workers' Compensation (or maintenance of a legally permitted and government-approved program of self-insurance) covering Vendor Personnel pursuant to applicable state workers' compensation laws for work-related injuries suffered by Vendor's Personnel, if Vendor employs Personnel;

iii. Employer's Liability with limits of not less than U.S. \$1,000,000 per accident;

iv. Automobile Liability with \$2,000,000 combined single limit per occurrence, for bodily injury and property damage combined covering owned, if Vendor owns any vehicles, non-owned, and hired vehicles, if Vendor brings vehicles on the City's premises or uses vehicles in the performance of services.

v. Limits for Commercial General Liability and Automobile Liability may be provided through a combination of primary and umbrella coverage; and

b. Vendor shall provide the City with evidence of the foregoing coverage before providing

any services.

c. Vendor shall notify the City 30 days prior to cancellation or reduction in limits of any insurance required hereunder.

#### 11. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, consultant error, mistake, negligence, or other fault of the Vendor, any subcontractor of the Vendor, or any officer, employee, representative, or agent of the Consultant or of any subcontractor of the Consultant, or which arises out of any workmen's compensation claim of any employee of the Consultant or of any employee of any subcontractor of the Consultant. The Consultant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Consultant, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands.

#### 12. FORCE MAJEURE

Neither Party shall be liable for damages or deemed in default of this Agreement and any Statement of Work hereunder to the extent that any delay or failure in the performance of its

obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

13. DISPUTE RESOLUTION

Vendor and the City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution process. Nothing prevents the Parties from pursuing litigation in the appropriate State or Federal court, located in Cass County, North Dakota

14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

15. ENTIRE AGREEMENT

The terms and conditions set forth herein and any Exhibit referenced herein constitute the entire understanding of the parties relating to the provision of services by Vendor to City and shall be incorporated in all Statements of Work unless otherwise so stated therein. This Agreement may be amended only by a written instrument signed by both parties.

16. ASSIGNMENT

This Agreement may not be assigned by Vendor or City without the prior written consent of the other party.

17. TERMINATION

This Agreement may be terminated by either party upon seven days written notice should the other party fail to perform in accordance with the terms hereof, provided such failure is not cured within such seven day period. City may terminate this Agreement for convenience at any time, in which event Vendor shall be compensated in accordance with the terms hereof for Services performed and reimbursable expenses incurred prior to its receipt of written notice of termination from City.

18. SEVERABILITY

Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

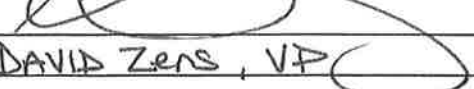


IN WITNESS WHEREOF, City and JDP Electric have caused this Agreement to be duly executed as of the date first above written.

CITY OF FARGO

JDP ELECTRIC

BY \_\_\_\_\_  
Dr. Timothy J. Mahoney, Mayor

BY  \_\_\_\_\_  
DAVID ZENS, VP

DATE: \_\_\_\_\_

DATE: 1-3-23

ATTEST:

BY \_\_\_\_\_  
Steven Sprague, City Auditor

### **Statement of Work**

This Statement of Work is a summary of all services the Vendor is able to provide under the Master Services Agreement. This Statement of Work is not a commitment by the City to issue the vendor any work requests, bids or proposals.

Vendor agrees to provide any of the following Services as requested in work requests, awarded bids or awarded requests for proposals from the City.

- Maintenance
- Generator Installation
- 24/7 Emergency Service
- Lighting Installation & Repair
- Emergency Lighting
- Conduit Systems
- DC Power Plants
- Electrical System Audits
- Environmental Controls
- High Voltage Systems
- Low Voltage Systems
- Lightning Protection
- Preventive Maintenance
- Redundant/Backup Power Systems
- Shutdowns & Retrofits
- Unique Power Requirements
- Transformers
- In Plant Distribution
- Upgrades
- Breakers/Panels/Switches
- Telephone/Cable/Data Wiring
- Fiber Optic Solutions
- Design/Build
- New Lighting Design & Installation
- Custom Electrical Services
- Electrical Installations
- Electrical Troubleshooting
- Emergency Power Systems

**Rate Sheet**

The Rates below are valid beginning January 9, 2023. Rates may be renegotiated at the request of either party annually. If new Rates are not negotiated by December 31 of the year, the Rates shall carry forward for the next year of the Agreement.

Rates for projects outside of the scope of this agreement will be negotiated separately.

**Rates:**

|  |           |
|--|-----------|
| Service Work - Typical Service work is 8 hours or less | \$100/HR* |
| Project Work Journeyman Electrician                    | \$85/HR*  |
| Apprentice Electrician                                 | \$65/HR*  |
| Project Manager  | \$100/HR* |

Material Markup on Material Invoices 15%

**Equipment Rates:**

| DESCRIPTION                | DAY      | WEEK       | MONTH      |
|----------------------------|----------|------------|------------|
| 19' Scissor Lift           | \$150.00 | \$300.00   | \$600.00   |
| 26' Scissor Lift           | \$175.00 | \$350.00   | \$700.00   |
| 20' Runabout Lift          | \$150.00 | \$300.00   | \$600.00   |
| 32' Scissor Lift           | \$200.00 | \$400.00   | \$800.00   |
| All Terrain Scissor Lift   | \$300.00 | \$600.00   | \$1,500.00 |
| Mini Excavator             | \$350.00 | \$900.00   |            |
| Trencher                   | \$300.00 | \$750.00   |            |
| Walk Behind Trencher       | \$150.00 | \$300.00   |            |
| Skid Steer w/ Attachments  | \$350.00 | \$900.00   |            |
| All Terrain Fork Lift      | \$350.00 | \$900.00   |            |
| Bucket Truck               | \$450.00 | \$1,500.00 | \$75/HR    |
| Towable Lift               | \$450.00 | \$1,500.00 | \$75/HR    |
| Powered Light Plant        | \$100.00 | \$200.00   | \$500.00   |
| Thermal Camera/Data Logger | \$100.00 | \$250.00   |            |
| Locator                    | \$25.00  |            |            |

**Master Services Agreement  
Between  
City of Fargo  
and Parsons Electric**

This Master Services Agreement (the "Agreement," which includes all attached schedules), effective January 9, 2023 ("Effective Date"), is entered into by and between Parsons Electric (the "Vendor"), having a principal place of business at 3451 University Drive South, Fargo, North Dakota 58104, and City of Fargo (the "City"), a North Dakota municipal corporation, having a principal place of business at 225 4<sup>th</sup> Street North, Fargo, North Dakota 58102 (each a "Party" and collectively, the "Parties").

**1. TERM**

The term of this Agreement will be (3) three years from the Effective Date, with (2) optional one-year extensions.

**2. STATEMENT OF WORK**

A Summary of all services the Vendor is able to provide under this Agreement is described in the Statement of Work form ("Statement of Work") attached hereto as Attachment A. Vendor hereby agrees to complete work pursuant to a work request, awarded bid, and/or awarded proposal. Neither this Agreement or the Statement of Work is a commitment by the City to issue the vendor any work requests, bids or proposals. The work request, Request for Bid (RFB) or Request for Proposal (RFP) shall describe the specific scope of services for a particular project. Any services provided by the Vendor under this agreement are referred to as "Services."

**3. MATERIALS**

Vendor shall furnish all materials, supplies, tools, equipment, and transportation required to provide services or deliverables required under Statements of Work. Vendor shall provide all available material safety data sheets for City approval prior to use of materials.

**4. LIEN WAIVER**

Vendor shall submit its lien waivers and obtain and submit lien waivers from all subcontractors and material suppliers with invoices Vendor submits to City. City's obligation to pay invoices will be contingent upon receipt of applicable lien waivers.

**5. COMPENSATION**

The Parties shall negotiate rates annually. Negotiated Rate Sheet ("Rate Sheet") for the current Agreement year is attached as Attachment B. If a new rate sheet is not negotiated by December 31 fo the current Agreement year, the Rate Sheet shall carry forward for the next year. Vendor

shall not charge and the City will not pay for any services performed without a work request, awarded bid or awarded proposal. Except as otherwise provided, undisputed invoices shall be payable within 30 calendar days after the receipt of the invoice. Invoices shall be e-mailed to [FinanceAPAR@FargoND.gov](mailto:FinanceAPAR@FargoND.gov).

6. OWNERSHIP OF DOCUMENTS

Vendor's work product reimbursed by the City, including all data, documents, results, ideas, developments and inventions that Vendor conceives or uses during the course of its performance under this Agreement shall be the City's property, unless otherwise agreed.

7. INDEPENDENT CONTRACTOR

The relationship between the Parties shall, within the context of this Agreement, be that of an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. The Vendor shall, at all times during the term of this Agreement, perform the duties and responsibilities herein. Neither Party is an agent of the other Party and is not authorized to make any representation contract, or contract commitment on behalf of the other Party.

8. NO CONFLICTS OF INTEREST

Vendor must disclose any actual, apparent, or potential Conflict of Interest to the City prior to execution of this Agreement if a conflict of interest arises or appear to arise during the term of this Agreement, contractor agrees to abide by any reasonable mitigation plan developed with or by the City. "Conflict of Interest" means any activity, interest, or relationship of Vendor or any of its officers, directors, affiliates, or principals that may compromise that person's ability to render impartial assistance or advice to the City or that may give rise to legal or reputational concerns or any competitive advantage unfair to the City.

9. CONFIDENTIALITY

The Vendor agrees to not, directly or indirectly, disclose, make known, divulge, publish, or communicate any confidential information to any person, firm, or corporation without consent unless that disclosure is authorized under North Dakota law.

10. INSURANCE

a. Vendor will obtain and maintain the following insurance coverage, naming the City of Fargo as an additional insured, via commercial insurance:

i. Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. \$5,000,000 each occurrence.

ii. Workers' Compensation (or maintenance of a legally permitted and government-approved program of self-insurance) covering Vendor Personnel pursuant to applicable state workers' compensation laws for work-related injuries suffered by Vendor's Personnel, if Vendor employs Personnel;

iii. Employer's Liability with limits of not less than U.S. \$1,000,000 per accident;

iv. Automobile Liability with \$2,000,000 combined single limit per occurrence, for bodily injury and property damage combined covering owned, if Vendor owns any vehicles, non-owned, and hired vehicles, if Vendor brings vehicles on the City's premises or uses vehicles in the performance of services.

v. Limits for Commercial General Liability and Automobile Liability may be provided through a combination of primary and umbrella coverage; and

b. Vendor shall provide the City with evidence of the foregoing coverage before providing

any services.

c. Vendor shall notify the City 30 days prior to cancellation or reduction in limits of any insurance required hereunder.

#### 11. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, consultant error, mistake, negligence, or other fault of the Vendor, any subcontractor of the Vendor, or any officer, employee, representative, or agent of the Consultant or of any subcontractor of the Consultant, or which arises out of any workmen's compensation claim of any employee of the Consultant or of any employee of any subcontractor of the Consultant. The Consultant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Consultant, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands.

#### 12. FORCE MAJEURE

Neither Party shall be liable for damages or deemed in default of this Agreement and any Statement of Work hereunder to the extent that any delay or failure in the performance of its

obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

**13. DISPUTE RESOLUTION**

Vendor and the City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution process. Nothing prevents the Parties from pursuing litigation in the appropriate State or Federal court, located in Cass County, North Dakota

**14. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

**15. ENTIRE AGREEMENT**

The terms and conditions set forth herein and any Exhibit referenced herein constitute the entire understanding of the parties relating to the provision of services by Vendor to City and shall be incorporated in all Statements of Work unless otherwise so stated therein. This Agreement may be amended only by a written instrument signed by both parties.

**16. ASSIGNMENT**

This Agreement may not be assigned by Vendor or City without the prior written consent of the other party.

**17. TERMINATION**

This Agreement may be terminated by either party upon seven days written notice should the other party fail to perform in accordance with the terms hereof, provided such failure is not cured within such seven day period. City may terminate this Agreement for convenience at any time, in which event Vendor shall be compensated in accordance with the terms hereof for Services performed and reimbursable expenses incurred prior to its receipt of written notice of termination from City.

**18. SEVERABILITY**

Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

IN WITNESS WHEREOF, City and Parsons Electric have caused this Agreement to be duly executed as of the date first above written.

CITY OF FARGO

PARSONS ELECTRIC

BY \_\_\_\_\_  
Dr. Timothy J. Mahoney, Mayor

BY Robert Gephart  
Rob Gephart - Division Director

DATE: \_\_\_\_\_

DATE: 01/03/2023

ATTEST:

BY \_\_\_\_\_  
Steven Sprague, City Auditor



### **Statement of Work**

This Statement of Work is a summary of all services the Vendor is able to provide under the Master Services Agreement. This Statement of Work is not a commitment by the City to issue the vendor any work requests, bids or proposals.

Vendor agrees to provide any of the following Services as requested in work requests, awarded bids or awarded requests for proposals from the City.

- 24/7 On Call Assistance
- Emergency Repair Work
- Break/Fix Service
- Electrical Panel & Switchboard Outages
- Temporary Power/Generators
- Troubleshooting & Repairs
- Electrical Retrofits & Additions
- New Build & Tenant Improvement
- Category 5 Cabling & Fiber Optics
- Lighting Installation & Repairs
- Electrical Circuit & Outlets
- Electrical Panels & Switchboards
- Start-Up Services
- Power Upgrades
- Acceptance Testing
- Thermal Imaging/Infrared
- Power Quality Analysis
- Power Studies
- Inspection/Cleaning of Electrical Equipment
- Energy Management Analysis
- Arc Flash Assessments
- System Functionality

**Rate Sheet**

The Rates below are valid beginning January 9, 2023. Rates may be renegotiated at the request of either party annually. If new Rates are not negotiated by December 31 of the year, the Rates shall carry forward for the next year of the Agreement.

Rates for projects outside of the scope of this agreement will be negotiated separately.

**Rates:**

|                        | Regular<br>Hourly | Overtime<br>Hourly | Holiday/Sunday<br>Hourly |
|------------------------|-------------------|--------------------|--------------------------|
| Service Electrician    | \$80.00           | \$120.00           | \$160.00                 |
| Apprentice Electrician | \$60.00           | \$90.00            | \$120.00                 |
| Bucket Truck           | \$60.00           | N/A                | N/A                      |

Materials to be billed at cost plus 25%

Subcontracts to be billed at cost plus 10%

**Master Services Agreement  
Between  
City of Fargo  
and Sun Electric Inc.**

This Master Services Agreement (the "Agreement," which includes all attached schedules), effective January 9, 2023 ("Effective Date"), is entered into by and between Sun Electric Inc (the "Vendor"), having a principal place of business at 411 39th Street North, Fargo, North Dakota 58102, and City of Fargo (the "City"), a North Dakota municipal corporation, having a principal place of business at 225 4<sup>th</sup> Street North, Fargo, North Dakota 58102 (each a "Party" and collectively, the "Parties").

**1. TERM**

The term of this Agreement will be (3) three years from the Effective Date, with (2) optional one-year extensions.

**2. STATEMENT OF WORK**

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**4. LIEN WAIVER**

Vendor shall submit its lien waivers and obtain and submit lien waivers from all subcontractors and material suppliers with invoices Vendor submits to City. City's obligation to pay invoices will be contingent upon receipt of applicable lien waivers.

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shall not charge and the City will not pay for any services performed without a work request, awarded bid or awarded proposal. Except as otherwise provided, undisputed invoices shall be payable within 30 calendar days after the receipt of the invoice. Invoices shall be e-mailed to [FinanceAPAR@FargoND.gov](mailto:FinanceAPAR@FargoND.gov).

6. OWNERSHIP OF DOCUMENTS

Vendor's work product reimbursed by the City, including all data, documents, results, ideas, developments and inventions that Vendor conceives or uses during the course of its performance under this Agreement shall be the City's property, unless otherwise agreed.

7. INDEPENDENT CONTRACTOR

The relationship between the Parties shall, within the context of this Agreement, be that of an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. The Vendor shall, at all times during the term of this Agreement, perform the duties and responsibilities herein. Neither Party is an agent of the other Party and is not authorized to make any representation contract, or contract commitment on behalf of the other Party.

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9. CONFIDENTIALITY

The Vendor agrees to not, directly or indirectly, disclose, make known, divulge, publish, or communicate any confidential information to any person, firm, or corporation without consent unless that disclosure is authorized under North Dakota law.

10. INSURANCE

a. Vendor will obtain and maintain the following insurance coverage, naming the City of Fargo as an additional insured, via commercial insurance:

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ii. Workers' Compensation (or maintenance of a legally permitted and government-approved program of self-insurance) covering Vendor Personnel pursuant to applicable state workers' compensation laws for work-related injuries suffered by Vendor's Personnel, if Vendor employs Personnel;

iii. Employer's Liability with limits of not less than U.S. \$1,000,000 per accident;

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c. Vendor shall notify the City 30 days prior to cancellation or reduction in limits of any insurance required hereunder.

#### 11. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, consultant error, mistake, negligence, or other fault of the Vendor, any subcontractor of the Vendor, or any officer, employee, representative, or agent of the Consultant or of any subcontractor of the Consultant, or which arises out of any workmen's compensation claim of any employee of the Consultant or of any employee of any subcontractor of the Consultant. The Consultant agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Consultant, or at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with, any such liability, claims, or demands.

#### 12. FORCE MAJEURE

Neither Party shall be liable for damages or deemed in default of this Agreement and any Statement of Work hereunder to the extent that any delay or failure in the performance of its

obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

13. DISPUTE RESOLUTION

Vendor and the City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution process. Nothing prevents the Parties from pursuing litigation in the appropriate State or Federal court, located in Cass County, North Dakota

14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

15. ENTIRE AGREEMENT

The terms and conditions set forth herein and any Exhibit referenced herein constitute the entire understanding of the parties relating to the provision of services by Vendor to City and shall be incorporated in all Statements of Work unless otherwise so stated therein. This Agreement may be amended only by a written instrument signed by both parties.

16. ASSIGNMENT

This Agreement may not be assigned by Vendor or City without the prior written consent of the other party.

17. TERMINATION

This Agreement may be terminated by either party upon seven days written notice should the other party fail to perform in accordance with the terms hereof, provided such failure is not cured within such seven day period. City may terminate this Agreement for convenience at any time, in which event Vendor shall be compensated in accordance with the terms hereof for Services performed and reimbursable expenses incurred prior to its receipt of written notice of termination from City.

18. SEVERABILITY

Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

IN WITNESS WHEREOF, City and Sun Electric, Inc have caused this Agreement to be duly executed as of the date first above written.

CITY OF FARGO

SUN ELECTRIC, INC

BY \_\_\_\_\_  
Dr. Timothy J. Mahoney, Mayor

BY Steve Doral  
Vice President

DATE: \_\_\_\_\_

DATE: 11/3/2023

ATTEST:

BY \_\_\_\_\_  
Steven Sprague, City Auditor

### **Statement of Work**

This Statement of Work is a summary of all services the Vendor is able to provide under the Master Services Agreement. This Statement of Work is not a commitment by the City to issue the vendor any work requests, bids or proposals.

Vendor agrees to provide any of the following Services as requested in work requests, awarded bids or awarded requests for proposals from the City.

- Maintenance
- Lighting installation and repair
- Conduit systems
- High Voltage Systems
- Low Voltage Systems
- Lightning Protection
- Preventative Maintenance
- Backup power systems
- Shutdowns and retrofits
- Transformers
- Upgrades
- Breakers/panels/switches
- Data/cable/network wiring
- Design build
- Electrical installations
- Electrical troubleshooting



**Rate Sheet**

The Rates below are valid beginning January, 9, 2023. Rates may be renegotiated at the request of either party annually. If new Rates are not negotiated by December 31 of the year, the Rates shall carry forward for the next year of the Agreement.

Rates for projects outside of the scope of this agreement will be negotiated separately.

Rates: See next page.



*Industrial - Commercial*

### CITY OF FARGO 2023

#### Time and Material Rates:

##### Labor Rate Schedule

| Labor Classification | Straight Time (per hour) | Overtime (per hour) |
|----------------------|--------------------------|---------------------|
|                      |                          |                     |
|                      | \$                       | \$                  |
| Wireman              | \$ 84.00                 | \$ 126.00           |
|                      | \$                       | \$                  |
|                      | \$                       | \$                  |
|                      | \$                       | \$                  |
|                      | \$                       | \$                  |
|                      | \$                       | \$                  |

##### Equipment Rate Schedule:

| Description           | Hourly  | Daily | Weekly |
|-----------------------|---------|-------|--------|
|                       |         |       |        |
| Scissor Lift          | \$25.00 |       |        |
| 50' Articulating Lift | \$95.00 |       |        |
| Excavator Mini        | \$75.00 |       |        |
| Skidsteer             | \$75.00 |       |        |
| Bucket Truck          | \$75.00 |       |        |
|                       |         |       |        |
|                       |         |       |        |
|                       |         |       |        |

##### Reimbursable Costs

|                               |            |  |
|-------------------------------|------------|--|
| Material- Actual Cost Plus    | 15%        | markup                                 |
| Subcontract- Actual Cost Plus | 10%        | markup                                 |
| Services- Actual Cost Plus    | 15%        | markup                                 |
| Small Tools & Consumables     | 0 per hour | Included in hourly rates listed above. |



(6)

## FINANCE DEPARTMENT

**FINANCE OFFICE**  
 PO Box 2083  
 225 4<sup>th</sup> Street North  
 FARGO, ND 58102  
 PHONE: (701) 241-1333  
 FAX: (701) 476-4188  
 www.FargoND.gov

January 5, 2023

The Honorable Board of City Commissioners  
 City of Fargo  
 225 North Fourth Street  
 Fargo, ND 58102

RE: RFQ for E-Procurement Software (RFQ23031)

Commissioners:

In December of 2022, request for quotes were received for three years of E-Procurement Software. Two proposals were submitted by separate vendors. Proposals met specification and are listed below.

The results are as follows:

| <u>Firm</u>         | <u>Total per unit</u> |
|---------------------|-----------------------|
| Bonfire Interactive | \$53,445.00           |
| Bidnet Direct MDF   | \$70,918.01           |

The review committee consisting of Terri Gayhart, Tanner Smedshammer and Jill Pagel determined that Bonfire Interactive met the specifications adequate for the City of Fargo Finance Department. Price was within the expected parameters. Our recommendation is to award the RFQ to Bonfire Interactive. A proposal synopsis is attached for your clarification and signature. Funding for this project is included in the 2023 Finance Department Budget.

SUGGESTED MOTION:

Approve the recommendation to purchase E-Procurement Software from Bonfire Interactive for three years for the total amount of \$53,445.00

Respectfully Submitted,

Tanner Smedshammer  
 Purchasing Manager

Fargo/Moorhead

Snow Removal  
 Street Maintenance  
 Right of Way Maintenance

Sanitary & Storm  
 Sewer Maintenance  
 Street Name Sign Maintenance

Fleet Management  
 Meters Readings,  
 Installations & Maintenance

Urban Forestry  
 Water Service/Hydrants  
 & Watermain Maintenance

**ORDER FORM**

Bonfire Interactive Ltd.

121 Charles St. W. Suite C429, Kitchener, ON

| ORDER         | DETAILS           |
|---------------|-------------------|
| Plan Type     | Annual            |
| Currency      | USD               |
| Start Date    | January 10th 2023 |
| End Date      | January 9th 2024  |
| Billing Cycle | Annual Invoice    |
| Data Location | USA               |

**CUSTOMER DETAILS / QUOTE TO**

City of Fargo  
 ATTN: Tanner Smedshammer  
 225 4th St N Fargo, ND 58102  
 Prepared by: Julien T. Nelson

**Annual Term**

| Quantity | Description                                | Rate       | Amount             |
|----------|--|------------|--------------------|
| 2        | Bonfire eSourcing                          | \$5,500.00 | \$11,000.00        |
|          | Bonfire Contract Management (1000)         | \$8,950.00 | \$8,950.00         |
|          | Bonfire Solicitation Builder               | \$5,500.00 | \$5,500.00         |
|          | Bundling & Volume Discount 20%             |            | -\$5,090.00        |
|          | First in the State Discount 10%            |            | -\$2,545.00        |
|          | Unlimited Projects                         | Included   |                    |
|          | Unlimited Evaluators, Advisors & Observers | Included   |                    |
|          | Unlimited Submissions                      | Included   |                    |
|          | Unlimited Vendors                          | Included   |                    |
|          | BidTables                                  | Included   |                    |
|          | Questionnaires                             | Included   |                    |
|          | RFP Evaluation                             | Included   |                    |
|          | Vendor Management                          | Included   |                    |
|          | Insights (KPI Reporting)                   | Included   |                    |
|          | Maintenance/Hosting                        | Included   |                    |
|          | Associated Releases/Upgrades               | Included   |                    |
|          | On-going Support                           | Included   |                    |
|          | <b>Annual Total</b>                        |            | <b>\$17,815.00</b> |

**QUOTE COMMENTS:**

- Includes all internal users including suppliers, data analysts, managers, administrators, evaluators & advisor/client roles for the organization.
- Includes implementation, training, unlimited projects, support, submissions, and cloud storage.
- Bonfire services including account activation and implementation to start immediately upon receiving signed order form.
- Additional seats can be added for \$4000.00 / year
- This quote expires March 31st 2023
- This annual rate is locked in for up to 3 additional annual terms.

**SIGNATURE & EXECUTION:**

The Customer hereby agrees to order the products and/or services outlined above at the prices indicated, and acknowledges it has read, understands and agrees to be bound by the terms and conditions at <https://gobonfire.com/terms-conditions/>

**City of Fargo:**

Date: 1/10/2023 Name: Mayor Tim Mahoney Signature: \_\_\_\_\_

Date: 1/10/2023 Name: Tanner Smedshammer Signature: T. Smedshammer

PO # \_\_\_\_\_

GTY Software Inc., DBA Bonfire Interactive LTD.:

Date: \_\_\_\_\_ Name: \_\_\_\_\_ Signature: \_\_\_\_\_

## TERMS AND CONDITIONS

1. **LICENSE.** GTY SOFTWARE INC., DBA BONFIRE INTERACTIVE LTD ("**Bonfire**") hereby grants to Customer (identified on the Order Form), for internal use by Customer, its agents, contractors, employees and suppliers (collectively, the "**Users**") a non-transferable, non-exclusive, non-sub-licensable right and license (the "**License**") to access and use the services identified on Schedule A (collectively, the "**Platform Services**") during the Term (as outlined on the Order Form). The Platform Services shall be made available on-line at [bonfirehub.com](http://bonfirehub.com) or [bonfirehub.ca](http://bonfirehub.ca) (or such other URL as Bonfire may designate from time to time) (the "**Site**") from a third party hosted facility, located in the country specified on the Order Form, and/or other systems used by Bonfire to host the Platform Services in the country specified on the Order Form (collectively, the "**Systems**"). Platform Services may be amended, enhanced or modified from time to time by Bonfire. Users shall access the Platform Services by means of a specific account (the "**Customer's Account**") using individual User login names and passwords ("**Passwords**") provided by Bonfire. Bonfire shall enable the Platform Services and provide the Passwords on the Plan Start Date (identified on the Order Form). The Customer is responsible for the confidentiality and use of its Passwords and Customer Account, and in no event shall Bonfire be liable for any loss of information of the Customer or other claims arising from unauthorized access to the Platform Services as a result of the failure by Customer to protect the confidentiality of its Passwords and Customer Account. Bonfire is also responsible for the confidentiality of the Passwords and Customer Account provided to Customer and shall in all events be liable and indemnify Customer for any breach of this provision.

2. **USE.** The License and Support (as defined in Section 3 below) is granted exclusively for Customer's internal use, and the Customer is solely and exclusively responsible:

- a. For the collection, accuracy, currency, quality, legality, completeness and use of Customer Data (as defined in Section 7.2 below) that is stored on the Systems, disclosed to or used by Customer or Users in connection with the Platform Services;
- b. For the content of all communications (including without limitation, any transfer of signs, signals, text, images, videos, sounds, data or intelligence of any nature transmitted in whole or in part electronically the "**Electronic Communications**") while using Customer's Account;
- c. To ensure that it and the Users will not use the Platform Services to communicate, by way of Electronic Communication or otherwise, any message or material that (1) is libelous, harmful to minors, obscene or constitutes pornography; (2) infringes the copyrights, patents, trade secrets, trademarks, trade names or other proprietary rights of a third party or is otherwise unlawful; or (3) would otherwise give rise to any breach of confidentiality or privacy laws, or any civil liability, or that constitutes or encourages conduct that could constitute a criminal offence, under any applicable law or regulation;

- d. To ensure that the use of the Platform Services by any User is limited to the rights outlined herein; and the Customer shall not permit Users, directly or indirectly, to do (and shall be responsible for any violation of) any of the following acts:
- i. Reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Platform Services;
  - ii. Modify, translate, or create derivative works from the Platform Services;
  - iii. Rent, lease, distribute, license, sublicense, sell, resell, assign, or otherwise commercially exploit the Platform Services;
  - iv. Publish or disclose to third parties any evaluation of the Platform Services without Bonfire's prior written consent;
  - v. Violate any local, state / provincial, federal or foreign law, treaty, regulation or convention applicable to the Customer in connection with Users' use of the Platform Services;
  - vi. Access data or log into a server or account on the System that the Customer is not authorized to access, or access or tamper with other customer accounts of Bonfire;
  - vii. Willfully tamper with the security of, or probe, scan or test the vulnerability of, any of the Systems, or render any part of the Systems unusable.
  - viii. Sharing of Customer's Account with multiple individuals to circumvent license allocation as defined on the Order Form.

**3. SUPPORT AND MAINTENANCE.** Bonfire shall provide general maintenance services and technical support in respect of the Platform Services ("**Support**") throughout the Term, during Business Days (as defined in Schedule A). The Customer acknowledges that the Support will not be available during System maintenance periods for purposes of upgrades and maintenance to the Platform Services and/or System. Downtime for such System maintenance periods shall only occur between the hours of 11:00 pm and 6:00 am Eastern Standard Time ("**Downtime**") unless there is a defect that renders the Platform Services unavailable in which case Bonfire shall take steps to correct such deficiency immediately. Otherwise, Bonfire will make reasonable efforts to announce the scheduled Downtime via e mail to the Customer's designated e-mail address. Support does not include services required as a result of (i) User misuse, improper use, alteration, or damage of the Platform Services; (ii) any problem caused by modifications in any version of the Platform Services not made or authorized by Bonfire; (iii) any problem resulting from the Customer combining or merging the Platform Services with any hardware or software not supplied by Bonfire, or not identified by Bonfire as compatible with the Platform Services and/or Systems, or (iv) any custom development services outlined on Schedule A hereto. Optional additional services

which may be provided by Bonfire at the request of the Customer are as outlined on Schedule A hereto.

**4. SERVICE LEVEL AGREEMENT.** Bonfire shall provide the Platform Services at a service level described in the Service Level Agreement outlined on Schedule B hereto.

**5. CUSTOM DEVELOPMENT.** In the event the Customer wishes to have Bonfire provide additional custom development and/or services at any time during the Term, the parties will negotiate the terms and conditions of such additional services, and enter into a mutually agreeable contract which, among other things, will address which party will own any and all intellectual property developed as a result.

**6. FEES, PAYMENT AND TAXES.**

**6.1 Fees.** Fees for the License, Platform Services and Support (collectively the "**Fees**") are based on (i) the Plan Type selected by the Customer, and/or (ii) the number of records ("**Records**") that the Plan Type includes, each as defined on the Order Form.

**6.2 Payment.**

a. **General.** All Fees are quoted in American currency unless otherwise stated on the Order Form; and are non-refundable except as may otherwise be provided in this Agreement. The Fees in an Order Form apply for the Initial Term and any Renewal subject always to Bonfire's right to increase the Fees by up to 5% above the previous applicable Fees at any time. Such revised Fees will apply only to a Renewal.

b. **Invoicing.** Fees will be invoiced in advance and will be due on such dates and for such amounts as indicated on the invoices provided by Bonfire to the Customer.

c. **Expenses.** The Customer shall pay Bonfire for all pre-approved costs and expenses incurred by Bonfire in providing any Support to the Customer (in excess of that provided as outlined in the Support and Maintenance Section contained herein) within 45 days of receipt of invoice from Bonfire, unless otherwise specified. The Customer is responsible for all its internet connection charges related to the use of the Platform Services.

d. **Suspension of Service.** If Fees on any Customer Account are not paid by the due date, in addition to any other rights and remedies Bonfire may have (including interest owing, and the termination rights set forth herein), Bonfire reserves the right to suspend the Customer Account without liability to Bonfire, until such account is paid in full. "**Suspended Account**" means that all attempts to create new projects in Bonfire will be blocked and all Support will cease until the Customer makes the full payment due and owing, including any interest and other charges accruing during the suspension period. A Suspended Account does not remove the Customer's obligation to pay those amounts outstanding to the date of such suspension or thereafter for the remainder of the Term,



as the case may be.

## **7. OWNERSHIP AND CONFIDENTIALITY.**

**7.1 Intellectual Property.** The Customer acknowledges and agrees that the Platform Services, and all intellectual property rights therein (including without limitation, copyrights, patents, trade secrets, trademarks, moral rights and other intellectual property rights, in and to the Platform Services, and all modifications, changes, enhancements, or additions thereto (whether initiated by the Customer or otherwise), and all intellectual property rights relating to the provision of Support in respect of the Platform Services (collectively, "**Bonfire IP**"), are owned or licensed by Bonfire. Except for the License granted hereunder, nothing in this Agreement gives the Customer any right, title or interest in, to or under any of the Bonfire IP, and to the extent the Customer acquires rights in the Bonfire IP, Customer assigns such rights to Bonfire and waives any moral rights it may have in the Bonfire IP to and in favour of Bonfire. All Bonfire IP shall be deemed to be Confidential Information (as defined below), and the Customer shall be bound by all confidentiality provisions.

**7.2 Customer Data.** "**Customer Data**" means any data, information or other materials of any nature recorded in any form whatsoever, disclosed or provided to Bonfire by the Customer and by the Users in the course of using the Platform Services, including all information generated by the Users' use of the Platform Services. The Customer retains all right, title and

interest in and to all Customer Data. The Customer Data shall be deemed to be Confidential Information (as defined below) of the Customer, and Bonfire will restrict access to Customer's Confidential Information to those Bonfire employees, consultants and/or subcontractors who have a need to access the Customer Data in order to provide the Platform Services and Support and have agreed to be bound by the confidentiality provisions outlined herein. The Customer agrees that it is solely and exclusively responsible for the collection, accuracy, currency, quality, legality, completeness and use of Customer Data that is stored on the System, disclosed to or used by Customer or Users in connection with the Platform Services, and for compliance with all applicable laws and regulations in the appropriate jurisdiction, including without limitation with respect to privacy, non-disclosure and confidentiality.

**7.3 Bonfire Access and Use.** Bonfire shall have the right, in its sole discretion, to access the Customer's Account from time to time, for purposes of Support, administration, anonymized data aggregation, invoicing and to inspect the Customer's utilization of the Platform Services so as to ensure Customer's compliance with the provisions of this Agreement.

**7.4 Bonfire Press Release.** Customer agrees that Bonfire may issue a press release identifying Customer as a Bonfire customer and describing Customer's utilization and the benefits that Customer receives from use of Bonfire's services, subject to the Customer's prior review and approval of same.



**7.5 Confidential Information.** As used herein, "**Confidential Information**" means all confidential and proprietary information of a party that is disclosed to the other party pursuant to this Agreement and as defined by North Dakota Century Code § 44-04-18.4, and includes without limitation all Passwords, Customer Account information, Customer Data, Bonfire IP, and the terms and conditions of this Agreement. Each party agrees to keep all Confidential Information disclosed to it by the other party strictly confidential, in the same manner as it protects the confidentiality of its own information and data (at all times exercising at least a reasonable degree of care in the protection of the Confidential Information). Confidential Information shall not include information which: (a) is known publicly; (b) is generally known in the industry before disclosure; (c) has become known publicly, without fault of a party, subsequent to disclosure by the other party; or (d) has been otherwise lawfully known or received by a party. This section will not be construed to prohibit the disclosure of Confidential Information if required by law or order of the court or other governmental authority, provided that a party shall give the other party prompt notice of such request, so that the other party has a reasonable time to attempt to limit or prevent such disclosure. Upon termination of this Agreement, all copies of all Confidential Information shall be either returned to the applicable party or destroyed, at the discretion and written direction of the other party.

## **8. PERSONAL INFORMATION.**

### **8.1 Definition and Permitted Use.**

- a. For this Agreement, "**Personal Information**" means any information that Bonfire collects, receives, or obtains, from or on behalf of Customer or any of its Authorized Users that identifies a specific individual or by or from which a specific individual may be identified, such as the individual's name, address, or social security number, and any other information relating to an identified or identifiable individual. Personal Information includes the information of or pertaining to Customer's personnel, directors, officers, agents, providers, contractors, investors, or customers.
- b. Bonfire shall not cause or permit any Personal Information to be processed in any manner or for any purpose other than the performance of the Services in compliance with the restrictions in this Agreement and all applicable Laws.

**8.2 Ownership and Treatment of Personal Information.** As between Customer and Bonfire, Customer is and shall remain the sole and exclusive owner of all right, title, and interest in and to Personal Information. Bonfire shall:

- a. Process Personal Information for the sole purpose of performing the Services and in compliance with: (i) this Agreement or as Customer may expressly direct in advance in writing; and (ii) all applicable data protection laws; and
- b. Notify Customer in writing if Bonfire becomes aware of any unauthorized access, use or other unauthorized act respecting Personal Information.

**8.3 Customer as Controller.** Customer agrees that if Customer, or any data submitted by Customer to the Platform Services, is subject to the General Data Protection Regulation (“**GDPR**”), or related laws including related laws of European Union member states: (i) Customer is the data controller of such data and Bonfire is a data processor of such data; and (ii) Customer further represents that Customer has undertaken all requirements to comply with all privacy and data protection laws including but not limited to GDPR. Such requirements may include but are not limited to maintaining adequate records and registration requirements with supervising or other regulatory authorities.

**8.4 Legitimate purpose/consent.** Customer agrees and represents to Bonfire that all personal information Customer collects, provides, or otherwise uses in any way in relation to the Bonfire Service is necessary for Customer's legitimate interest and is not overridden by fundamental rights of the subject individual, and otherwise that Customer has all rights and obtained all necessary consents to collect, provide, manage, all personal information Customer provides to Bonfire for any purpose. Customer further represents and warrants that Customer will not collect, provide or otherwise use in any way in relation to the Bonfire Service any special category of personal data as described in GDPR.

## **9 TERM AND TERMINATION.**

**9.1 Term.** The License and Support shall commence on the Plan Start Date (as outlined on the Order Form) and shall continue for the Term outlined on the Order Form (the “**Initial Term**”), unless earlier terminated in accordance with the provisions of this Agreement. At the end of the Initial Term this Agreement will auto-renew for further terms of 12 months (each a “**Renewal**”) unless either party gives written notice of intention to terminate at least ninety (90) days prior to the end of the then current term (together the Initial Term and any Renewals constitute the “**Term**”).

**9.2 Suspension of Service.** Bonfire may, at its sole option, and in addition to any other right herein, notify the Customer that it has a Suspended Account effective immediately in the event of any breach of payment of Fees as outlined in Section 6.2 above, or a breach of any provisions related to intellectual property or confidential information, or a breach of any provisions outlined in Section 2.d.

**9.3 Termination.** This Agreement may be terminated as follows upon the occurrence of any of the following events:

- a. Immediately by Bonfire, if the Customer fails to make payment of undisputed Fees within 45 days of receiving written notice from Bonfire;
- b. Immediately by either party, if the other party breaches any of the obligations or provisions of this Agreement and fails to remedy such breach within 30 days of written notice from the party of such default;
- c. Immediately on written notice by either party if the other party (A) ceases or threatens to cease

to carry on its business, commits an act of bankruptcy, makes an assignment or bulk sale of its assets, or proposes a compromise or arrangement to its creditors, or (B) is subject to any proceeding that is taken to (i) compromise or make an arrangement with that party's creditors, (ii) obtain an order to assign that party into bankruptcy or winding up that party, or (iii) obtain an order to appoint a receiver over any part of that party's assets, and in each case, such proceeding is not dismissed within 60 days of such proceeding being initiated; and

- d. Immediately on written notice by either party if the other party breaches or threatens to breach any provision of Section 7 of this Agreement.

**9.4 Effect of Termination.** Upon the effective date of termination, the License and all Support shall terminate and:

- a. Each of the parties shall deliver or destroy, at the direction of the other party, all Confidential Information of the other party which is in its possession, care or control, provided that the Bonfire, on request by Customer, shall be permitted 10 business days to provide Customer with a backup copy of all Customer Data located on the Platform Services ;
- b. Customer shall pay to Bonfire all undisputed Fees accrued and owing up to the effective date of termination or Bonfire shall reimburse to Customer all pre-paid Fees on a pro rata basis for that portion of the Term following the effective date of termination;
- c. The provisions dealing with intellectual property, confidential information, liability and indemnification of this Agreement shall continue in force following effective termination; and
- d. Each of the parties shall have all remedies which are available to it at law or in equity.

## **10 INSURANCE**

Bonfire shall, at its own cost and expense, procure and maintain in full force and effect during the Term, policies of insurance from licensed and reputable insurance carriers covering the operations of Bonfire and its potential liabilities pursuant to this Agreement.

## **11 WARRANTIES AND DISCLAIMERS**

**11.1 Software Limited Warranty.** Bonfire warrants that the Platform Services will operate in substantial conformity with the applicable written documentation provided by Bonfire. For any breach of this warranty, Customer's remedy shall be that Bonfire will, at its expense, correct any errors identified by Customer in the Platform Services, in addition to any other remedy that might be available to Customer for such breach by Bonfire. Bonfire also warrants that it will maintain the Platform Services at reputable third party Internet service providers and hosting facilities. Bonfire warrants that it has implemented commercially reasonable security measures (SOC2 certified), including without limitation, technical, physical and procedural controls to protect Customer Data against destruction, loss,

alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by Bonfire, whether by accident or otherwise. However, the Customer acknowledges and agrees that, notwithstanding such security measures, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Platform Services and Customer Data. Accordingly, Bonfire cannot and does not guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet. For any breach of the foregoing warranties, Bonfire shall pay to Customer all damages the Customer suffers in connection with such breach, subject to the limitations set out in Section 11.3.

**11.2 Exclusions.** Except as expressly stated in this Section 11, there are no representations, warranties or conditions (whether implied or arising by statute or otherwise in law or from a course of dealing or usage of trade) for the Platform Services or Support, and BONFIRE DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES AND CONDITIONS INCLUDING WITHOUT LIMITATION THE CONDITIONS AND/OR WARRANTIES OF MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR ANY PURPOSE, PARTICULAR, SPECIFIC OR OTHERWISE, OR NON-INFRINGEMENT. Bonfire does not warrant that the functions contained in the Platform Services will meet the Customer's requirements or that the operation of the Platform Services will be uninterrupted or error-free.

**11.3 Limitations of Liability.** UNLESS PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR THEIR RESPECTIVE AGENTS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, WHETHER OR NOT FORESEEABLE, INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS, LOST PROFITS OR REVENUE, OR FAILURE TO REALIZE EXPECTED SAVINGS, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **12 INDEMNIFICATION.**

**12.1 Bonfire Indemnification.** Bonfire shall, at its own expense, defend Customer in any action, suit or claim by a third party alleging that the Platform Services (when used as authorized under this Agreement) infringe any United States or Canadian patent, trademark, trade secret, copyright or any other proprietary right of such third party (an "IP Claim") and shall pay settlement amounts agreed by Bonfire and/or any losses, damages, liabilities, expenses, or costs (including but not limited to reasonable attorneys' fees) awarded to such third party against Customer by a court of competent jurisdiction in such IP Claim. As conditions for such defense and satisfaction by Bonfire, (i) Customer shall notify Licensor promptly in writing upon becoming aware of all pending IP Claims; (ii) Customer shall give Licensor sole control of the defense and settlement of such IP Claims; (iii) Customer shall cooperate fully with Licensor in the defense and/or settlement of such IP Claims; and (iv) Customer shall not settle any IP Claims without Licensor's consent, or compromise the defense of any such IP Claims.

**12.2 Mitigation.** Notwithstanding the foregoing, if Bonfire reasonably believes that use of any portion of the Platform Services is likely to be enjoined by reason of an IP Claim then Bonfire may, at its sole option and expense: (i) procure for the Customer the right to continue using the Platform Services, as the case may be, or any portion thereof; (ii) replace the same with other software, services or other material of equivalent functions and efficiency that is not subject to an action described in this section; or (iii) modify the applicable software or other material so that there is no longer any infringement or breach, provided that such modification does not adversely affect the functional capabilities of the Platform Services as set out herein. If none of the foregoing options are commercially reasonable, Bonfire may terminate this Agreement or access to the allegedly infringing portion of the Platform Services [and refund customer any prepaid unearned fees for the Platform Services or such portion of the Platform Services.] Bonfire shall have no liability respecting any IP Claim to the extent such Claim is based upon the combination, operation or use of the Platform Services, Support with other equipment, software, apparatus, devices or things not identified by Bonfire as compatible with the Platform Services and/or Systems or in a manner inconsistent with Bonfire's specifications and instructions or this Agreement.

**12.3 Procedure.** Bonfire's defense and indemnity obligations in this Section 12 are subject to the following: (i) Customer promptly notifying Bonfire in writing of the Claim on becoming aware of any pending Claim; (ii) Bonfire having sole control of the defense and all related settlement negotiations with respect to the Claim, provided that no settlement shall be accepted without the prior written consent of the aggrieved party, such consent not to be unreasonably withheld, conditioned or delayed; and (iii) Customer shall cooperate fully to the extent necessary in the defense or settlement of such Claim, and execute all documents necessary for the defense of such Claim and (iv) Customer shall not settle any Claim without Bonfire's written consent, or compromise the defense of any such Claim.

This section states the entire liability of Bonfire for any type of infringement or breach whatsoever of intellectual property rights of third parties resulting from or relating to the provision by Bonfire of the Platform Services or Support.

## **13 GENERAL PROVISIONS.**

**13.1 Entire Agreement.** This Agreement, and any amendments or additions thereto from time to time, constitute the entire agreement and set forth the entire understanding between the parties hereto with respect to the subject matter hereof and supersede all prior or other agreements, covenants, arrangements and discussions with respect thereto. In the event of an inconsistency between the terms and conditions of this Agreement and any other document or agreement between the parties with respect to the subject matter hereof, the terms and conditions of this Agreement shall prevail and govern to the extent necessary to remedy such inconsistency.

**13.2 Relationship of Customer and Bonfire.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between the parties; no party is by virtue of this Agreement authorized as an agent, employee or agent representative of



the other.

**13.3 Export and control restrictions.** The Customer acknowledges that this Agreement and the provision of all products hereunder shall be subject to the export control laws and regulations of Canada as are in force from time to time and the Customer shall comply with all such laws and regulations.

**13.4 Non-Exclusivity.** Nothing in this Agreement will be construed to prevent Bonfire from marketing, licensing, selling or otherwise providing the Platform Services, Support or Systems, or any aspects of Bonfire's technology or services to any third party. Nothing in this Agreement will be construed to prevent the Customer from obtaining services similar to the Platform Services from a third party.

**13.5 Modifications and Waiver.** No modification of, amendment or addition to this Agreement is valid or binding unless set forth in writing and fully executed by both parties hereto. Any waiver of any right or remedy under this Agreement must be in writing and signed by each party. No delay in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at any time. The waiver of any breach hereof or default in any payment shall not be deemed to constitute a waiver of any succeeding breach or default.

**13.6 No Assignment.** This Agreement and any rights or obligations hereunder, shall not be assigned, sublicensed or otherwise transferred by the Customer by a change of control of the Customer or by operation of law. Bonfire may transfer or assign its rights and obligations hereunder without prior written approval of the Customer. This Agreement shall be binding upon and shall inure to the benefit of Bonfire and the Customer and each of their successors and permitted assigns.

**13.7 Governing Law.** The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota, without regard to conflicts of laws principles. The parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply to this Agreement. The parties irrevocably and unconditionally, attorn to the exclusive jurisdiction of the courts of the State of North Dakota, and all courts competent to hear appeals therefrom.

**13.8 Notices.** Any notices, demands and other communications hereunder shall be in writing and shall be delivered, sent by electronic transmission, or by mail, registered or certified, return receipt requested, postage prepaid, and addressed to the parties as outlined on the Order Form. All notices shall be effective and deemed to be delivered (i) if mailed, on the fifth business day following such mailing, unless there is an interruption in the mail, in which case it shall be deemed to have been given when received; or (ii) if delivered or sent by facsimile, on the business day following the date of dispatch or the date of transmission, as the case may be. Either party may change the address for notice by giving written notice of such

change to the other party in the manner provided in this Section.

**13.9 Severability.** If any provision of this Agreement is held to be unenforceable or illegal by a court of competent jurisdiction, such provision shall be modified to the extent necessary to render it enforceable, or shall be severed from this Agreement, and all other provisions of this Agreement shall remain in full force and effect.

**13.10 Force Majeure.** Neither party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including but not limited to, acts of God, fire, labour difficulties, governmental action or terrorism, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.

**13.11 Authorized Reseller Status; Option to Purchase Affiliate Products.** Bonfire is a subsidiary of GTY Technology Holdings Inc. ("GTY") and an authorized reseller of products and services produced and provided by other subsidiaries of GTY (such subsidiaries, "Bonfire Affiliates"). These products and services include software-as-a-service technology for the procurement and vendor supplier sourcing industry, digital services and payment technology through a software-as-a-service platform, software solutions for grants management and indirect cost reimbursement and related implementation and consulting services, software tools to streamline permitting and licensing services, and additional web based budgeting preparation, performance, management and data visualization solutions ("Affiliate Products"). Bonfire Affiliates include Bonfire Interactive US Ltd., Sherpa Government Solutions LLC, eCivis Inc., CityBase, Inc., OpenCounter Enterprise Inc., Questica Ltd. and Questica Software Inc. In addition to the products and services that are the subject of this Agreement, Client has the option to purchase from either Bonfire, as an authorized reseller, or Bonfire Affiliates, Affiliate Products on terms and conditions, including pricing, to be agreed upon in writing by Client and Bonfire or Client and the applicable Bonfire Affiliate.

## **SCHEDULE A – SERVICE DESCRIPTIONS AND DEFINITIONS**

All capitalized terms used in this Schedule shall have the meanings ascribed thereto in the Agreement. This Schedule may be amended from time to time in accordance with the terms of the Agreement, and is deemed incorporated into the Agreement, as amended.

### **1. PLATFORM SERVICES.**

a. **Description of Platform Services.** Platform Services include the following functionality (based on the modules included on the customer order form):

- i. Public Opportunity Portal
- ii. Project Management and Evaluation
- iii. Contract Management
- iv. Vendor Record Management
- v. Vendor Performance Management
- vi. Insights and Analytics
- vii. User Management

2. **CUSTOM DEVELOPMENT AND SERVICES.** The following optional custom development services are available to the Customer, the terms of which shall be negotiated by the parties.

- a. **Data Migration Service:** Importing Customer's legacy data and files into Platform Services. Exporting Customer's historical data in a structured manner out of Platform Services.
- b. **Custom Development Service:** Includes any additional development that the Customer would like done for integrating custom data formats, the creation of custom report formats, and any other development required to fill Customer needs.

### **3. BUSINESS DAYS.**

- a. Business Days are defined as Monday – Friday.
- b. Business Days do not include holidays, which include:
  - i. New Year's Day (January 1)
  - ii. President's Day / Family Day (Third Monday in February)
  - iii. Good Friday (Friday before Easter Sunday)
  - iv. Victoria Day (Monday before May 25)
  - v. Labor Day (First Monday in September)



- vi. Columbus Day / Thanksgiving Day (Second Monday in October)
- vii. Christmas Day (December 25)
- viii. Boxing Day (December 26)

## **SCHEDULE B – SERVICE LEVEL AGREEMENT**

Bonfire understands the importance and centrality the Platform Services plays in supporting an organization's business processes. We value and appreciate the trust that each customer places in us.

This Service Level Agreement ("SLA") is a policy governing the use of the Platform Services between Bonfire ("us" or "we") and users of Platform Services ("you"). This SLA applies separately to each Customer using the Platform Services. Any amendments or revisions to this SLA will be in writing and agreed to by both parties.

Bonfire is committed to providing reliable high-performance managed services to our customers. Our SLA has been designed to ensure the highest quality service and to provide compensation to the Customer in the event of failure to achieve the specified metrics herein.

### **1. SERVICE COMMITMENT**

- a. **Service Availability.** Bonfire will use commercially reasonable efforts to make the Platform Services available with a Monthly Uptime Percentage (defined below) of at least 99.5% during any monthly billing period. In the event Bonfire does not meet the Service Commitment, you will be eligible to receive a Service Credit as described below.
- b. **Data Redundancy.** Bonfire will use commercially reasonable efforts to provide at a minimum one (1) redundant data store for Customer Data, updated on a daily basis, during the period of the Term.
- c. **Data Storage Term.** While there exists an SLA in place between the Customer and Bonfire, Bonfire will use commercially reasonable efforts to store all Customer Data.
- d. **Data Exportation.** Bonfire will use commercially reasonable efforts to provide (i) the access or means for the Customer to export the Customer Data out of the Platform Services or (ii) a comprehensive export of all Customer Data in downloadable Excel and ZIP formats upon request.

### **2. SERVICE AVAILABILITY DEFINITIONS**

- a. **Server Outage.** A "Server Outage" is defined as an instance in which no traffic can pass in or out of the Bonfire managed server(s) for more than 15 consecutive minutes ("Service Unavailable"). We will calculate the Service Unavailable for each Customer as a percentage for each fifteen-minute period in the monthly billing cycle. The calculation of the number of Server Outages will not include outages that arise directly or indirectly as a result of any of the SLA Exclusions (as defined below).
- b. **Monthly Uptime Percentage.** The "Monthly Uptime Percentage" is calculated by subtracting from 100% the average of the Service Outage from each fifteen-minute

in the monthly cycle.

3. **SERVICE CREDITS.** “Service Credits” are calculated as a percentage of the total charges paid by you to Bonfire for the billing cycle in which the error occurred in accordance with the schedule below.

a. Service Credit Percentages:

- i. For Monthly Uptime Percentage equal to or greater than 99.0% but less than 99.5% - Service Credit of 1%
- ii. For Monthly Uptime Percentage less than 99% - Service Credit Percentage of 5%.

We will apply any Service Credits against future Bonfire payments otherwise due from you unless there are none, in which case Service Credits will be refunded. A Service Credit will be applicable and issued only if the credit amount for the applicable monthly billing cycle is greater than one dollar (\$1 Canadian Dollar). Service Credits may not be transferred or applied to any other Customer.

4. **SERVICE CREDIT PROCEDURE.** To receive a Service Credit, you must submit a request by sending an e-mail message to [support@gobonfire.com](mailto:support@gobonfire.com). To be eligible, the credit request must (i) include your account URL in the subject of the e-mail message; (ii) include, in the body of the e-mail, the dates and times of each incident of each outage; and (iii) be received by us within ten (10) business days after the end of the billing cycle in which the errors occurred. If the Monthly Uptime Percentage applicable to the month of such request is confirmed by us, we will issue the Service Credit to you within one billing cycle following the month in which the error occurred. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.
5. **SERVICE COMMITMENT EXCLUSIONS.** The Service Commitment does not apply to any unavailability, suspension, termination of Platform Services, or any other Platform Services performance issues (i) that result from Downtime and Service Suspensions as defined below. “Service Suspensions” means, collectively, Bonfire’s right to suspend access to any portion or all of the Platform Services at any time, on a Service-wide basis: (a) for scheduled Downtime to permit us to conduct maintenance or make modifications to any Platform Service; (b) in the event of a denial of service attack or other attack on the Platform Service or other event that we determine, in our sole discretion, may create a risk to the applicable Platform Service, to you or to any of our other customers if the Platform Service were not suspended; or (c) in the event that we determine that any Platform Service is prohibited by law or we otherwise determine that it is necessary or prudent to do so for legal or regulatory reasons. To the extent we are able, we will endeavour to provide you email notice of any

Service Suspension and email notice regarding resumption of Platform Services following any such suspension; (ii) caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of the Platform Services; (iii) that result from any actions or inactions of you or any third party; (iv) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); or (v) arising from our suspension and termination of your right to use Platform Services in accordance with the terms of the Agreement. If availability is impacted by factors other than those used in our calculation of the Server Outage, we may issue a Service Credit considering such factors in our sole discretion.

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/15/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|   |  |  |  |   |
|---|--|--|--|---|
| <b>PRODUCER</b><br>Henderson Brothers Inc<br>920 Ft. Duquesne Blvd.<br>Pittsburgh, PA 15222 |  | <b>CONTACT NAME:</b><br><b>PHONE</b><br>(A/C, No, Ext): (412) 261-1842 |  | <b>FAX</b><br>(A/C, No): (412) 261-4149 |
|   |  | <b>E-MAIL ADDRESS:</b> mailroom@hendersonbrothers.com                  |  |   |
|   |  | <b>INSURER(S) AFFORDING COVERAGE</b>                                   |  | <b>NAIC #</b>                           |
|   |  | <b>INSURER A:</b> Hartford Fire Insurance Company Payable              |  | <b>19682</b>                            |
|   |  | <b>INSURER B:</b> Crum & Forster Specialty                             |  | <b>44520</b>                            |
|   |  | <b>INSURER C:</b>  |  |   |
|   |  | <b>INSURER D:</b>  |  |   |
|   |  | <b>INSURER E:</b>  |  |   |
|   |  | <b>INSURER F:</b>  |  |   |

**INSURED**  
Bonfire Interactive Ltd. & Bonfire Interactive US Ltd.  
GTY Technology Holdings, Inc.  
121 Charles Street West Suite C429  
Kitchener, ON N2G 1H6  
CANADA

## COVERAGES

**CERTIFICATE NUMBER:**

**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE  | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS   |
|----------|--|-----------|----------|---------------|-------------------------|-------------------------|--|
|          | <b>COMMERCIAL GENERAL LIABILITY</b><br><input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br><input type="checkbox"/> OTHER |           |          |               |                         |                         | EACH OCCURRENCE \$<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$<br>MED EXP (Any one person) \$<br>PERSONAL & ADV INJURY \$<br>GENERAL AGGREGATE \$<br>PRODUCTS - COMP/OP AGG \$<br>\$ |
|          | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY  |           |          |               |                         |                         | COMBINED SINGLE LIMIT (Ea accident) \$<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$                                    |
|          | <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR<br><b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br>DED <input type="checkbox"/> RETENTION \$  |           |          |               |                         |                         | EACH OCCURRENCE \$<br>AGGREGATE \$<br>\$   |
|          | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input type="checkbox"/> N<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                      |           |          |               |                         |                         | PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/><br>E.L. EACH ACCIDENT \$<br>E.L. DISEASE - EA EMPLOYEE \$<br>E.L. DISEASE - POLICY LIMIT \$                         |
| A        | Prof/Tech E&O/Cyber  |           |          | 40TE039156422 | 6/15/2022               | 6/15/2023               | Prof/Tech E&O/Cyber 5,000,000  |
| B        | Excess Liability   |           |          | EOL238026     | 6/15/2022               | 6/15/2023               | Prof/Tech E&O/Cyber 5,000,000  |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Crime Limit: \$1,000,000  
Hiscox Insurance Company - Policy #UC24850175

## CERTIFICATE HOLDER

## CANCELLATION

To Whom it May Concern  
151 Charles Street  
Suite 429C  
Kitchener, ON N2G 1H6  
CANADA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Robert J. Huppert

# CERTIFICATE OF LIABILITY INSURANCE

ISSUE DATE YYYY/MM/DD  
2022/06/15

**BROKER**


**PROLINK Insurance Inc.**  
2401-150 King Street, West  
Toronto, ON M5H 1J9  
Canada  
PHONE: 416-595-7484 FAX: 416-595-1649

This certificate is issued as a matter of information only and confers no rights upon the certificate holder and imposes no liability on the insurer. This certificate does not amend, extend or alter the coverage afforded by the policies below.

|           |                                 |
|-----------|---------------------------------|
| Company A | Hartford Fire Insurance Company |
| Company B |                                 |
| Company C |                                 |
| Company D |                                 |
| Company E |                                 |

**INSURED'S FULL NAME AND MAILING ADDRESS**

Bonfire Interactive Ltd. & Bonfire Interactive US Ltd.  
121 Charles Street West  
Suite C429  
Kitchener, ON N2G 1H6  
CANADA

**COVERAGES**

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated notwithstanding any requirements, terms or conditions of any contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all terms, exclusions and conditions of such policies.

**LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS**

| TYPE OF INSURANCE  | CO LTR | POLICY NUMBER | EFFECTIVE DATE<br>YYYY/MM/DD | EXPIRY DATE<br>YYYY/MM/DD | LIMITS OF LIABILITY<br>(Canadian dollars unless indicated otherwise)   |  |
|--|--------|---------------|------------------------------|---------------------------|--|--|
| <b>COMMERCIAL GENERAL LIABILITY</b><br><input type="checkbox"/> CLAIMS MADE<br><input checked="" type="checkbox"/> OCCURRENCE<br><input checked="" type="checkbox"/> PRODUCTS AND/OR COMPLETED OPERATIONS<br><input checked="" type="checkbox"/> PERSONAL INJURY<br><input checked="" type="checkbox"/> EMPLOYER'S LIABILITY<br><input checked="" type="checkbox"/> TENANT'S LEGAL LIABILITY<br><input checked="" type="checkbox"/> NON-OWNED AUTOMOBILE<br><input checked="" type="checkbox"/> HIRED AUTOMOBILE | A      | 05MLT134421   | 2022/06/15                   | 2023/06/15                | EACH OCCURRENCE \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGGREGATE \$ 1,000,000<br>PERSONAL INJURY \$ 1,000,000<br>EMPLOYER'S LIABILITY \$ 1,000,000<br>TENANT'S LEGAL LIABILITY \$ 300,000<br>NON-OWNED AUTOMOBILE \$ 1,000,000<br>HIRED AUTOMOBILE \$ 75,000 |  |
| <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> DESCRIBED AUTOMOBILES<br><input type="checkbox"/> ALL OWNED AUTOMOBILES<br><input type="checkbox"/> LEASED AUTOMOBILES **<br><input type="checkbox"/> GARAGE LIABILITY<br><input type="checkbox"/>   |        |               |                              |                           | BODILY INJURY<br>PROPERTY DAMAGE COMBINED \$<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE \$   |  |
| <b>EXCESS LIABILITY</b><br><input checked="" type="checkbox"/> UMBRELLA FORM<br><input type="checkbox"/> OTHER THAN UMBRELLA FORM  | A      | 05UMB134423   | 2022/06/15                   | 2023/06/15                | EACH OCCURRENCE \$ 5,000,000<br>AGGREGATE \$ 5,000,000   |  |
| OTHER (SPECIFY)  |        |               |                              |                           | \$   |  |
|  |        |               |                              |                           | \$   |  |
|  |        |               |                              |                           | \$   |  |
|  |        |               |                              |                           | \$   |  |
|  |        |               |                              |                           | \$   |  |

DESCRIPTION OF OPERATIONS/LOCATIONS/AUTOMOBILES/SPECIAL ITEMS TO WHICH THIS CERTIFICATE APPLIES (but only with respect to the operations of the Named Insured)

\*\*\* LIMITS ARE IN US FUNDS  
Evidence of Insurance Only

Policy Includes: Contractual Liability as defined in the Commercial General Liability policy. Cross Liability/Severability of Interests Clause. Primary & Non-contributory but only arising out of the sole negligence of the Named Insured.

**CERTIFICATE HOLDER**
**CANCELLATION**

To Whom it May Concern  
c/o  
151 Charles Street  
Suite 429C  
Kitchener, ON N2G 1H6  
CANADA

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 15 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

AUTHORIZED REPRESENTATIVE

Per: \_\_\_\_\_

Page 1 of 1

# **Fargo Fire Department**

⑦

## MEMORANDUM

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: FIRE CHIEF STEVE DIRKSEN**

**DATE: JANUARY 5, 2023**

**SUBJECT: BID AWARD FOR FIRE STATION 2 ADDITION**

At the April 18, 2022 City Commission meeting, the Commission authorized the sale of bods for the construction of Fire Station 8 and an addition to Fire Station 2. EAPC was awarded the contract for schematic design, bid documents, and contract administration of the projects.

EAPC developed an RFP, which included development of a base bid for the entire project. Bids were opened on December 21, 2022. Meridian Commercial Construction provided the lowest combined base bid at \$329,000. This bid includes general contracting, mechanical, and electrical.

There were two alternatives bid. Alternative #1 was to raise the overhead doors and alternative #2 was to provide new signage. Neither of the alternatives is being pursued.

**RECOMMENDED MOTION:**

To award construction contract for the addition to Fire Station 2 to Meridian Commercial Construction in the amount of \$329,000.

Attachment: Certified Bid Tab and Contract



PROJECT: Fargo Fire Department Station #2 Addition  
LOCATION: Fargo, ND  
PROJ. NO: 20222800  
BID DATE: Wednesday, December 21, 2022  
BID TIME: 11:30 a.m. local time

112 Roberts St N. Ste 300  
Fargo, ND 58102  
(701) 461-7222

|                                  |             |              |            | ALTERNATES    |                                  |                                   |      |
|----------------------------------|-------------|--------------|------------|---------------|----------------------------------|-----------------------------------|------|
|                                  |             |              |            | 1             |                                  | 2                                 |      |
|                                  |             |              |            |               |                                  |                                   |      |
|                                  | LICENSE NO. | BID SECURITY | ADDENDUM # | BASE BID      | NEW OVERHEAD APPARATUS BAY DOORS | NEW ILLUMINATED STAND-OFF SIGNAGE |      |
| <b>Combined Bid</b>              |             |              |            |               | Price                            | Price                             | Days |
| Hammers Construction             | 38304       | ✓            | 1-6        | \$ 352,633.00 | \$21,569.00                      | \$12,466.00                       | 5    |
| Mendian Commercial Construction  | 34415       | ✓            | 1-6        | \$ 329,000.00 | \$29,600.00                      | \$13,000.00                       | 0    |
| <b>General Contractor</b>        |             |              |            |               | Price                            | Price                             | Days |
| Gast General Contractors         | 961         | ✓            | 1-6        | \$ 287,900.00 | \$25,000.00                      | \$3,800.00                        | 5    |
| Meinecke-Johnson Company         | 1           | ✓            | 1-6        | \$ 240,700.00 | \$21,000.00                      | \$12,000.00                       | 5    |
| Meridian Commercial Construction | 34415       | ✓            | 1-6        | \$ 234,000.00 | \$24,000.00                      | \$11,200.00                       | 0    |
| Minko Construction, Inc.         | 3467        | ✓            | 1-6        | \$ 288,500.00 | \$25,200.00                      | \$13,100.00                       | 0    |
| <b>Mechanical Contractor</b>     |             |              |            |               | Price                            | Price                             | Days |
| Cote Mechanical                  | 38787       | ✓            | 1-6        | \$ 63,765.00  | NO BID                           | NO BID                            |      |
| Manning Mechanical               | 37375       | ✓            | 1-6        | \$ 64,500.00  | \$2,500.00                       | NO BID                            | 0    |
| Peterson Mechanical              | 2217        | ✓            | 1-6        | \$ 68,800.00  | NO BID                           | NO BID                            |      |
| <b>Electrical Contractor</b>     |             |              |            |               | Price                            | Price                             | Days |
| Magnum Electrical                | 4533        | ✓            | 1-6        | \$ 36,360.00  | \$1,160.00                       | \$2,980.00                        | 1    |
| Superior Electric                | 57702       | ✓            | 1-6        | \$ 32,516.00  | \$1,450.00                       | \$2,645.00                        | 2    |
|                                  |             |              |            |               |                                  |                                   |      |
|                                  |             |              |            |               |                                  |                                   |      |
|                                  |             |              |            |               |                                  |                                   |      |

The undersigned certifies this Bid Tabulation.

Signed:



# AIA® Document A101® – 2017

## ***Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum***

**AGREEMENT** made as of the 9th day of January in the year 2023  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

City of Fargo Fire Department  
637 NP Avenue  
Fargo, ND 58102

and the Contractor:  
(Name, legal status, address and other information)

Meridian Commercial Construction  
6218 53rd Ave S  
Fargo, ND 58104  
Telephone Number: 701-356-0397

for the following Project:  
(Name, location and detailed description)

Fargo Fire Department Station #2 Addition  
3020 25<sup>th</sup> St S  
Fargo, ND 58103

The Architect:  
(Name, legal status, address and other information)

Engineers-Architects, P.C. (herein known as EAPC Architects Engineers)  
112 Roberts St N Ste 300  
Fargo, ND 58102  
Telephone Number: 701-461-7222

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Contractor agree as follows.

Init.

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User Notes:

(863581261)

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

## EXHIBIT A INSURANCE AND BONDS

## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

☐ The date of this Agreement.

☒ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

## § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

Init.

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ X ] By the following date: August 31, 2023

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

| Portion of Work | Substantial Completion Date |
|-----------------|-----------------------------|
|-----------------|-----------------------------|

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Three Hundred Twenty-nine Thousand Dollars and Zero Cents (\$ 329,000.00 ), subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

| Item | Price |
|------|-------|
| N/A  |       |

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.  
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

| Item | Price | Conditions for Acceptance |
|------|-------|---------------------------|
| N/A  |       |                           |

§ 4.3 Allowances, if any, included in the Contract Sum:  
(Identify each allowance.)

| Item | Price |
|------|-------|
| N/A  |       |

§ 4.4 Unit prices, if any:  
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

| Item | Units and Limitations | Price per Unit (\$0.00) |
|------|-----------------------|-------------------------|
| N/A  |                       |                         |

§ 4.5 Liquidated damages, if any:  
(Insert terms and conditions for liquidated damages, if any.)

N/A

§ 4.6 Other:  
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

N/A

**ARTICLE 5 PAYMENTS****§ 5.1 Progress Payments**

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**§ 5.1.3** Pay applications may be submitted by the 25<sup>th</sup> and will be paid, in the amount approved by the Architect, by the next regularly schedule City pay cycle following the Owner and Architect Review.

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

10%

**§ 5.1.7.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

Init.

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

10% until project is 50% complete, then reduced to 5% for the remainder of the contract.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

## § 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

0 %

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- ☒ Litigation in a court of competent jurisdiction located in Cass County, ND.
- ☐ Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Amount of any completed but unpaid Work and the Contractor's Fee attributable to such Work shall be the only amounts owed to Contractor and Contractor shall receive no separate termination fee.

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:

*(Name, address, email address, and other information)*

Chief Steve Dirksen  
637 NP Avenue  
Fargo, ND 58102  
Telephone Number: 701-241-1540

Email Address: sdirksen@fargond.gov

**§ 8.3** The Contractor's representative:

*(Name, address, email address, and other information)*

Mark James  
6218 53<sup>rd</sup> Ave S  
Fargo, ND 58104  
Telephone Number: 701-356-0397  
Email Address: mark.james@meridiancommercialconstruction.com

Init.

§ 8.4 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- (Paragraphs deleted)*
- .5 Drawings

| Number | Title  | Date |
|--------|--|------|
| G001   | Cover Sheet  |      |
| S001   | Structural General Notes                               |      |
| S002   | Special Inspection Tables                              |      |
| S201   | Foundation Plan & First Floor Slab Plan                |      |
| S202   | Roof Framing Plan                                      |      |
| S601   | Foundation Details                                     |      |
| S701   | Framing Details  |      |
| A001   | General Architectural Information                      |      |
| A002   | Architectural Site Plan, Details                       |      |
| A021   | Wall, Floor and Roof Types                             |      |
| A201   | Floor Plan – Demolition and Addition                   |      |
| A210   | Roof Plan and Reflected Ceiling Plan                   |      |
| A401   | Building Elevations, Sections and Wall Sections        |      |
| A801   | Door Schedule, Door and Window Elevations, and Details |      |
| PM01   | Mechanical Symbols & Legend Sheet                      |      |
| P101   | Plumbing Demolition Plan                               |      |
| P201   | First Floor Plumbing Plan                              |      |
| P801   | Plumbing Riser Diagrams, Details and Schedules         |      |

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|      |   |
|------|---|
| M201 | First Floor Heating Demolition and New Piping Plan              |
| M301 | First Floor Ventilation Plan                                    |
| M601 | Mechanical Sections and Details                                 |
| M801 | Mechanical Schedules  |
| E001 | Electrical Symbols and Abbreviations Legend                     |
| E002 | Electrical Specifications                                       |
| E201 | First Floor Power, Lighting, Demo and Systems Plan              |
| E801 | Motor Equipment Schedule & Riser, One-Line Diagrams and Details |
| E901 | Schedules   |
| E902 | Schedules   |

#### .6 Specifications

| Section  | Title                                 | Date | Pages |
|--|---------------------------------------|------|-------|
| <b>DIVISION 00 – BIDDING AND CONTRACT REQUIREMENTS</b> |                                       |      |       |
| 00 7000  | ARTICLE 16 – SUPPLEMENTARY CONDITIONS |      |       |
| <b>DIVISION 01 – GENERAL REQUIREMENTS</b>              |                                       |      |       |
| 01 2300  | ALTERNATES                            |      |       |
| 01 2500  | SUBSTITUTION PROCEDURES               |      |       |
| 01 2600  | CONTRACT MODIFICATION                 |      |       |
| 01 2900  | PAYMENT PROCEDURES                    |      |       |
| 01 3100  | PROJECT MANAGEMENT AND COORDINATION   |      |       |
| 01 3200  | CONSTRUCTION PROGRESS DOCUMENTATION   |      |       |
| 01 3300  | SUBMITTAL PROCEDURES                  |      |       |
| 01 3516  | ALTERATION PROJECT PROCEDURES         |      |       |
| 01 4000  | QUALITY REQUIREMENTS                  |      |       |
| 01 5000  | TEMPORARY FACILITIES AND CONTROLS     |      |       |
| 01 6000  | PRODUCT REQUIREMENTS                  |      |       |
| 01 7300  | EXECUTION                             |      |       |
| 01 7700  | CLOSEOUT PROCEDURES                   |      |       |
| 01 7823  | OPERATION AND MAINTENANCE DATA        |      |       |
| <b>DIVISION 02 – DEMOLITION</b>                        |                                       |      |       |
| 02 4119  | SELECTIVE DEMOLITION                  |      |       |
| <b>DIVISION 03 – CONCRETE</b>                          |                                       |      |       |
| 03 0130  | MAINTENANCE OF CAST-IN PLACE CONCRETE |      |       |
| 03 1000  | CONCRETE FORMING AND ACCESSORIES      |      |       |
| 03 2000  | CONCRETE REINFORCING                  |      |       |
| 03 3000  | CAST-IN-PLACE CONCRETE                |      |       |
| <b>DIVISION 06 – WOOD, PLASTICS, AND COMPOSITES</b>    |                                       |      |       |
| 06 1000  | ROUGH CARPENTRY                       |      |       |

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|            |                              |
|------------|------------------------------|
| 06 1600    | SHEATHING                    |
| 06 1753    | SHOP FABRICATED WOOD TRUSSES |
| 06 6400    | PLASTIC PANELING             |
| 07 0150.19 | PREPARATION FOR REROOFING    |

**DIVISION 07 – THERMAL AND MOISTURE PROTECTION**

|         |                               |
|---------|-------------------------------|
| 07 2100 | THERMAL INSULATION            |
| 07 2500 | WEATHER BARRIERS              |
| 07 2600 | VAPOR RETARDERS               |
| 07 3113 | ASPHALT SHINGLES              |
| 07 4619 | STEEL SIDING                  |
| 07 6200 | SHEET METAL FLASHING AND TRIM |

**DIVISION 08 – OPENINGS**

|         |                               |
|---------|-------------------------------|
| 08 1113 | HOLLOW METAL DOORS AND FRAMES |
| 08 3613 | SECTIONAL DOORS               |
| 08 5313 | VINYL WINDOWS                 |
| 08 7100 | DOOR HARDWARE                 |

**DIVISION 10 – SPECIALTIES**

|         |                            |
|---------|----------------------------|
| 10 1419 | DIMENSIONAL LETTER SIGNAGE |
|---------|----------------------------|

**DIVISION 20 – BASIC MECHANICAL REQUIREMENTS**

|         |   |
|---------|---|
| 20 0513 | COMMON MOTOR REQUIREMENTS                     |
| 20 0517 | SLEEVES AND SLEEVE SEALS FOR PIPING           |
| 20 0518 | ESCUTCHEONS FOR PIPING                        |
| 20 0523 | VALVES  |
| 20 0529 | HANGERS AND SUPPORTS FOR PIPING AND EQUIPMENT |
| 20 0548 | VIBRATION CONTROLS                            |
| 20 0553 | IDENTIFICATION                                |
| 20 0719 | PIPING INSULATION                             |

**DIVISION 22 – PLUMBING**

|            |                                   |
|------------|-----------------------------------|
| 22 1116    | DOMESTIC WATER PIPING             |
| 22 1119    | DOMESTIC WATER PIPING SPECIALTIES |
| 22 1316    | SANITARY WASTE AND VENT PIPING    |
| 22 1319    | SANITARY WASTE PIPING SPECIALTIES |
| 22 4216.16 | COMMERCIAL SINKS                  |

**DIVISION 23 – HEATING, VENTILATING, AND AIR CONDITIONING (HVAC)**

|            |  |
|------------|--|
| 23 0593    | TESTING, ADJUSTING, AND BALANCING FOR HVAC |
| 23 0713    | DUCT INSULATION                            |
| 23 0923.12 | CONTROL DAMPERS                            |
| 23 0993.11 | SEQUENCE OF OPERATIONS FOR HVAC DDC        |
| 23 1123    | FACILITY NATURAL-GAS PIPING                |
| 23 2300    | REFRIGERANT PIPING                         |
| 23 3113    | METAL DUCTS                                |
| 23 3300    | AIR DUCT ACCESSORIES                       |

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|         |   |
|---------|---|
| 23 3713 | DIFFUSERS, REGISTERS, AND GRILLES       |
| 23 5416 | GAS FIRED FURNACES                      |
| 23 6200 | PACKAGED COMPRESSOR AND CONDENSER UNITS |
| 23 7200 | AIR-TO-AIR ENERGY RECOVERY EQUIPMENT    |

**.7 Addenda, if any:**

| Number    | Date     | Pages |
|-----------|----------|-------|
| Addenda 1 | 11.16.22 | 14    |
| Addenda 2 | 11.28.22 | 22    |
| Addenda 3 | 12.01.22 | 7     |
| Addenda 4 | 12.07.22 | 4     |
| Addenda 5 | 12.14.22 | 3     |
| Addenda 6 | 12.16.22 | 2     |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8 Other Exhibits:**

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

☐ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

☐ The Sustainability Plan:

| Title | Date | Pages |
|-------|------|-------|
| N/A   |      |       |

☐ Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
|----------|-------|------|-------|

**.9 Other documents, if any, listed below:**

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER (Signature)**

Chief Steve Dirksen

*(Printed name and title)*

\_\_\_\_\_  
**CONTRACTOR (Signature)**

Mark James, Project Manager

*(Printed name and title)*

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# **AIA® Document A101® – 2017**

***Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum***

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(863581261)

## **Additions and Deletions Report for** **AIA® Document A101® – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:38:08 CT on 01/05/2023.

### **PAGE 1**

**AGREEMENT** made as of the 9th day of January in the year 2023

...

City of Fargo Fire Department  
637 NP Avenue  
Fargo, ND 58102

...

Meridian Commercial Construction  
6218 53rd Ave S  
Fargo, ND 58104  
Telephone Number: 701-356-0397

...

Fargo Fire Department Station #2 Addition  
3020 25<sup>th</sup> St S  
Fargo, ND 58103

...

Engineers-Architects, P.C. (herein known as EAPC Architects Engineers)  
112 Roberts St N Ste 300  
Fargo, ND 58102  
Telephone Number: 701-461-7222

### **PAGE 2**

☒ A date set forth in a notice to proceed issued by the Owner.  
**PAGE 3**

☒ By the following date: August 31, 2023

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Three Hundred Twenty-nine Thousand Dollars and Zero Cents (\$ 329,000.00 ), subject to additions and deductions as provided in the Contract Documents.

...

N/A

...

N/A

...

N/A

...

N/A

...

N/A

...

N/A

**PAGE 4**

~~§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.) Pay applications may be submitted by the 25<sup>th</sup> and will be paid, in the amount approved by the Architect, by the next regularly schedule City pay cycle following the Owner and Architect Review.~~

...

10%

**PAGE 5**

10% until project is 50% complete, then reduced to 5% for the remainder of the contract.

...

0 %

**PAGE 6**

[ X ] Litigation in a court of competent jurisdiction located in Cass County, ND.

...

Amount of any completed but unpaid Work and the Contractor's Fee attributable to such Work shall be the only amounts owed to Contractor and Contractor shall receive no separate termination fee.

...

Chief Steve Dirksen

637 NP Avenue

Fargo, ND 58102

Telephone Number: 701-241-1540

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User Notes:

(863581261)

...

Email Address: [sdirksen@fargond.gov](mailto:sdirksen@fargond.gov)

...

Mark James  
6218 53<sup>rd</sup> Ave S  
Fargo, ND 58104  
Telephone Number: 701-356-0397  
Email Address: [mark.james@meridiancommercialconstruction.com](mailto:mark.james@meridiancommercialconstruction.com)  
PAGE 7

~~4~~ AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203-2013 incorporated into this Agreement.)

...

|             |   |
|-------------|---|
| <u>G001</u> | <u>Cover Sheet</u>  |
| <u>S001</u> | <u>Structural General Notes</u>                               |
| <u>S002</u> | <u>Special Inspection Tables</u>                              |
| <u>S201</u> | <u>Foundation Plan &amp; First Floor Slab Plan</u>            |
| <u>S202</u> | <u>Roof Framing Plan</u>                                      |
| <u>S601</u> | <u>Foundation Details</u>                                     |
| <u>S701</u> | <u>Framing Details</u>  |
| <u>A001</u> | <u>General Architectural Information</u>                      |
| <u>A002</u> | <u>Architectural Site Plan, Details</u>                       |
| <u>A021</u> | <u>Wall, Floor and Roof Types</u>                             |
| <u>A201</u> | <u>Floor Plan – Demolition and Addition</u>                   |
| <u>A210</u> | <u>Roof Plan and Reflected Ceiling Plan</u>                   |
| <u>A401</u> | <u>Building Elevations, Sections and Wall Sections</u>        |
| <u>A801</u> | <u>Door Schedule, Door and Window Elevations, and Details</u> |
| <u>PM01</u> | <u>Mechanical Symbols &amp; Legend Sheet</u>                  |
| <u>P101</u> | <u>Plumbing Demolition Plan</u>                               |
| <u>P201</u> | <u>First Floor Plumbing Plan</u>                              |
| <u>P801</u> | <u>Plumbing Riser Diagrams, Details and Schedules</u>         |
| <u>M201</u> | <u>First Floor Heating Demolition and New Piping Plan</u>     |
| <u>M301</u> | <u>First Floor Ventilation Plan</u>                           |
| <u>M601</u> | <u>Mechanical Sections and Details</u>                        |
| <u>M801</u> | <u>Mechanical Schedules</u>                                   |
| <u>E001</u> | <u>Electrical Symbols and Abbreviations Legend</u>            |
| <u>E002</u> | <u>Electrical Specifications</u>                              |
| <u>E201</u> | <u>First Floor Power, Lighting, Demo and</u>                  |

E801

Systems Plan  
Motor Equipment Schedule & Riser  
One-Line Diagrams and Details

E901SchedulesE902Schedules

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**DIVISION 00 – BIDDING AND CONTRACT REQUIREMENTS**00 7000      ARTICLE 16 – SUPPLEMENTARY CONDITIONS**DIVISION 01 – GENERAL REQUIREMENTS**

01 2300      ALTERNATES  
01 2500      SUBSTITUTION PROCEDURES  
01 2600      CONTRACT MODIFICATION  
01 2900      PAYMENT PROCEDURES  
01 3100      PROJECT MANAGEMENT AND COORDINATION  
01 3200      CONSTRUCTION PROGRESS DOCUMENTATION  
01 3300      SUBMITTAL PROCEDURES  
01 3516      ALTERATION PROJECT PROCEDURES  
01 4000      QUALITY REQUIREMENTS  
01 5000      TEMPORARY FACILITIES AND CONTROLS  
01 6000      PRODUCT REQUIREMENTS  
01 7300      EXECUTION  
01 7700      CLOSEOUT PROCEDURES  
01 7823      OPERATION AND MAINTENANCE DATA

**DIVISION 02 – DEMOLITION**02 4119      SELECTIVE DEMOLITION**DIVISION 03 – CONCRETE**

03 0130      MAINTENANCE OF CAST-IN PLACE CONCRETE  
03 1000      CONCRETE FORMING AND ACCESSORIES  
03 2000      CONCRETE REINFORCING  
03 3000      CAST-IN-PLACE CONCRETE

**DIVISION 06 – WOOD, PLASTICS, AND COMPOSITES**

06 1000      ROUGH CARPENTRY  
06 1600      SHEATHING  
06 1753      SHOP FABRICATED WOOD TRUSSES  
06 6400      PLASTIC PANELING  
07 0150.19      PREPARATION FOR REROOFING

**DIVISION 07 – THERMAL AND MOISTURE PROTECTION**

07 2100      THERMAL INSULATION  
07 2500      WEATHER BARRIERS  
07 2600      VAPOR RETARDERS  
07 3113      ASPHALT SHINGLES

|                |                                      |
|----------------|--------------------------------------|
| <u>07 4619</u> | <u>STEEL SIDING</u>                  |
| <u>07 6200</u> | <u>SHEET METAL FLASHING AND TRIM</u> |

**DIVISION 08 – OPENINGS**

|                |                                      |
|----------------|--------------------------------------|
| <u>08 1113</u> | <u>HOLLOW METAL DOORS AND FRAMES</u> |
| <u>08 3613</u> | <u>SECTIONAL DOORS</u>               |
| <u>08 5313</u> | <u>VINYL WINDOWS</u>                 |
| <u>08 7100</u> | <u>DOOR HARDWARE</u>                 |

**DIVISION 10 – SPECIALTIES**

|                |                                   |
|----------------|-----------------------------------|
| <u>10 1419</u> | <u>DIMENSIONAL LETTER SIGNAGE</u> |
|----------------|-----------------------------------|

**DIVISION 20 – BASIC MECHANICAL REQUIREMENTS**

|                |  |
|----------------|--|
| <u>20 0513</u> | <u>COMMON MOTOR REQUIREMENTS</u>                     |
| <u>20 0517</u> | <u>SLEEVES AND SLEEVE SEALS FOR PIPING</u>           |
| <u>20 0518</u> | <u>ESCUTCHEONS FOR PIPING</u>                        |
| <u>20 0523</u> | <u>VALVES</u>  |
| <u>20 0529</u> | <u>HANGERS AND SUPPORTS FOR PIPING AND EQUIPMENT</u> |
| <u>20 0548</u> | <u>VIBRATION CONTROLS</u>                            |
| <u>20 0553</u> | <u>IDENTIFICATION</u>                                |
| <u>20 0719</u> | <u>PIPING INSULATION</u>                             |

**DIVISION 22 – PLUMBING**

|                   |  |
|-------------------|--|
| <u>22 1116</u>    | <u>DOMESTIC WATER PIPING</u>             |
| <u>22 1119</u>    | <u>DOMESTIC WATER PIPING SPECIALTIES</u> |
| <u>22 1316</u>    | <u>SANITARY WASTE AND VENT PIPING</u>    |
| <u>22 1319</u>    | <u>SANITARY WASTE PIPING SPECIALTIES</u> |
| <u>22 4216.16</u> | <u>COMMERCIAL SINKS</u>                  |

**DIVISION 23 – HEATING, VENTILATING, AND AIR CONDITIONING (HVAC)**

|                   |   |
|-------------------|---|
| <u>23 0593</u>    | <u>TESTING, ADJUSTING, AND BALANCING FOR HVAC</u> |
| <u>23 0713</u>    | <u>DUCT INSULATION</u>                            |
| <u>23 0923.12</u> | <u>CONTROL DAMPERS</u>                            |
| <u>23 0993.11</u> | <u>SEQUENCE OF OPERATIONS FOR HVAC DDC</u>        |
| <u>23 1123</u>    | <u>FACILITY NATURAL-GAS PIPING</u>                |
| <u>23 2300</u>    | <u>REFRIGERANT PIPING</u>                         |
| <u>23 3113</u>    | <u>METAL DUCTS</u>                                |
| <u>23 3300</u>    | <u>AIR DUCT ACCESSORIES</u>                       |
| <u>23 3713</u>    | <u>DIFFUSERS, REGISTERS, AND GRILLES</u>          |
| <u>23 5416</u>    | <u>GAS FIRED FURNACES</u>                         |
| <u>23 6200</u>    | <u>PACKAGED COMPRESSOR AND CONDENSER UNITS</u>    |
| <u>23 7200</u>    | <u>AIR-TO-AIR ENERGY RECOVERY EQUIPMENT</u>       |

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|                  |                 |           |
|------------------|-----------------|-----------|
| <u>Addenda 1</u> | <u>11.16.22</u> | <u>14</u> |
| <u>Addenda 2</u> | <u>11.28.22</u> | <u>22</u> |
| <u>Addenda 3</u> | <u>12.01.22</u> | <u>7</u>  |
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| <u>Addenda 5</u> | <u>12.14.22</u> | <u>3</u>  |



Addenda 6

12.16.22

2

...

N/A

...

Chief Steve Dirksen

Mark James, Project Manager

***Certification of Document's Authenticity***  
***AIA® Document D401™ – 2003***

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:38:08 CT on 01/05/2023 under Order No. 2114305155 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)



# AIA Document A101® – 2017 Exhibit A

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 9th day of January in the year 2023  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

Fargo Fire Department Station #2 Addition

**THE OWNER:**  
(Name, legal status and address)

City of Fargo Fire Department  
637 NP Avenue  
Fargo, ND 58102

**THE CONTRACTOR:**  
(Name, legal status and address)

Meridian Commercial Construction  
6218 53rd Ave S  
Fargo, ND 58104

### TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

##### § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

| Causes of Loss | Sub-Limit |
|----------------|-----------|
|----------------|-----------|

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

| Coverage | Sub-Limit |
|----------|-----------|
|----------|-----------|

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ A.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- ☐ **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- ☐ **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- ☐ **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- ☐ **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- ☐ **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- ☐ **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- ☐ **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

Init.

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User Notes:

(1781627248)

[ ] § A.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] § A.2.5.2 **Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

#### Coverage

#### Limits

### ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

#### § A.3.1 General

§ A.3.1.1 **Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 **Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 **Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

#### § A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

#### § A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than one million dollars (\$ 1,000,000 ) each occurrence, one million dollars (\$ 1,000,000 ) general aggregate, and one million dollars (\$ 1,000,000 ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;

Init.

- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than three hundred and fifty thousand dollars (\$ 350,000 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ A.3.2.5** Workers' Compensation at statutory limits.

**§ A.3.2.6** Employers' Liability with policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.

**§ A.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than one million dollars (\$ 1,000,000 ) per claim and one million dollars (\$ 1,000,000 ) in the aggregate.

**§ A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

**§ A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

Init.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

**§ A.3.3 Contractor's Other Insurance Coverage**

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

☐ § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

☐ § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for Work within fifty (50) feet of railroad property.

☐ § A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

☐ § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

☐ § A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

☐ § A.3.3.2.6 Other Insurance  
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*



Coverage

Limits

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:  
*(Specify type and penal sum of bonds.)*

| Type             | Penal Sum (\$0.00) |
|------------------|--------------------|
| Payment Bond     |                    |
| Performance Bond |                    |

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Init.

## **Additions and Deletions Report for** **AIA® Document A101® – 2017 Exhibit A**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:39:00 CT on 01/05/2023.

### **PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 9th day of January in the year 2023

...

Fargo Fire Department Station #2 Addition

...

City of Fargo Fire Department

637 NP Avenue

Fargo, ND 58102

...

Meridian Commercial Construction

6218 53rd Ave S

Fargo, ND 58104

### **PAGE 4**

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than one million dollars (\$ 1,000,000 ) each occurrence, one million dollars (\$ 1,000,000 ) general aggregate, and one million dollars (\$ 1,000,000 ) aggregate for products-completed operations hazard, providing coverage for claims including

### **PAGE 5**

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than three hundred and fifty thousand dollars (\$ 350,000 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

...

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than one million dollars (\$ 1,000,000 ) per claim and one million dollars (\$ 1,000,000 ) in the aggregate.

## BID FORM

PROJECT: Fargo Fire Department – Station #2 Addition

BID OPENING DATE: December 21, 2022 - Bids Due at 11:30, AM, Central Time Zone

BID OPENING TIME: 11:45, AM, Central Time Zone

BID OPENING PLACE: City Auditor  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

TO THE OWNER: City of Fargo  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

I have received the Drawings and Specifications for the Combined Contract for EAPC Project No. 20222800, Fargo Fire Department Station #2 Addition, to be erected at Fargo, North Dakota.

I have also received Addenda Nos. 1, 2, 3, 4, 5, 6 and have included their provisions in my Bid. I have examined both the documents and the site and submit the following Bid:

I will do the Combined Construction work for the lump sum price of Three Hundred  
Twenty-Nine Thousand dollars (\$ 329,000).

## ALTERNATIVES.

I will include the following alternates as specified additions to or deductions from the above Base Bid, for changes in dollars and time listed:

Alternate No. 1, New overhead apparatus garage bay doors

Add \$ 29,600 Twenty-Nine Thousand Six Hundred  
Add 0 Calendar Days.

Alternate No. 2, New illuminated stand-off reverse channel dimensional letter signage

Add \$ 13,000 Thirteen Thousand  
Add 0 Calendar Days.

In submitting this Bid, I agree:

1. To accept the provisions of the Instructions to Bidders regarding disposition of Bid Security.

2. To enter into and execute a Contract, if awarded on the basis of this bid, and to furnish Guarantee Bonds in accord with the Instructions to Bidders.
3. To accomplish the work in accord with the Contract Documents.

I have attached the required Bid Security.

I have listed below the major Subcontractors whose bids I have used in submitting this Bid:

Heating, Ventilating, Air Conditioning  
Electrical

*Upon Award*

|                        |  |           |
|------------------------|--|-----------|
| Official Address:      | <u>Meridian Commercial Construction, LLC.</u>                                      | firm name |
| <u>6218 53rd Ave S</u> |  | signed by |
| <u>Fargo, ND 58104</u> | <u>Rob Jordahl - President</u>   | title     |

# **AIA® Document A310™ – 2010**

## Bid Bond

**CONTRACTOR:**
*(Name, legal status and address)*

Meridian Commercial Construction, LLC  
6218 53rd Avenue South  
Fargo, ND 58104

**OWNER:**
*(Name, legal status and address)*

City of Fargo  
225 4th St. N  
Fargo, ND 58102

**BOND AMOUNT:** Five Percent (5%) of the Amount Bid, 5% A.B.

**PROJECT:**
*(Name, location or address, and Project number, if any)*

Fargo Fire Department Station #2 Addition  
Fargo, ND

**SURETY:**
*(Name, legal status and principal place of business)*

Merchants National Bonding, Inc.  
P.O. Box 14498  
Des Moines, IA 50306-3498

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 6th

day of December

2022

*(Witness)*

*(Witness)*

Meridian Commercial Construction, LLC

*(Principal)*

*(Seal)*

*(Title)* Rob Jordahl, President

Merchants National Bonding, Inc.

*(Surety)*

*(Seal)*

*(Title)* Jill Graveline, Attorney in Fact

**CAUTION:** You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

Init.

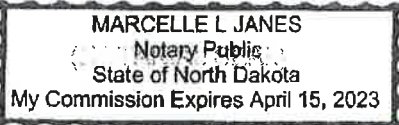
AIA Document A310™ – 2010. Copyright © 1983, 1970 and 2010 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. Purchasers are permitted to reproduce ten (10) copies of this document when completed. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, [copyright@aia.org](mailto:copyright@aia.org).

081110

ACKNOWLEDGMENT OF PRINCIPAL (CORPORATION)

State of ND  
County of Cass

On this 6 day of December 2022, before me personally appeared Rob Jordahl known to be the President of the corporation that is described in and that he or she executed the within instrument, and acknowledged to me that such corporation executed the same.



Marcelle Janes

ACKNOWLEDGMENT OF PRINCIPAL (INDIVIDUAL OR PARTNERSHIP)

State of \_\_\_\_\_  
County of \_\_\_\_\_

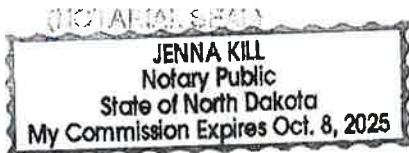
On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared \_\_\_\_\_ known to be the person described in and who executed the within instrument, and acknowledged to me that he/she executed the same.

(NOTARIAL SEAL)

ACKNOWLEDGMENT OF SURETY

State of North Dakota  
County of Cass

On this 6th day of December 2022, before me personally appeared Jill Graveline known to be the person who is described in and whose name is subscribed to the within instrument as Attorney in Fact of Merchants National Bonding, Inc. and acknowledged to me that he or she subscribed the name of Merchants National Bonding, Inc. thereto as surety and his or her own name as Attorney in Fact.



Jenna Kill

# MERCHANTS BONDING COMPANY™

## POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually, Beth Johnston; Braeden Nelson; Bridget Helm; Daniel Armbrust; Jill Graveline; Rebecca Hecker; Thomas Dawson

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 21st day of March, 2022.



MERCHANTS BONDING COMPANY (MUTUAL)  
MERCHANTS NATIONAL BONDING, INC.

By

*Larry Taylor*  
President

STATE OF IOWA  
COUNTY OF DALLAS ss.

On this 21st day of March, 2022, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



**POLLY MASON**  
Commission Number 750576  
My Commission Expires  
January 07, 2023

*Polly Mason*  
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 6th day of December, 2022.



*William Warner Jr.*  
Secretary



# *State of North Dakota*

## SECRETARY OF STATE



### CONTRACTOR LICENSE

NO: 34415

CLASS: A

The undersigned, as Secretary of State of the state of North Dakota and Registrar of Contractors, certifies that **MERIDIAN COMMERCIAL CONSTRUCTION, LLC** whose address is in FARGO, ND, has filed in this office proper documents for a Contractor License valid until March 1, 2023, and has complied with all requirements of North Dakota Century Code, chapter 43-07.

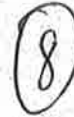
**MERIDIAN COMMERCIAL CONSTRUCTION, LLC** is entitled to bid on and accept contracts as authorized by law under this license without limit as to the value of any single contract project.

Dated: January 19, 2022

A handwritten signature in black ink, reading "Alvin A. Jaeger".


Alvin A. Jaeger  
Secretary of State





## MEMORANDUM

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: DESI FLEMING**   
**DIRECTOR OF PUBLIC HEALTH**

**DATE: DECEMBER 30, 2022**

**RE: PURCHASE OF SERVICE AGREEMENT WITH THE NORTH  
DAKOTA DEPARTMENT OF HEALTH AND HUMAN  
SERVICES, BEHAVIORAL HEALTH DIVISION FOR OPIOID OR  
STIMULANT MISUSE PREVENTION ACTIVITIES.  
NO. 810-12949  
FUNDS: MONTHLY \$21,237.50, NOT TO EXCEED \$254,850  
TOTAL  
EXPIRES: SEPTEMBER 23, 2023**

This is a request to approve the attached Purchase of Service Agreement with the North Dakota Department of Health and Human Services, Behavioral Health Division for Opioid or stimulant misuse prevention.

No budget adjustments.

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

**Suggested Motion:** Move to approve the contract with the North Dakota Department of Health and Human Service, Behavioral Health Division.

DF/lls  
Attachment

CONTRACT #810-12949

## PURCHASE OF SERVICE AGREEMENT

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

City of Fargo (Vendor), 1240 25<sup>th</sup> 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 October 1, 2022, through September 30, 2023. This Agreement will not automatically renew.

### 2. SCOPE OF SERVICE

Vendor shall implement evidence-based strategies addressing opioid or stimulant misuse and use disorders through prevention, harm reduction, treatment, and recovery as identified in the submitted "Invitation to Apply", which is made a part of this Agreement as Attachment A. Vendor shall provide services in a manner that is recovery-oriented, trauma-informed and person-centered.

Vendor shall implement the following strategies:

- a. Complete a community naloxone assessment and submit to State by December 16, 2022, following State provided template.
- b. Disseminate naloxone throughout the community, based on where an overdose is most likely to occur.
- c. Provide training on recognition of opioid overdose and appropriate use of naloxone.
- d. Promote medication safety by collaborating with local pharmacies to bring awareness of the ONE Program.
- e. Partner with State and local addiction treatment providers to increase availability of contingency management programs.
- f. Become aware of all State Opioid Response (SOR) funded efforts and State funded programs to connect individuals and entities with applicable information.

Vendor shall ensure all practitioners who serve clients with substance use disorders and are eligible to obtain a Drug Addiction Treatment Act of 2000 (DATA) waiver employed by an organization receiving funding through State Opioid Response (SOR) receive such waiver. The educational requirements for this waiver necessary to treat more than 30 patients at one time may be completed at no cost via pcssnow.org.

Vendor shall ensure any organization receiving funding through the SOR perform HIV and viral hepatitis testing as clinically indicated and referral to appropriate treatment provided to those testing positive. Vaccination for hepatitis A and B should be provided or referral made for same as clinically indicated.

Vendor shall make any necessary project modifications as deemed necessary by State. Vendor shall coordinate with all State-funded SOR sub-recipients to support collective efforts meeting the goals and objectives of the SOR grant program. Vendor shall coordinate with existing community-based organizations and programs to maximize benefit, avoid duplication, and leverage, redirect, and realign resources. Vendor shall collaborate with State-contracted SOR evaluator to ensure all state and federal required data is collected, including the designated measures under the Government Performance and Results (GPRA) Modernization Act of 2010 for approved treatment and recovery activities (pre, follow-up, and post-grant activities).

Vendor shall submit monthly reports to State by the 10th of each month (unless otherwise directed based on SAMHSA requirements), which may include:

- a. Project performance
- b. Implementation status
- c. Achievements and barriers
- d. Any changes to local strategy implementation
- e. Process and outcome measures, which may include:
  - 1) Number of individuals trained
  - 2) Number of providers implementing Medication-assisted treatment (MAT)
  - 3) Number of naloxone overdose kits purchased
  - 4) Number of naloxone overdose kits distributed
  - 5) Number of overdose reversals
  - 6) Number of Fentanyl test strips purchased
  - 7) Number of Fentanyl test strips distributed
  - 8) Education of school-aged children, first responders, and key community sectors on opioid and/or stimulant misuse
  - 9) Outreach activities that target underserved and/or diverse populations and other measures as identified by SAMHSA or State

Vendor shall engage in ongoing communication with State and project evaluator for monitoring of local strategy implementation and project analysis.

By September 30, 2023, Vendor shall complete a final project summary report to include the following information:

- a. Summary of progress made for each implemented strategy, including success stories.
- b. Identified barriers to implementation for each strategy and efforts made to address them.

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

Vendor shall follow all SAMHSA standard funding restrictions.

Vendor shall ensure all communication (i.e. media, partnership meetings, stakeholders, etc.) about efforts related to this project includes the following language:

This effort is associated with North Dakota's State Opioid Response Grant (SOR), funded by the federal Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA), administered through the North Dakota Department of Health and Human Services.

Vendor shall complete a Naloxone Distribution Partnership Agreement and submit to State by October 10, 2022.

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 of \$21,237.50. Total payment under this Agreement may not exceed \$254,850. Vendor shall submit its request for reimbursement to State by the 10th of each month. Vendor shall submit its final payment request to State no later than 10 days after the expiration or termination of this agreement, or upon request by State.

4. TERMINATION

a. Termination by Mutual Agreement or Notice

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

b. Early Termination in the Public Interest

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

c. Termination for Lack of Funding or Authority

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

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.

- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

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

d. Termination for Cause

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

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

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

5. NONPERFORMANCE

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

6. FORCE MAJEURE

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

7. VENDOR'S UNDERSTANDING OF TERM OF FUNDING

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

8. VENDOR ASSURANCES

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

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

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

9. AUTHORITY TO CONTRACT

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

10. INDEPENDENT ENTITY

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

11. INDEMNITY

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

12. INSURANCE

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

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

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

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

13. NOTICE

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

City of Fargo  
1240 25<sup>th</sup> Street South  
Fargo, ND 58103

OR

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

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

14. INTEGRATION, MODIFICATION, AND CONFLICT IN DOCUMENTS

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

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

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

15. SEVERABILITY

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

16. APPLICABLE LAW AND VENUE

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

17. ASSIGNMENT

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



18. SPOILIATION – PRESERVATION OF EVIDENCE

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

19. WORKS FOR HIRE

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

20. WORK PRODUCT, EQUIPMENT, AND MATERIALS

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

21. CONFIDENTIAL INFORMATION

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

22. COMPLIANCE WITH PUBLIC RECORDS LAWS

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

23. ATTORNEY FEES

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

24. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

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

25. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

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

26. ACCESS TO BOOKS AND RECORDS

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

CITY OF FARGO

By \_\_\_\_\_

Timothy J. Mahoney

Its Mayor, City of Fargo

By



Desi Fleming

Its Director of Public Health

12/30/2022

DATE

DATE

45-6002069

Vendor's Federal Taxpayer Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HEALTH AND  
HUMAN SERVICES


By \_\_\_\_\_ DATE \_\_\_\_\_  
CHRISTOPHER D. JONES  
EXECUTIVE DIRECTOR

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



## MEMORANDUM

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: DESI FLEMING**   
**DIRECTOR OF PUBLIC HEALTH**

**DATE: DECEMBER 30, 2022**

**RE: AMENDMENT TO THE PURCHASE OF SERVICE AGREEMENT  
WITH THE NORTH DAKOTA DEPARTMENT OF HEALTH AND  
HUMAN SERVICES FOR SUBSTANCE ABUSE PREVENTION  
ACTIVITIES AND STRATEGIES.  
NO. 810-12545 AMENDMENT  
FUNDS: ADDITIONAL \$6,000  
EXPIRES: SEPTEMBER 30, 2023**

This is a request to approve the attached Purchase of Service Agreement amendment with the North Dakota Department of Health and Human Services, Behavioral Health Division. The term has been moved from September 30, 2022 to September 30, 2023 and the funds have been increased by \$6,000.

### No Budget Adjustment

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

**Suggested Motion:** Move to approve the amendment for the Purchase of Service Agreement with the North Dakota Department of Health and Human Services, Behavioral Health Division.

DF/lls  
Attachment

CONTRACT #810-12545  
AMENDMENT A

AMENDMENT TO PURCHASE OF SERVICE AGREEMENT

On or about December 15, 2021, the state of North Dakota, acting through its North Dakota Department of Health and Human Services, Behavioral Health Division (State) and City of Fargo (Vendor) entered into an Agreement to plan, implement, and evaluate evidence-based substance abuse prevention activities and strategies.

The parties agree that certain parts of that Agreement should be changed:

1. The Term of the Agreement is changed from December 15, 2021, through September 30, 2022, to December 15, 2021, through September 30, 2023.
2. Effective October 1, 2022, the Scope of Service section is amended to include the following language:

CONTINUED IMPLEMENTATION PHASE (October 1, 2022 – August 31, 2023):

- a. Vendor shall implement activities identified in the Assessment and Planning Phase. Vendor shall implement evidence-based activities and strategies following the guidelines provided by State.
- b. Vendor shall collect process measures to monitor implementation and modify strategy and activity implementation as needed.
- c. Vendor shall implement a minimum of three activities monthly as outlined in the Parents LEAD Community Toolkit (<http://www.parentslead.org/sites/default/files/PL%20Toolkit.pdf>) to support general prevention efforts and increase readiness.


EVALUATION PHASE (September 1, 2023 – September 30, 2023):

Vendor shall complete an evaluation of the local condition assessed during the Assessment and Planning Phase and submit to State by September 30, 2023, to include the following:

- a. detailed summary of progress made for the implemented strategy utilizing pre- and post- assessment data collected, clear summary of process measures (total people reached, number of resources disseminated, etc.),
  - b. outcome measures based on identified priority areas,
  - c. identification of communication points to share with local stakeholders,
  - d. identified barriers to implementation for activities and possible solutions, and
  - e. plans for sustaining outcomes.
3. Effective October 1, 2022, the Compensation section is amended to increase the total amount paid under the Agreement from \$17,650 to \$23,650, an increase of \$6,000. For the period October 1, 2022, through September 30, 2023, total payment under this Agreement may not exceed \$6,000.

All other terms and conditions remain as previously written.

CITY OF FARGO

By \_\_\_\_\_ By  12/30/2022  
Timothy J. Mahoney Desi Fleming DATE  
Its Mayor, City of Fargo Its Director of Public Health

STATE OF NORTH DAKOTA

DATE \_\_\_\_\_ NORTH DAKOTA DEPARTMENT OF HEALTH AND  
HUMAN SERVICES

By \_\_\_\_\_  
PAMELA SAGNESS, DIRECTOR  
BEHAVIORAL HEALTH DIVISION DATE

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



**Fargo Cass Public Health**  
1240 25th Street South  
Fargo, ND 58103-2367  
Phone: 701.241.1360 | Fax: 701.241.1366  
[www.FargoCassPublicHealth.com](http://www.FargoCassPublicHealth.com)

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**Public Health**  
Prevent. Promote. Protect.

**Fargo Cass Public Health**

## MEMORANDUM

**TO:** BOARD OF CITY COMMISSION

**FROM:** DESI FLEMING   
DIRECTOR OF PUBLIC HEALTH

**DATE:** DECEMBER 30, 2022

**RE:** AGREEMENT FOR PROVISION OF HEALTH SERVICES FOR  
CASS COUNTY BASED ON ANNUAL OPERATING BUDGET  
SUBMITTED TO CASS COUNTY  
EXPIRES:

The attached agreement with Cass County is for provision of health services.

No budget adjustment is required for this contract.

If you have any questions, please contact me at 241.1360.

**Suggested Motion:** Move to approve the contract with Cass County for Health Services.

DF/lls  
Attachment

**AGREEMENT FOR PROVISION OF HEALTH SERVICES  
FOR CASS COUNTY BY  
FARGO CASS PUBLIC HEALTH**

Cass County and the City of Fargo hereby enter into an agreement in accordance applicable ND Century Code Sections 23 and 54-40, under which public health services will be provided by Fargo Cass Public Health throughout Cass County and within those cities within the County that do not have approved health departments. This revised agreement will be effective as of date of acceptance, and will continue annually thereafter, subject to renegotiation or cancellation by either Cass County ("County") or the City of Fargo ("City") upon 90 days notice to the other by certified mail.

**NOW, THEREFORE,** it is hereby agreed between the parties as follows:

**1. HEALTH OFFICER:**

The City Health Officer will act as health officer for Cass County and provide oversight and consultation on all programs provided to Cass County through Fargo Cass Public Health. The position will also assist in verifying program compliance with the standards for public health agencies as set by the North Dakota State Health Department. The Health Officer will provide expertise and advisement on any public health issues or emergency and engage in media and messaging opportunities as appropriate.

**2. NURSING SERVICES:**

The nursing services provided in Cass County by Fargo Cass Public Health will include, but not be limited to the following services:

- A. Home Health Care:** Referrals accepted from any source. Eligibility will be based on established referral criteria. An evaluation visit is made, and nursing assessment is done to determine care needed by client. Individualized plan of treatment is developed to address specific needs of the client and will require a primary medical provider to sign and authorize care on recurring basis per Medicaid, Medicare, and agency policy. Services may include medication assistance, chronic disease management and education, INR checks, safety assessments, supervision of HHA services, and referrals to community resources.



the Cass County Jail staff and the Sheriff's Office shall be responsible to ensure adequately trained mail staff are on duty to perform medication pass coverage as needed. The nurses will work under the medical direction of the contracted medical provider (presently Family HealthCare Center), along with various community mental/behavioral health providers. Services include but are not limited to nursing assessment, triage, acute care, medication assistance, consultation and referral, and health education/promotion activities. The services will also include HIV testing and counseling, required by law. (North Dakota Century Code 23-07-07.5) along with TB screening. Nursing services are guided by standards set forth by the National Commission on Correctional Health Care.

3. **COMMUNICATIONS / PUBLIC INFORMATION:** Fargo Cass Public Health communication, internal and external, serves to provide education, public awareness, and/or crisis communication. Messaging may be provided in written materials, advertising, online or other forms of social media. Media interviews, when requested, will be directed to the Public Information Officer who will notify the appropriate department within FCPH to fulfill the media request. Serves as the point of contact for public inquiries for the agency.

4. **HEALTH PROTECTION AND PROMOTION SERVICES:**

- A. **Health Promotion:** Activities may include group and/or individual wellness and health education programs including nutrition, tobacco, substance abuse prevention, breastfeeding, mental health, physical activity, and obesity prevention.
8. **Family Planning:** Reproductive health services including STD counseling, testing, and treatment, breast and pelvic exams, colposcopy, birth control, and PrEP (Pre-Exposure Prophylaxis) are available at Fargo Cass Public Health and accessible for all residents of Cass County. Fees for services are based on household size and income. No one will be denied services due to inability to pay.
- C. **Women's Way:** A free breast and cervical cancer early detection program for eligible ND women. May provide financial assistance for office visits for breast and cervical cancer screenings, mammograms, Pap tests, HPV tests, and for breast or cervical diagnostic tests.
- D. **ND Ryan White Program:** Provides case management and reimbursement of services for individuals living with HIV. This program provides financial assistance, transportation, outpatient medical care, dental, vision, mental health, and medications. Also provides supportive services to help individuals manage their HIV and maintain their health, as well as prevent further transmission of HIV.

applicable health standards and regulations. Cass County specifically retains the right to promulgate, amend, and repeal the on-site regulations to be enforced under this Agreement.

- D. **Nuisances:** Respond to citizen complaints to verify compliance with applicable health, safety, public nuisance, or other statutes, regulations, or ordinances enacted in the public interest.
- E. **Food Service:** Perform periodic inspections, as necessary, to verify all licensed school and childcare kitchens comply with applicable health standards and regulations, and to report such findings to school and state officials as required by law.
- F. **Miscellaneous:** Perform such other inspections, sampling, and analysis, and file such reports as may be necessary during the term of this agreement which otherwise would be the obligation of County to perform under such statutes, rules or regulations as may hereafter be promulgated by the State or Federal governments.
- G. **Enforcement:** In the event enforcement of the foregoing environmental health services should require legal assistance, Fargo Cass Public Health will approach the office of Cass County States Attorney for such legal assistance.

## 8. **EMERGENCY PREPAREDNESS SERVICES:**

Provides emergency preparedness planning and response for Cass County and acts as a liaison between the North Dakota Department of Health and local public health to strengthen the infrastructure between emergency services and public/private healthcare to respond to public health emergencies. Coordination and planning for the deployment of the National Pharmaceutical Stockpile, along with bioterrorism and emergency response for Cass County. Assists county as needed with local emergency public health plans.

## 9. **HARM REDUCTION SERVICES:**

- A. **Gladys Ray Shelter:** provide a safe, comfortable temporary shelter to people who cannot access other shelter options in the community, and to help connect people to housing and services.
- B. **Withdrawal Management Unit (WMU):** provides short term residential, social model (non-medical) detoxification services for adult men and women.
- C. **Mobile Outreach:** Staff teams provide a less costly response to substance use related incidents in the community, especially the downtown area. Referrals and requests for a response typically come from local law enforcement, emergency departments, withdrawal management programs, and other area shelters.

**C. Monthly Billings:**

Fargo Cass Public Health will bill Cass County monthly for actual expenses incurred in providing the foregoing services. A report of activities will be provided as requested.

**D. Refunds to Cass County:**

Fees received for any on-site septic services will be credited to Cass County on the final billing for each month.


**WHEREFORE**, the parties have duly caused their representatives to execute this Agreement on their behalf this 19 day of December, 2022.

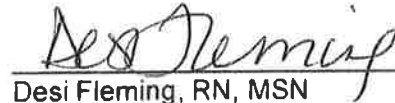
**CASS COUNTY:**

  
Chad Peterson  
CHAIRMAN, COUNTY COMMISSION

  
Brandy Madrigga  
COUNTY FINANCE DIRECTOR

**FARGO CASS PUBLIC HEALTH:**

  
Tracie Newman, MD, MPH, FAAP  
HEALTH OFFICER

  
Desi Fleming, RN, MSN  
DIRECTOR OF PUBLIC HEALTH

\_\_\_\_\_  
Timothy J. Mahoney  
MAYOR, CITY OF FARGO

Attest:

\_\_\_\_\_  
Steve Sprague  
CITY AUDITOR

(11)

To: Board of City Commissioners

From: Jill Minette, Director of Human Resources

JM

Re: Eide Bailly End-User Agreement

Date: January 4, 2023

Attached, you will find the Eide Bailly End-User Agreement for the City of Fargo. The Human Resources Team contracts with Eide Bailly to conduct our pre-employment background checks during the conditional offer phase of pre-employment. The agreement does not impact the budget as the cost of background checks is already included in the Human Resources budget.

The agreement has been reviewed by the City Attorney.

**Suggested Motion:**

Approve the Eide Bailly End-User Agreement

**THIS END-USER AGREEMENT ("Agreement") is made and entered into by and between Eide Bailly (its parent, subsidiaries, predecessors, successors, affiliates, directors, officers, fiduciaries, insurers, employees and agents jointly, "Eide Bailly") and End-User (its parent, subsidiaries, predecessors, successors, affiliates, directors, officers, fiduciaries, insurers, employees and agents jointly "End-User"). This Agreement shall be effective on the date of last signature below (the "Effective Date").**

#### **General**

End-User is engaged in the business of municipal government, Fargo Police Department and FargoDome. End-User represents that it is a legal entity in good standing in its state of formation as well as all jurisdictions in which it conducts business, with a legitimate permissible purpose for requesting the services and information products offered by Eide Bailly.

Pursuant to the terms of this Agreement, Eide Bailly strives to deliver accurate and timely information products ("consumer reports" and/or "investigative consumer reports" (collectively "consumer reports")) to assist End-User in making intelligent and informed decisions for a permissible purpose under applicable law. To this end, Eide Bailly assembles information from a variety of sources, including databases maintained by consumer reporting agencies containing information from public records, other information repositories and third-party researchers. End-User understands that these information sources and resources are not maintained by Eide Bailly. Therefore, Eide Bailly cannot be a guarantor that the information provided from these sources is absolutely accurate or current. Nevertheless, Eide Bailly has in place reasonable procedures designed to respond promptly to claims of incorrect or inaccurate information in accordance with applicable law.

Eide Bailly agrees that it will provide background screening services to End-User pursuant to the Statement of Work agreed to by the parties which may be modified or updated from time to time and which is wholly incorporated herein.

#### **End-User's Certification of Fair Credit Reporting Act (FCRA) Permissible Purpose(s)**

End-User hereby certifies that, each time a consumer report is requested, all of its orders from Eide Bailly shall be made, and the resulting consumer reports shall be used, for the following Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq* ("FCRA") permissible purposes only: for employment purposes under Section 604(a)(3)(B), including contractors, volunteers or evaluating a consumer for employment, promotion, reassignment, retention as an employee, where the consumer has given prior written permission.

#### **End-User's Certification of Legal Compliance**

End-User certifies to Eide Bailly that the consumer reports it receives will not be used in violation of any applicable federal, state or local laws, including, but not limited to the FCRA and Title VII of the Civil Rights Act of 1964. End-User accepts full responsibility for complying with all such laws and for using the consumer reports it receives from Eide Bailly in a legally acceptable fashion. To that end, End-User agrees to comply with and provide all statutorily required notices in Section 615 of the FCRA or other state laws when using consumer reports. End-User further accepts full responsibility for any and all consequences of use and/or dissemination of those consumer reports. End-User further agrees that each consumer report will only be used for a one-time use.

End-User agrees to have reasonable procedures for the fair and equitable use of consumer reports and to secure the confidentiality of private information. End-User agrees to take precautionary measures to protect the security and dissemination of all consumer report or investigative consumer report information including, for example, restricting terminal access, utilizing passwords to restrict access to terminal devices, and securing access to, dissemination and destruction of electronic and hard copy reports. End User agrees to abide by **Addendum A** attached hereto which is incorporated into and is part of this Agreement.

As a condition of entering into this Agreement, End-User certifies that it will comply with all applicable local, state and federal laws including but not limited to the FCRA and state law equivalents. Eide Bailly will only keep information it provides to End-User for the lesser of two (2) years or as required by applicable law.

End-User certifies that it will retain information it receives from Eide Bailly in accordance with applicable law, and will make such information available to Eide Bailly upon request. In addition, End-User agrees to abide by all state and local "ban the box" laws and certifies that it will not conduct a background check until after a conditional offer of employment has been provided. End-Users seeking credit information certify to Eide Bailly that it has provided all disclosures required by applicable federal, state or local laws, regulations and ordinances to the consumer in connection with such requests and must provide information described in and sign **Addendum B** before Eide Bailly can provide credit information to End-User. **Addendum B** is incorporated into and is part of this Agreement, if applicable. End-User acknowledges and agrees to notify its employees that End-User can access credit information only for the permissible purposes listed in the FCRA.

End-User understands that the credit bureaus require specific written approval from Eide Bailly before the following persons, entities and/or businesses may obtain credit reports: private detectives, private detective agencies, private investigative companies, bail bondsmen, attorneys, law firms, credit counseling firms, security services, members of the media, resellers, financial counseling firms, credit repair clinics, pawn shops (except companies that do only Title pawn), check cashing companies (except companies that do only loans, no check cashing), genealogical or heir research firms, dating services, massage or tattoo services, businesses that operate out of an apartment, individuals seeking information for their own private use, adult entertainment services of any kind, companies that locate missing children, companies that handle third party repossession, companies seeking information in connection with time shares, subscriptions companies, individuals involved in spiritual counseling or persons or entities that are not an End-User or decision maker.

End-User represents that, if it orders credit reports, End-User will have a policy and procedures in place to investigate any discrepancy in a consumer's address when notified by the credit bureau that the consumer's address, as submitted by End-User, substantially varies from the address the credit bureau has on file for that consumer.

End-User understands and agrees that access to certain types of information (e.g., credit, motor vehicle records, I-9 verification, etc.) may require End-User to execute a separate contract, agreement, or addendum (as applicable) with Eide Bailly or with Eide Bailly's vendors or service providers. End-User understands that Eide Bailly will not provide to End-User or allow End-User access to such information unless and until it executes the relevant contract(s), agreement(s) or addenda (as applicable).

End-User hereby acknowledges that it has received a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act" (Appendix A) and "Notice of Users of Consumer Reports" (Appendix B).

End-User hereby certifies that, under the Investigative Consumer Reporting Agencies Act ("ICRAA"), California Civil Code sections 1786 et seq., and the Consumer Credit Reporting Agencies Act ("CCRAA"), California Civil Code sections 1785.1 et seq., if the End-User is located in the State of California, and/or the End-User's request for and/or use of information products pertains to a California resident, applicant or employee, End-User will do the following:

- (i) Request and use information products solely for permissible purpose(s) identified under California Civil Code sections 1785.11 and 1786.12.
- (ii) When, at any time, information products are sought for employment purposes other than suspicion of wrongdoing or misconduct by the consumer who is the subject of the investigation, provide a clear and conspicuous disclosure in writing to the consumer, which solely discloses: (1) that an investigative information products may be obtained; (2) the permissible purpose of the investigative information products; (3) that information on the consumer's character, general reputation, personal characteristics and mode of living may be disclosed; (4) the name, address, telephone number, and website of the Consumer Reporting Agency conducting the investigation; and (5) the nature and scope of the investigation requested, including a summary of the provisions of California Civil Code section 1786.22.
- (iii) When, at any time, information products are sought for employment purposes other than suspicion of wrongdoing or misconduct by the consumer who is the subject of the investigation, only request an information product if the applicable consumer has authorized in writing the procurement of the information product.

- (iv) When information products are sought in connection with the hiring of a dwelling unit, notify the consumer in writing that an information product will be made regarding the consumer's character, general reputation, personal characteristics. The notification shall include the name and address of the consumer reporting Agency as well as a summary of the provisions of California Civil Code section 1786.22, no later than three days after the date on which the information product was first requested.
- (v) When information products are sought in connection with the underwriting of insurance, clearly and accurately disclose in writing at the time the application form, medical form, binder, or similar document is signed by the consumer that an information product regarding the consumer's character, general reputation, personal characteristics, and mode of living may be made, or, if no signed application form, medical form, binder, or similar document is involved in the underwriting transaction, the disclosure shall be made to the consumer in writing and mailed or otherwise delivered to the consumer not later than three days after the report was first requested. The disclosure shall include the name and address of consumer reporting agency, the nature and scope of the investigation requested, and a summary of the provisions of California Civil Code section 1786.22.
- (vi) Provide the consumer a means by which he/she may indicate on a written form, by means of a box to check, that the consumer wishes to receive a copy of any information products that are prepared.
- (vii) If the consumer wishes to receive a copy of the information products, the End-User shall send (or contract with another entity to send) a copy of the information product to the consumer within three business days of the date that the information product is provided to End-User. The copy of the information product shall contain the name, address, and telephone number of the person who issued the report and how to contact him/her.
- (viii) Under all applicable circumstances, comply with California Civil Code sections 1785.20 and 1786.40 if the taking of adverse action is a consideration, which shall include, but may not be limited to, advising the consumer against whom an adverse action has been taken that the adverse action was based in whole or in part upon information contained in the information product, informing the consumer in writing of Eide Bailly's name, address, and telephone number, and provide the consumer of a written notice of his/her rights under the ICRAA and the CCRAA.
- (ix) Comply with all other requirements under applicable California law, including, but, not limited to any statutes, regulations and rules governing the procurement, use and/or disclosure of any information products, including, but not limited to, the ICRAA and CCRAA.

A. When Information Products are Used for Employment Purposes

If the information products End-User obtains from Eide Bailly are to be used for an employment purpose, End-User certifies that prior to obtaining or causing a "consumer report" to be obtained, a clear and conspicuous disclosure, in a document consisting *solely of the disclosure*, has been made in writing to the consumer explaining that a consumer report may be obtained for employment purposes. Such disclosure satisfies all requirements identified in the FCRA. End-User also certifies that the consumer has authorized, in writing, the obtaining of the report by End-User. If an investigative consumer report (as defined by federal law) is obtained, End-User certifies a separate disclosure will be provided. End-User certifies that it also has provided the consumer with any notices or disclosures required under applicable state and local law. End-User understands that Eide Bailly will not initiate a report for employment purposes in the absence of a written authorization. End-User certifies that each time it orders a report, it is reaffirming the above certifications.

Prior to taking adverse employment action based in whole or in part on the information products provided by Eide Bailly, End-User will provide to the consumer: (1) a copy of the report, and (2) a description, in writing, of the rights of the consumer entitled: "A Summary of Your Rights Under the Fair Credit Reporting Act." After the appropriate waiting period, End-User will issue to the consumer notice of the adverse action taken, including the statutorily required notices identified in Section 615 of the FCRA. End-User will not initiate the pre-adverse and adverse action notice process until Eide Bailly has completed all search components of the consumer and/or investigative consumer report, Eide Bailly has provided the complete report to End-User, and End-User has reviewed the consumer report contents.

Before taking adverse action based on a criminal record the EEOC Criminal History Guidance recommends that you perform an individualized assessment and or other considerations. To obtain a copy of the EEOC Criminal History Guidance please go to the following website: [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

**B. Reporting of Criminal History.**

Please note, as it relates to criminal history information, Eide Bailly only reports conviction records and will report a minimum of seven (7) years of conviction information, where allowed by applicable law. Eide Bailly does not report non-conviction information unless a case is pending with a next court date scheduled and also does not report information relating to infractions, summary offenses, violations or other sub-criminal information.

Eide Bailly complies with all FCRA and state and local laws that restrict the reportability of certain types of adverse information about a consumer. To ensure compliance with such laws, End-User acknowledges and agrees that when including any information about a consumer in a consumer report, Eide Bailly follows the most restrictive reporting restrictions based on the consumer's residence address. Eide Bailly does not use salary information in applying these reporting restrictions.

**C. Investigative Consumer Reports**

In addition to the disclosure requirements identified above, if the consumer makes a written request within a reasonable amount of time, End-User will provide: (1) information about whether an investigative consumer report has been requested; (2) if an investigative consumer report has been requested, written disclosure of the nature and scope of the investigation requested; and (3) Eide Bailly's contact information, including complete address and toll-free telephone number. This information will be provided to the consumer no later than five (5) days after the request for such disclosure was received from the consumer or such report was first requested, whichever is the latter.

**D. International Criminal Record Searches**

End-User understands that searches of international background screening will be conducted through the services of a third-party independent contractor. Because of differences in foreign laws, language, and the manner in which foreign records are maintained and reported. Eide Bailly cannot be either an insurer or guarantor of the accuracy of the information reported. End-User therefore releases Eide Bailly and its affiliated companies, officers, agents, employees, and independent contractors from any liability whatsoever in connection with erroneous information received as a result of an international background screening report.

**E. National/Multi-State Database Searches**

Eide Bailly recommends that End-User screen its applicants or employees at the county court-house or online system, federal, and multi-state/nationwide database levels. End-User understands that if it chooses not to conduct searches at these levels, Eide Bailly cannot be held responsible for any records that exist that are not included in the End-User's coverage requested. End-User further understands that the multi-state/nationwide database report will only be offered in conjunction with a county-level verification of any records found and that End-User will bear any additional costs associated with this verification.

**Additional Requirements for Motor Vehicle Records and/or Driving Records**

End-User hereby certifies that Motor Vehicle Records and/or Driving Records ("MVRs") (which may include medical or mental health information about a consumer) shall only be ordered in strict compliance with the Driver Privacy Protection Act ("DPPA") at 18 U.S.C. § 2721 *et seq.* and any related state laws. End-User further certifies that no MVRs shall be ordered without first obtaining the written consent of the consumer to obtain "driving records," evidence of which shall be transmitted to Eide Bailly in the form of the consumer's signed release authorization form. End-User also certifies that it will use this information only in the normal course of business to obtain lawful information relating to the holder of a commercial driver's license or to verify information provided by an applicant or employee. End-User shall not transmit any data contained in the resulting MVR via the public internet, electronic mail or any other unsecured means.



**Warrants**

In the course of completing background checks, Eide Bailly may uncover active arrest warrants which are outstanding against the subject. In these cases, Eide Bailly may be contacted by the law enforcement agency seeking the subject. End-User understands that Eide Bailly will furnish to law enforcement any information contained within the subject's file to assist in the apprehension of the subject. Additionally, Eide Bailly may contact End-User, and End-User agrees to release to Eide Bailly, any and all information End-User may have which will further the apprehension of the wanted individual.

**General Provisions**

End-User agrees not to resell, sub-license, deliver, display or otherwise distribute to any third party any of the information products addressed herein, except as required by law. End-User may not assign or transfer this Agreement without the prior written consent of Eide Bailly. In addition, End-User shall immediately notify Eide Bailly of any of the following events: change in ownership of End-User (over 50%), a merger, change in name or change in the nature of End-User's business. The parties understand that this Agreement is for the sole benefit of Eide Bailly and End-User and no third party shall be deemed a third party beneficiary of this Agreement. If any of the provisions of this Agreement become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be impacted. By agreement of the parties, North Dakota law shall guide the interpretation of this Agreement, if such interpretation is required. All litigation arising out of this Agreement shall be commenced in North Dakota, and the parties hereby consent to such jurisdiction and venue. Any written notice by either party shall be delivered personally by messenger, private mail courier service, or sent by registered or certified mail, return receipt requested, postage prepaid to the addresses listed below, or may be delivered electronically to the e-mail addresses listed below. This Agreement shall be construed as if it were jointly prepared. Both parties agree that this Agreement constitutes all conditions of service, present and future. Changes to these conditions may be made only by mutual written consent of an authorized representative of End-User and an officer of Eide Bailly. The headings of each section shall have no effect upon the construction or interpretation of any part of this Agreement.

If End-User is permitted to request consumer reports for employment purposes via Eide Bailly's website, then, in addition to all other obligations, End-User agrees to abide by such additional conditions that may be imposed to utilize the website, provide all required certifications electronically, to maintain complete and accurate files containing all required consent, authorization and disclosure forms with regard to each consumer for whom a report has been requested, and maintain strict security procedures and controls to assure that its personnel are not able to use End-User's Internet access to obtain reports for improper, illegal or unauthorized purposes. End-User agrees to obtain the consumer's electronic consent to receive any legal or other notices electronically. End-User agrees to allow Eide Bailly to audit its records or use of Eide Bailly's services or ordering systems, including verification that End-User has a permissible purpose to request and obtain consumer and/or investigative consumer reports, at any time, upon reasonable notice given. Breaches of this Agreement and/or violations of applicable law discovered by Eide Bailly may result in immediate suspension and/or termination of the account, legal action and/or referral to federal or state regulatory agencies.

**Confidentiality**

Neither party shall reveal, publish or otherwise disclose any Confidential Information to any third party without the prior written consent of the other party. "Confidential Information" means any and all Proprietary Intellectual Property (as defined by North Dakota Century Code 44-04-18.4) or secret data; sales or pricing information relating to either party, its operations, employees, products or services; and, all information relating to any customer, potential customer, Agent, and/or independent sales outlet. The Parties agree to keep this information confidential at all times during the term of this Agreement, and continuing for five years after receipt of any Confidential Information. Notwithstanding anything to the contrary herein, in no event shall Eide Bailly be required to destroy, erase or return any consumer reports or applicant data related thereto in Eide Bailly's files, all of which Eide Bailly shall maintain as a consumer reporting agency in strict accordance with all applicable federal, state, and local laws.

In connection with services provided hereunder, End-User may have access to Confidential Information relating to Eide Bailly's intellectual property, including but not necessarily limited to trade secrets, service marks,

trademarks, trade names, logos, symbols, brand names, software, technology, inventions, processes (that are subject to a patent or otherwise pending) collectively "Proprietary Intellectual Property." End-User acknowledges and agrees that Eide Bailly is the sole exclusive owner of all right, title and interest in such Proprietary Intellectual Property and it shall not disclose to any third party the nature or details of any such Proprietary Intellectual Property. End-User further agrees that it has no right to publish, reproduce, prepare derivative works based upon, distribute, perform or otherwise display any of Eide Bailly's Proprietary Intellectual Property.

### **Independent Contractor**

The parties agree that the relationship of the parties created by this Agreement is that of independent contractor and not that of employer/employee, principal/agent, partnership, joint venture or representative of the other. Except as authorized hereunder, neither party shall represent to third parties that it is the employer, employee, principal, agent, joint venture or partner with, or representative of the other party.

### **Fees and Payment**

End-User agrees to pay nonrefundable fees and other charges or costs for Eide Bailly background check services. Any charges or costs, including but not limited to surcharges and other fees levied by federal, state, county, other governmental agencies, educational institutions, employer verification lines and licensing agencies, incurred by Eide Bailly in servicing End-User, will be passed onto End-User. At Eide Bailly's option, payments not received thirty (30) days after the date of the invoice may cause the account to be placed on temporary interruption, with no additional requests being processed until the balance due is paid in full or arrangements have been made with Eide Bailly's Accounts Payable Department. Accounts with invoices unpaid thirty (30) days or more will be assessed an interest charge of 1 % per month, as allowed by applicable law. If the account goes to collection, End-User agrees to pay all collection expenses, including attorneys' fees and court costs. End-User agrees that prices for services are subject to change without notice, although Eide Bailly will make every reasonable effort to give notice of such change before it becomes effective. Any account that remains inactive for a period of twelve (12) months will be deemed inactive and may be terminated by Eide Bailly.

### **Warranties, Remedies, and Limitation of Liability**

End-User understands that Eide Bailly obtains the information reported in its information products from various third party sources "AS IS", and therefore is providing the information to End-User "AS IS". Eide Bailly makes no representation or warranty whatsoever, express or implied, including but not limited to, implied warranties of merchantability or fitness for particular purpose, or implied warranties arising from the course of dealing or a course of performance with respect to the accuracy, validity, or completeness of any information products and/or consumer reports, that the information products will meet End-User's needs, or will be provided on an uninterrupted basis; Eide Bailly expressly disclaims any and all such representations and warranties.

EIDE BAILLY WILL NOT BE LIABLE TO END-USER FOR DAMAGES, AND END-USER HEREBY RELEASES EIDE BAILLY FROM ANY LIABILITY FOR DAMAGES ARISING UNDER ANY THEORY OF LEGAL LIABILITY TO THE FULLEST EXTENT THAT END-USER MAY LEGALLY AGREE TO RELEASE EIDE BAILLY FROM LIABILITY FOR SUCH DAMAGES, PROVIDED HOWEVER, THAT END USER DOES NOT RELEASE EIDE BAILLY FROM ANY LIABILITY ARISING SOLELY FROM THE MISCONDUCT OR NEGLIGENCE OF EIDE BAILLY (UNLESS ATTRIBUTED OR IMPUTED TO EIDE BAILLY BY REASON OF ANY ACT OR OMISSION OF END USER WHETHER AS AN AGENT OF EIDE BAILLY OR OTHERWISE.) IN THE EVENT EIDE BAILLY IS LIABLE TO END-USER FOR ANY MATTER RELATING TO THIS AGREEMENT, WHETHER ARISING IN CONTRACT, EQUITY, TORT OR OTHERWISE (INCLUDING WITHOUT LIMITATION ANY CLAIM FOR NEGLIGENCE), THE AMOUNT OF DAMAGES RECOVERABLE AGAINST EIDE BAILLY WILL NOT INCLUDE ANY AMOUNTS FOR INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST INCOME, OR LOST SAVINGS, OR FOR ANY AMOUNTS WITH RESPECT TO CLAIMS AGAINST EIDE BAILLY, EVEN IF EIDE BAILLY HAS BEEN ADVISED OF THE POSSIBILITY FOR SUCH DAMAGES.

To the extent provided by law, End-User shall indemnify, defend and hold harmless Eide Bailly, its successors and assigns, officers, directors, employees, agents, vendors, credit bureaus and suppliers from and against any and all claims, suits, proceedings, actual damages, costs, expenses (including, without limitation, reasonable attorneys'

fees and court costs) ("Losses") brought or suffered by any third party arising or resulting from, or otherwise in connection with information products provided by Eide Bailly, the content, compliance, method of delivery or effectiveness of any notices, pre-adverse or adverse action letters, any breach by End-User of any of its representations, warranties, or agreements in this Agreement or its negligence or willful misconduct.

Eide Bailly does not guarantee End-User's compliance with all applicable laws in its use of reported information, and does not provide legal or other compliance related services upon which End-User may rely in connection with its furnishing of reports. End-User understands that any documents, information, conversations or communication with Eide Bailly's representatives regarding searches, verifications or other services offered by Eide Bailly are not to be considered a legal opinion regarding such use. End-User agrees that (1) it will consult with its own legal or other counsel regarding the use of background screening information, including but not limited to, the legality of using or relying on reported information and to review any forms as well as the content of prescribed notices, adverse or pre-adverse action letters and any attachments to this Agreement for compliance with all applicable laws and regulations and (2) the provision of such notices, pre-adverse or adverse action letters and the contents thereof is the sole responsibility of End-User not Eide Bailly. End-User acknowledges and agrees that it has no obligation to use, and is solely responsible for independently vetting the contents of, any sample forms that Eide Bailly has provided to End-User in connection with this Agreement.

If requested, Eide Bailly may apply a client's scoring or hiring criteria to consumer reports based on criteria established and provided by End-User ("Criteria"). Eide Bailly makes no representations regarding the validity, legality, or appropriateness of the Criteria. These services as well as any administration of notices shall be deemed to be purely clerical in nature and shall be performed by Eide Bailly on behalf of End-User. All employment-related decisions, including hiring, contracting and site-access decisions, are made exclusively by End-User, not by Eide Bailly. End-User agrees that End-User assumes full responsibility for such decisions and agrees to indemnify and hold Eide Bailly harmless to the extent provided by law, if any.

#### **Term and Termination**

The term of this Agreement shall begin on the date it is executed by End-User and shall be in effect for one (1) year beginning on the first day of the assigned date below and renewed automatically for one (1) year each year on its anniversary date, if no written notice is received by either party within thirty (30) days prior to end of term.

Except as otherwise provided for herein, either party may cancel this Agreement by giving sixty (60) days written notice to the other party. If End-User desires to terminate this Agreement, End-User agrees that it will pay Eide Bailly for all services that have been provided prior to the effective date of termination. Eide Bailly may terminate or revise the provisions of this Agreement immediately upon written notice if End-User is the debtor in a bankruptcy action or in an assignment for the benefit of creditors or if End-User undergoes a change in ownership. Termination of this Agreement by either party does not release End-User from its obligation to pay for services rendered or other responsibilities and agreements made.

In addition to any and all other rights a party may have available according to law, if a party defaults by failing to perform any provision, term or condition of this Agreement the other party may terminate the Agreement by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have fifteen (15) days from the receipt of such notice to cure the default(s). Unless waived by party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement.

During the term of this Agreement, Eide Bailly will be the exclusive provider to the End-User except for services not provided herein.

#### **Force Majeure**

End-User agrees that Eide Bailly is not responsible for any events or circumstances beyond its control (e.g., including but not limited to war, riots, embargoes, strikes and/or Acts of God) that prevent Eide Bailly from meeting its obligations under this Agreement.

**Waiver**

The failure of either party to insist in any one or more cases upon the strict performance of any term, covenant or condition of this Agreement will not be construed as a waiver or subsequent breach of the same or any other covenant, term or condition; nor shall any delay or omission by either party to seek a remedy for any breach of this Agreement be deemed a waiver by either party of its remedies or rights with respect to such a breach.

**Severability**

If any provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect any other provision of this Agreement that can be given effect without the invalid or unenforceable provision, or the application of such provision to other persons or circumstances, and, to this end, the provisions hereof are severable.

**Entire Agreement and Execution**

This Agreement and all attachments and exhibits hereto, constitute the entire agreement of the parties and shall supersede any prior agreements governing the subject matter contained herein. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A signature on a copy of this Agreement received by either party by facsimile is binding upon the other party as an original. The parties shall treat a photocopy of such facsimile as a duplicate original. The individuals signing below represent that they are duly authorized to do so.

**Signature**

**I certify that I am authorized to execute this Agreement on behalf of the company listed below. Further, I certify on behalf of such company, that the above statements are true and correct and agree for the company to the terms and conditions set forth in the Agreement.**

On Behalf of End-User:

End-User Name: City of Fargo, Fargo Police Department and FargoDome

End-User Address: \_\_\_\_\_

End-User E-mail: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

On Behalf of Eide Bailly

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Address: 4310 17<sup>th</sup> Ave S, Fargo, ND 58103

E-mail Address: backgrounds@eidebailly.com

Print Name: Michaela Dye

**ADDENDUM A****Access Security Requirements**

The parties acknowledge they must work together to protect the privacy of consumers. The following measures are designed to reduce unauthorized access of consumer reports. In accessing consumer information, End-User agrees to the following:

1. End-User will take reasonable procedures to protect its account number and password so that only key personnel employed by your company know this sensitive information, including not posting this information anywhere in the facility. End-User agrees to request an account password change immediately if a person who knows the password leaves its company or no longer needs to have access due to a change in duties.
2. End-User agrees that system access software, whether developed by your company or purchased from a third party vendor, will have End-User's account number and password "hidden" or embedded and be known only by supervisory personnel. End-User will assign each user of its system access software a unique logon password. If such system access software is replaced by different access software and therefore no longer is in use or, alternatively, the hardware upon which such system access software resides is no longer being used or is being disposed of, or if the password has been compromised or believed to be compromised in any way, End-User will change its password immediately.
3. End-User agrees it will not discuss its account number or password by telephone with any unknown caller, even if the caller claims to be an employee of Eide Bailly
4. End-User will restrict the ability to obtain consumer information to a few key personnel.
5. End-User agrees to place all terminal devices used to obtain consumer information in a secure location within its facility so that unauthorized persons cannot easily access them.
6. End-User agrees it will turn off and lock all devices or systems used to obtain consumer information.
7. End-User will secure hard copies and electronic files of consumer reports within its facility so that unauthorized persons cannot easily access them.
8. End-User agrees to shred and/or destroy all hard copy consumer reports when they are no longer needed and erase and overwrite or scramble electronic files containing consumer information when no longer needed and when applicable regulation(s) permit destruction.
9. End-User agrees to notify its employees that End-User can access credit information only for the permissible purposes listed in the Fair Credit Reporting Act.

**ADDENDUM B****Documents Required Before Requesting Credit Report Information**

Before End-User will be allowed to access credit report information, Eide Bailly requires that End-User provide one (1) of the following items listed below (if End-User is not publicly traded) and also receive an onsite inspection to verify company information and physically review End-User's onsite location. Certain criteria must be met at the onsite inspection per requirements of the credit bureau. The cost for the onsite inspection will be the responsibility of the End-User and End-User will receive an invoice from Eide Bailly for any related costs and expenses.

1. Business license status from a government web site (please include entire web page print out);
2. Business license, copy or documented verification;
3. Documented corporation verification with state or federal government;
4. Copy of Articles of Incorporation with proof of filing;
5. State and/or federal tax records originating from the state or federal government;
6. FDIC Certification; or
7. 501(c)(3) certificate for non-profit originations.

If End-User is a publicly traded company, the following items are acceptable methods for verifying that the End-User is a bona fide entity:

1. Documentation of ticker symbol information from trading website;
2. Certified copy of audited annual or quarterly statements submitted to the SEC.



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INSPECTIONS

**INSPECTIONS DEPARTMENT**

Fargo City Hall  
225 Fourth Street North  
Fargo, ND 58102  
Phone: 701.241.1561 | Fax: 701.476.6779  
FargoND.gov

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## Memorandum

DATE: December 29, 2022  
TO: Members of PWPEC  
FROM: Shawn Ouradnik, Inspections Director  
SUBJECT: Dangerous Building at 437 23 St S – Change Order #1

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### **Background:**

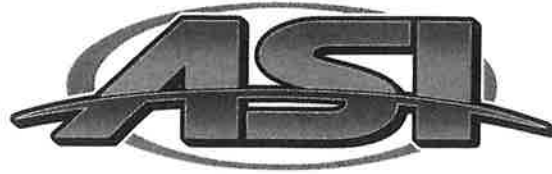
The property at 437 23 St S, Fargo ND, has been declared Dangerous and the contract for demolition has been awarded to Asplin Siteworks Inc.

1. After asbestos sampling was completed the proposal for abatement exceeded the \$5,000 allowance contained in the agreement with Asplin Siteworks Inc.

### **Recommended Motion:**

Approve change order #1 in the amount of \$10,920.00





**ASPLIN SITEWORKS INC.**

3102 1<sup>st</sup> Ave N Fargo 58102

PH 701 364 2605

*Change order 437 23<sup>rd</sup> ST S Fargo, this is for asbestos testing and removal*

*City Allowance \$5,000.00*

*Testing by Legend environmental \$1,995.00 already paid*

*Mavo Systems Proposal \$15,920.00*

*Change Order Total \$10,920.00*

*Ken Asplin*

KEN ASPLIN

ASPLIN SITEWORKS INC

December 12, 2022



INSPECTIONS

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INSPECTIONS DEPARTMENT  
Fargo City Hall  
225 Fourth Street North  
Fargo, ND 58102  
Phone: 701.241.1561 | Fax: 701.476.6779  
[FargoND.gov](http://FargoND.gov)

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## Memorandum

DATE: December 27, 2022  
TO: Board of City Commissioners  
FROM: Shawn Ouradnik, Inspections Director  
SUBJECT: Vendor for junk vehicle removal contract

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Attached are bids received for the provision of junked vehicle removal services for the coming calendar year of 2023. The bids received were from Fargo Moorhead Towing. Bids were sought from Aggressive Towing & Recovery, Ed's Towing Service, Hazer's Auto & Truck Parts, and Fargo Moorhead Towing (Northland Towing). The department received only one bid back from Fargo Moorhead Towing (Northland Towing) of the four solicited.

This process is routine and annual. The department received only one bid back from Fargo Moorhead Towing (Northland Towing) of the four solicited. The Inspections Department has not worked with Fargo Moorhead Towing (Northland Towing) in the past.

**Suggested Motion:** Accept the bid and enter into contract with Fargo Moorhead Towing (Northland Towing) for the removal of junk vehicles.

Fargo Moorhead Towing

|                                  | Bid amount    |
|----------------------------------|---------------|
| Impound Light Duty -             | \$150         |
| Impound Medium Duty -            | \$200         |
| Impound Heavy Duty -             | \$250         |
| Dolly charges -                  | \$30          |
| Mileage -                        | \$5/mile      |
| Admin fee -                      | \$25          |
| Daily Storage Light Duty -       | \$40          |
| Daily Storage Medium Duty -      | \$55          |
| Daily Storage Heavy Duty -       | \$70          |
| Extra labor/hr. -                | \$50          |
| Additional charge <u>Winch</u> - | \$125 minimum |
| Additional charge _____ -        |               |

Notes-

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Provide bids for all categories.

If any other charges please explain.

## **AGREEMENT**

This agreement, made and entered into this 29th day of December 2020, by and between the City of Fargo, a municipal corporation ("City"); and Fargo Moorhead Towing of Fargo, North Dakota ("Contractor").

### **PREMISES:**

- A. City has solicited proposals for the removal, impound and disposition of junk cars.
- B. Contractor has submitted a proposal for such removal, impound and disposition.
- C. City has determined that the proposal submitted by contractor is the most advantageous to the City.
- D. The parties entered into a contract on December 27, 2022.
- E. The parties mutually agree that certain amendments to that contract are necessary.
- F. The parties wish to reduce their supplemental agreement to writing.

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

1. Contractor agrees to provide prompt wrecker services to the City of Fargo for the removal of junk cars, as may be designated by the City; in the event the contractor is unable, for any reason, to furnish prompt wrecker services, they will be required to hire another firm to remove junk cars, at its expense.
2. Contractor will provide a suitably fenced storage area and will retain all vehicles picked up for a minimum period of ninety days.
3. During the ninety-day holding period, the owner of such vehicle may take possession thereof by paying to the Contractor an impound fee of \$150 Light Duty/\$200 Medium Duty/\$250 Heavy Duty and a per day storage charge of \$40 Light Duty/\$55 Medium Duty/\$70 Heavy Duty. An administrative fee of \$25 may apply, and, if needed, dollies/skates/go jacks may be used, in which, a \$30 fee will apply and a \$125 minimum charge for winching will apply when needed. If snow removal is necessary, a \$50 fee per hour of shoveling shall apply. No vehicle may be removed by the owner which does not have a current automobile registration tag.
4. Any vehicles which are not claimed by the owner within the ninety-day period shall be retained by Contractor for salvage purposes.
5. Contractor shall, on the first day of each month, furnish the City with an accounting which shall consist of a list of all vehicles which are picked up and impounded and all vehicles which are claimed by the owner

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

7. The term of this agreement shall be from January 1, 2023 through December 31, 2023. This agreement may be terminated at any time by either party upon giving thirty days written notice of such termination.

Dated this 27th day of December 2022.

CITY OF FARGO

BY \_\_\_\_\_  
Its Mayor

Fargo Moorhead Towing

BY  \_\_\_\_\_  
Its President

| <b>City of Fargo<br/>Staff Report</b>   |  |  |   |
|---|--|--|---|
| <b>Title:</b>   | Westrac Fourth Addition  | <b>Date:<br/>Update</b>                        | 11/30/2022<br>1/5/2023                        |
| <b>Location:</b>  | 2900, 2920, 2924, 2928,<br>2932, and 2936 Fiechtner<br>Drive                                   | <b>Staff Contact:</b>                          | Donald Kress, current<br>planning coordinator |
| <b>Legal Description:</b>   | Part of Lots 2 and 3, Block 3, Westrac Second Addition   |  |   |
| <b>Owner(s)/Applicant:</b>  | LJS Investments, LLP / Nate<br>Vollmuth, Goldmark Design<br>and Development                    | <b>Engineer:</b>                               | Bolton & Menk                                 |
| <b>Entitlements<br/>Requested:</b>  | <b>Minor Subdivision</b> (replat of part of Lots 2 and 3, Block 3, Westrac Second<br>Addition) |  |   |
| <b>Status:</b>  | City Commission Public Hearing: January 9 <sup>th</sup> , 2023                                 |  |   |
| <b>Existing</b>   |  | <b>Proposed</b>                                |   |
| <b>Land Use:</b> Contractor office and shop; self-<br>storage   |  | <b>Land Use:</b> No change proposed            |   |
| <b>Zoning:</b> LI, Limited Industrial   |  | <b>Zoning:</b> No change proposed              |   |
| <b>Uses Allowed:</b> LI – Limited Industrial. Allows<br>colleges, community service, daycare centers<br>of unlimited size, detention facilities, health<br>care facilities, parks and open space, religious<br>institutions, safety services, adult entertainment<br>centers, offices, off-premise advertising,<br>commercial parking, outdoor recreation and<br>entertainment, retail sales and service, self<br>storage, vehicle repair, limited vehicle service,<br>industrial service, manufacturing and<br>production, warehouse and freight movement,<br>wholesale sales, aviation, surface<br>transportation, basic utilities, certain<br>telecommunications facilities  |  | <b>Uses Allowed:</b> No change proposed.       |   |
| <b>Maximum Lot Coverage Allowed:</b> 85%  |  | <b>Maximum Lot Coverage Allowed:</b> No change |   |
| <b>Proposal:</b>  |  |  |   |
| <p>The applicant request one entitlement:</p> <ol style="list-style-type: none"> <li>1. A <b>minor subdivision</b>, to be known as Westrac Fourth Addition, a replat of part of Lots 2 and 3, Block 3, Westrac Second Addition</li> </ol> <p>The subject property is located at 2900, 2920, 2924, 2928, 2932, and 2936 Fiechtner Drive and encompasses approximately 1.83 acres.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p><b>Surrounding Zoning Districts and Land Uses:</b></p> <ul style="list-style-type: none"> <li>• North: LI; Islamic cultural center</li> <li>• East: LI; parking lot</li> <li>• South: LI; contractor shop</li> <li>• West: LI; contractor shop</li> </ul> |  |  |   |

|   |
|---|
| <b>Area Plans:</b>  |
| The subject property is not included in any growth plan or future land use plan.  |
| <b>Context</b>  |
| <p><b>Neighborhood:</b> The subject property is located in the Westgate neighborhood.</p> <p><b>Schools:</b> The subject property is located within the Fargo Public School District and is served by Jefferson Elementary, Ben Franklin Middle, and Fargo North High schools</p> <p><b>Parks:</b> McCormick Park, 2101 9<sup>th</sup> Avenue South, is approximately one-half mile east of the subject, and provides amenities of a basketball court, picnic tables, playground, recreational trails and a warming house</p> <p><b>Pedestrian / Bicycle:</b> There are no off-street trails or shared use paths adjacent to the subject property. On-street bike lanes are provided along Fiechtner Drive.</p> <p><b>MATBUS Routes:</b> The subject property is located along MATBUS Route 20. The closest stop is at the corner of Fiechtner Drive and Page Drive, approximately 450 feet southwest of the subject property.</p>  |
| <b>Staff Analysis:</b>  |
| <p><u>MINOR SUBDIVISION</u></p> <p>The subdivision plat divides an existing platted lot into a two lot configuration. The new lot line is configured such that all existing buildings will maintain the required interior side yard setback from the lot line.</p> <p><b>Subdivision</b></p> <p>The LDC stipulates that the following criteria are met before a minor plat can be approved:</p> <ol style="list-style-type: none"> <li><b>1. Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.</b><br/> The subject property is zoned LI, Limited Industrial. This property is not covered by a growth plan or future land use plan. The land uses on the subject property are consistent with the LI zoning. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, Planning staff has received and responded to two phone inquiries. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments. <b>(Criteria Satisfied)</b></li> <li><b>2. Section 20-0907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.</b><br/> While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. <b>(Criteria Satisfied)</b></li> </ol> <p>(continued on next page)</p> |

|  |
|--|
| <b>Staff Recommendation:</b>   |
| Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the proposed plat of <b>Westrac Fourth Addition</b> , as outlined in the staff report, on the basis that it satisfactorily complies with the Standards of Article 20-06, and Section 20-0907.B. and C of the LDC and all other applicable requirements of the LDC."   |
| <b>Planning Commission Recommendation: December 6<sup>th</sup> 2022</b>  |
| At the December 6 <sup>th</sup> , 2022 Planning Commission hearing, that Commission, by a vote of 6-0 with three Commissioners absent and two Commission seats vacant, moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed plat of <b>Westrac Fourth Addition</b> , as outlined in the staff report, on the basis that it satisfactorily complies with the Standards of Article 20-06, and Section 20-0907.B. and C of the LDC and all other applicable requirements of the LDC.<br><i>NOTE: At the December 6<sup>th</sup>, 2022 Planning Commission hearing, one Commissioner did not arrive in time to vote on the first item, Westrac 4<sup>th</sup> Addition, but voted on the remaining items.</i> |
| <b>Attachments:</b>  |
| <ol style="list-style-type: none"> <li>1. Zoning Map</li> <li>2. Location Map</li> <li>3. Preliminary Plat</li> </ol>  |



2900, 2920, 2924, 2928,  
2932 & 2936 Fiechtner Drive South



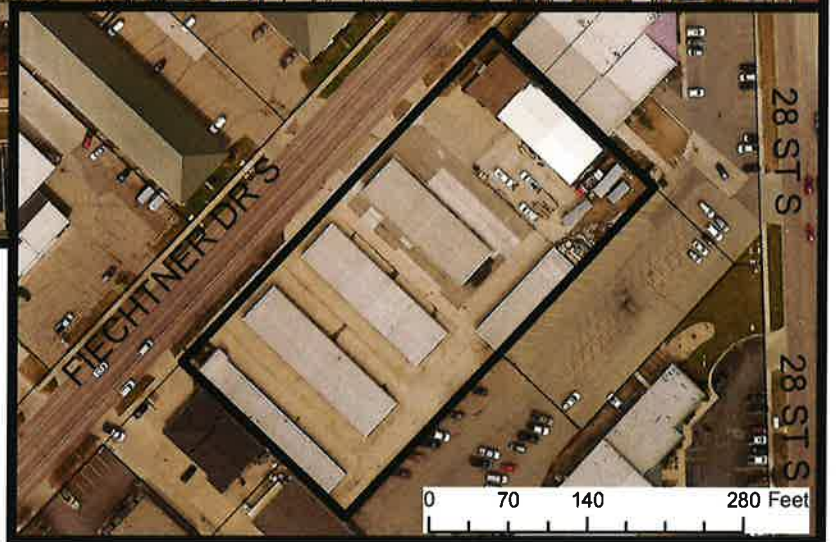
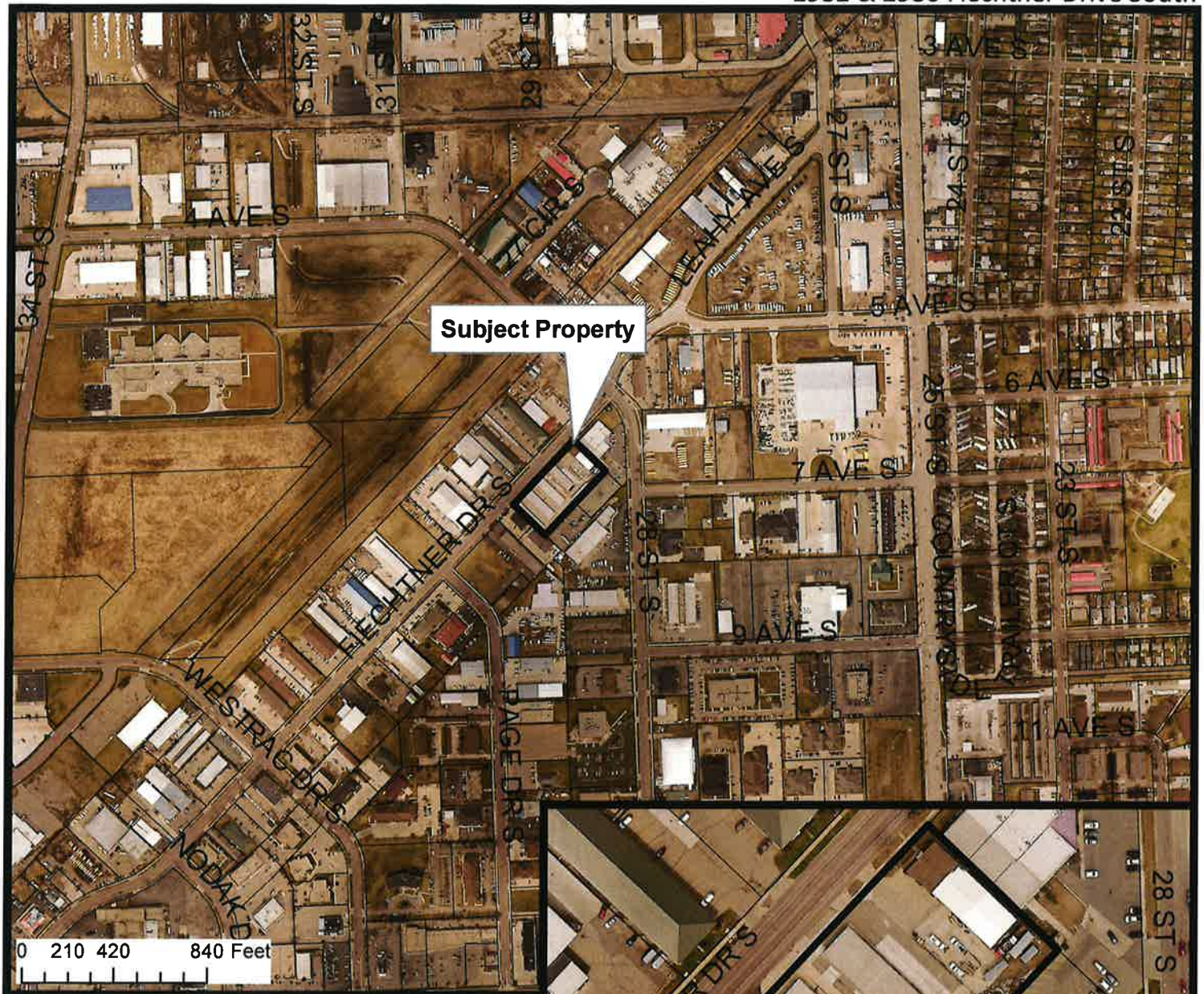
**Fargo Planning Commission  
December 6, 2022**



## Minor Subdivision

### Westrac Fourth Addition

2900, 2920, 2924, 2928,  
2932 & 2936 Fiechtner Drive South







MEMORANDUM

**TO:** Fargo City Commission

**FROM:** Nicole Crutchfield, Director of Planning & Development  
Mark Williams, Assistant Director of Planning & Development ✓  
Kim Citrowske, Planning Coordinator ✓

**DATE:** January 5, 2023

**RE:** Consultant Contract for Growth Plan (RFP22106)

Staff is requesting approval of the attached contract with *czb, LLC* for professional consulting services to lead the development of a Growth Plan. The contract has a not to exceed budget of \$776,000 that has been allocated from the Planning Department's planning services budget. This project will involve many city departments and thus staff is currently in conversations about the possibility of participating in a small portion of cost sharing with them.

The project is anticipated to be completed by spring of 2024, within approximately fourteen months once work is underway.

Background

The last comprehensive Growth Plan was adopted in 2007 and in the last 15 years the City has changed. A Request for Proposals (RFP) was posted in October with eight planning consultant teams who responded to the open call.

A RFP review group was formed comprised of: Jason Benson, Cass County Engineer; Michael Redlinger, Interim City Administrator; Nathan Boerboom and Jeremy Gordon, Division Engineers; Nicole Crutchfield, Director of Planning and Development, Mark Williams, Assistant Director and Kim Citrowske, Planning Coordinator to read through and score proposals, participate in a formal interview process and select the preferred consultant team, *czb, LLC*.

The *czb* team proposal was robust and forward thinking in its approach to master plan for growth which is anticipated to span several years to

- 1) Study our current growth patterns, engage community and stakeholders,
- 2) Understand our community values and vision to move forward and finally
- 3) Outline the growth management plan and decision making framework that will guide us to a Land Development Code (LDC) re-write that codifies the community's development values and vision.

The *czb, LLC* proposal included a sub-consultant code writer which no other consultant team included. The RFP vision was to set-the-stage for an LDC re-write and this consultant team's proposal jump-starts the process. This vigor in approach and consultant time dedicated to our project does exceed the initial budget, but staff envision an overall efficiency in time and budget with the robust proposal and initial code writing component totaling \$776,000 and an anticipated timeline for completion in 2024.

The Finance Committee has reviewed and is supportive of the consultant and financing plan.

Attached please find the consulting agreement with *czb, LLC* and associated exhibits for the development of a Growth Plan.

Recommendation

Approve the consulting agreement with *czb, LLC* for professional consulting services for the development of the Growth Plan, pending legal review by the City Attorney's Office.



## CONSULTING AGREEMENT

czb, LLC and the City of Fargo

THIS CONSULTING AGREEMENT ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between czb, LLC, a Maine limited liability company, with offices at 48 Front Street, Suite 201, Bath, ME 04530 (referred to either as "czb" or "Consultant"), and City of Fargo, ND, a North Dakota municipal corporation, with offices at 225 4th Street North, Fargo, ND, 58102 (referred to either as "City" or "Contractor")

WHEREAS, Contractor sought proposals to complete a Citywide Master Plan for Growth; and

WHEREAS, Consultant was selected by Contractor to complete a Citywide Master Plan for Growth; and

WHEREAS, Consultant is able and willing to complete a Citywide Master Plan for Growth by performing the scope of work defined below and the City desires to engage Consultant for such purposes and the parties wish to enter into an agreement memorializing the terms thereof;

NOW, THEREFORE, the parties hereto, intending to be legally bound, and for good and sufficient consideration, hereby agree as follows:

1. Consultant shall perform the work and services outlined below in the attached scope of work so that Contractor may achieve its goals.
2. Performance – the Work. Consultant shall perform the work required by this Agreement in a manner consistent with the highest professional standards. Consultant shall undertake and perform the following scope of work (the "Work"):
  - a. Deliver a Citywide Master Plan for Growth as described by the program of work set forth in ATTACHMENT "A".
3. Timeframe for Performance of Work. Consultant shall begin the Work on or before February 1, 2023 and Consultant shall be responsible for substantially conforming to the schedule described in ATTACHMENT "B", and the Work shall be completed no later than March 31, 2024, unless this Agreement is sooner terminated in accordance with the terms hereof.
4. Compensation for Services. Contractor shall pay compensation to Consultant for the Performance of the Work in accordance with ATTACHMENT "C", which contemplates up to 31-person trips by czb personnel or its sub-consultants. Unless otherwise approved by the parties by change order or amendment to this Agreement, said compensation shall not exceed SEVEN HUNDRED SEVENTY-SIX THOUSAND AND no/100 DOLLARS (\$776,000.00). Consultant's travel expenses shall be borne solely by Consultant. ATTACHMENT "C" establishes estimated costs comprising the total sum. Contractor and Consultant agree that costs in ATTACHMENT "C" are estimates and may change, and such changes are not required to be reported by Consultant, but the total sum shall not change without a written request from Consultant to Contractor and written authorization granted by Contractor to Consultant. Consultant shall invoice Contractor on a monthly basis, starting on March 1, 2023, and continuing through April 1, 2024. Consultant shall invoice Contractor based on percentage completion of the phases and tasks described in ATTACHMENT "A". On receipt of Consultant invoices, transmitted via email in PDF form, Contractor shall make full payment to Consultant within 30 calendar days of receipt.

5. Representation and Warranties of Contractor. The Contractor represents and warrants to Consultant that it has obtained funds to pay Consultant under this Contract. Both the Contractor and Consultant warrant and represent to each other that this Agreement does not conflict with any other agreement by which Contractor or Consultant is bound, and this Agreement has been approved by the Contractor's officers. Contractor and Consultant each represent and warrant to each other that each has the full power and legal authority to enter into this Agreement and to perform the obligations required of it as set forth in the Agreement.
6. Consultant Not an Agent of Contractor. Nothing in this Agreement or the performance by Consultant or any of its subcontractors of the work specified by this Agreement shall make the Consultant or its subcontractors an agent of Contractor for any purpose.
7. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights on any third persons as third party beneficiaries of this Agreement, and no one shall have any authority to enforce the terms of this Agreement except the parties signing this Agreement.
8. No Termination Except for Cause. Neither party shall have the right to terminate this Agreement except for cause amounting to a breach by the other party of one or more of its obligations or duties as set forth in this Agreement.
9. Entire Agreement. This Agreement as written constitutes the entire agreement of the parties with respect to the subject matter, and any prior negotiations, discussions or submissions are not part of this Agreement except if they are expressly included in the written terms of this Agreement.
10. Governing Law, Jurisdiction and Venue. This Agreement and the rights and obligations of the parties stated herein shall be interpreted under the law of the state of North Dakota with the Parties hereby agreeing that any lawsuits resulting from a dispute over this Agreement or the Work performed hereunder shall be brought either in state district court for the state of North Dakota or in federal district court for the District of North Dakota and that venue for such lawsuits shall lie in Cass County, North Dakota.
11. Binding Agreement. This Agreement is binding upon the parties hereto and their respective successors and assigns.
12. Term of Agreement. The term of this Agreement shall commence on the date of this Agreement and shall continue until June 30, 2024 unless sooner terminated by the parties.
13. No Assignment. Neither party may assign this Agreement to any third party without the express written consent of the other party, which consent may be withheld in the other party's sole discretion.
14. Disputes. The parties shall attempt to mutually resolve any disputes that arise between them under this Agreement, but in the event that a mutual resolution of the dispute cannot be achieved, each party may pursue all available legal remedies.
15. Notice. In the event that any party to this Agreement needs to provide notice to any other party of any matter or occurrence related to this Agreement, said notice shall be sent by first class mail, return receipt requested, to each of the parties as follows:

**To the Consultant:**

czb, LLC  
ATTN: Charles Buki  
48 Front Street, Suite 201  
Bath, ME 04530

Or to:

The Registered Agent for service of process for the Consultant on record with the  
Secretary of State for the State of Maine

**To the City:**

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

and to:

Director of Planning and Development  
ATTN: Nicole Crutchfield  
Fargo City Hall  
225 N. Fourth Street  
Fargo, ND 58102

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this  
Agreement as of the day and year first above written.

**CONTRACTOR:**

City of Fargo  
a North Dakota municipal corporation

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

**ATTEST:**

\_\_\_\_\_  
Steven Sprague, City Auditor

**CONSULTANT:**

czb, LLC  
a Maine limited liability company

By: \_\_\_\_\_  
Charles Buki  
Its: President

ATTACHMENT "A"

Citywide Master Plan for Growth Work Description

[see attached]



## Proposed Work Program

Our approach is grounded in our philosophy that long-range growth planning must be values-based, rigorously prioritized, and set clear direction while providing implementation flexibility. To get to the heart of these three cornerstones of good planning, we propose to design and lead a three-phase, 14-month process that is streamlined and sequential, with phases to confirm or modify a values-based vision for Fargo's future, to select a preferred pathway to growth, and to distill the preferred path into guidance for action.

Furthermore, it is our experience that the core of effective public participation is a representative steering committee that can both reflect the public in its group conversations but also act as a conduit back to the community. We are pleased, therefore, to see a project steering committee described in the RFP, and include it in our description of proposed engagement activities.

### PHASE 1 Our Current Path and Vision for Growth



Through a review of existing plans and policies, along with analysis of demographic, economic, and real estate trends, we will define a "current path" scenario for growth, including the vision, values, and assumptions underpinning it. Working with community stakeholders, we will assess the costs and benefits of this current path and determine the elements that the community wants to maintain and the elements it wants to alter or discard.

At the end of this phase, it will be clear where Fargo will be headed if it does nothing differently. It will also be clear which parts of the City's existing vision for growth can be confirmed and maintained, and which parts need adjustment.

### PHASE 2 Our Chosen Path Forward



Based on reactions to the "current path" scenario for growth in Phase 1, Phase 2 will present alternative paths. These scenarios will be aligned with the general direction defined at the conclusion of Phase 1, but each will have recognizable distinctions (related to where and how growth happens, and the associated impacts) to help stakeholders further define Fargo's vision for future growth.

At the end of this phase, a preferred path forward will be defined and ratified to serve as the basis for long-range planning.

### PHASE 3 Our Growth Management Plan and Decision-Making Framework



With a preferred path for growth in place, Phase 3 will focus on the translation of that path into a decision-making framework and action plan that will assist the community in making consistent decisions that reflect and reinforce Fargo's vision for growth.

Towards the end of this phase, the City will be in a good position to begin updating its Land Development Code, harmonize existing plans, and undertake other steps toward activation of the updated vision for growth.

### Engagement Activities



Throughout the three phases, the project steering committee will be at the center of a web of public engagement that will include open houses, surveys, "kitchen table conversations," and stakeholder interviews. These different means of engagement will play vital educational roles while helping to define a vision for growth and the preferred path to growth.

## Proposed Work Program - Outcomes, Deliverables and Elements

### PRE-PROJECT ACTIVITIES

If selected, we will work with the City right away to finalize a scope and process that delivers a Citywide Master Plan for Growth in a timely manner. Topics to address in this preliminary work will include:

- Project management issues such as points of contact and data sharing.
- Establishment of routine project management calls on a biweekly basis.
- Identification and composition of a technical advisory committee of staff from the City of Fargo and relevant partner agencies; beginning of monthly technical advisory touch points, with participation tied to active tasks and project needs.
- A finalized project timeline with milestones spelled out, a final public engagement plan, specific meeting dates placed on the calendar, and consultant travel requirements identified.

### PHASE 1 Our Current Path and Vision for Growth



#### PHASE 1: Our Current Path and Vision for Growth

During this first phase, czb and its team will rapidly analyze the planning and policy context of growth in Fargo, as well as demographic, economic, and other factors that will influence future growth. This will contribute to the development of a “current path” or status quo scenario to help stakeholders understand the expected outcomes and impacts of doing nothing differently, and to identify specific components of the current path that are worth keeping or that need to be modified.

In particular, this phase of work will include the following tasks:

##### 1.1: Analyze existing plans, policies, and infrastructure

- Review the existing comprehensive plan and all area plans for vision, direction, and decision-making guidance; identify discernable values and planning principles expressed by these documents and any conflicting visions.
- Review all existing relevant policies and ordinances that relate to growth.
- Review all long-range infrastructure plans, service plans, and capital improvement plans (CIPs).
- Conduct a capital facilities analysis and infrastructure review to determine deficiencies and capacity, inclusive of water, sewer, stormwater, transportation, electric, and other utilities, with potential to include public safety facilities, public works facilities, and other types of facilities as necessary.

##### 1.2: Analyze demographic and economic trends that will influence growth

- Perform demographic, economic, and real estate market analysis inclusive of demographic trends and projections, employment trends and conditions, and real estate market trends by major land use categories such as single- and multi-family housing, retail, office, industrial, and hospitality.

##### 1.3: Develop a “current path” scenario

- Based on findings from tasks 1.1 and 1.2, develop a “current path” scenario with UrbanFootprint that describes how and where Fargo might grow over the next 20 years, the impacts of these growth patterns (fiscal, land use, and environmental), and the decision-making variables that will influence this path. Use understanding of infrastructure capacity and conditions from task 1.1, as well as well-grounded assumptions about the path and form of future development, to help determine fiscal, land use, and transportation impacts.

**1.4: Assess the current path scenario**

- Present the current path scenario and identify what the Fargo community likes and does not like about its current path and where that path is taking the region.
- Pinpoint what the community wants to change about the current path, and how those changes might translate into adjustments to stated values, planning principles, and priorities of a vision for growth

**1.5: Confirm a vision for growth**

- Using input from public reactions to the current path scenario, define and confirm a clear vision for growth, including the values, planning principles, and priorities that should shape future planning and decision-making.

**Deliverables**

Through the performance of these tasks, czb and its team will deliver the following discrete deliverables during Phase 1:

- "Summary of Direction" from existing planning documents and policies
- Capital Facilities Analysis
- Current Path Scenario, complete with assumptions and estimated impacts
- Confirmed Vision for Growth

## PHASE 2 Our Chosen Path Forward

**PHASE 2: Our Chosen Path Forward**

During the second phase, czb and its team will craft between two and four alternative scenarios for growth that will represent meaningful deviations from the current path scenario presented in Phase 1. Each of the alternative scenarios will align with the Confirmed Vision for Growth and will be presented graphically, narratively, and numerically in order to aid stakeholders in understanding the relative outcomes and impacts associated with each scenario—and how they differ from the current path. Careful attention to communication design will ensure that the alternative paths are well understood by stakeholders and that the preferred path represents an informed and deliberate choice by the community.

In particular, this phase of work will include the following tasks:

**2.1: Define and analyze alternative growth scenarios**

- Based on the confirmed vision for growth from Phase 1, as well as what the community embraced or rejected about the current path scenario, define a set of alternative growth scenarios that align with the vision for growth in distinct ways. Use UrbanFootprint to build each scenario and lay the groundwork for impact analysis.
- Identify the relative impacts (fiscal, economic, environmental, etc.) of these alternative growth scenarios, including a broad understanding of costs, benefits, and how they differ from the current path.
- Use demographic and economic trends analysis, capital facilities analysis, and review of infrastructure from Phase 1 to inform impact and cost/benefit modeling of alternative scenarios.

**2.2: Present the growth scenarios for public vetting and identify preferred path**

- Exhibit the growth scenarios in ways that clearly describe the relative impacts of different paths and the tradeoffs required to achieve each growth scenario.

### PHASE 3 Our Growth Management Plan and Decision- Making Framework



#### 2.3: Ratify a well-defined preferred growth scenario

- Use public input from presentations of alternative growth scenarios to define the preferred growth scenario, which may represent a hybrid of the presented scenarios.
- Perform further analysis to flesh out the impacts and implications of the preferred growth scenario and its alignment with the confirmed vision for growth; define the outcomes that will describe progress along this preferred path.

#### Deliverables

Through the performance of these tasks, czb and its team will deliver the following discrete deliverables during Phase 2:

- Outline of Proposed Alternative Growth Scenarios to serve as the basis for development of detailed scenarios
- Alternative Growth Scenarios Presentation
- Preferred Growth Scenario Presentation

#### PHASE 3: Our Growth Management Plan and Decision-Making Framework

The final phase will produce the roadmap the Fargo community will need to steer itself toward the desired outcomes and impacts described by the preferred growth scenario. It will translate the confirmed vision for growth and preferred growth scenario into a flexible and actionable decision-making framework to support planning, policy design, and investments over the coming decade.

In particular, this phase of work will include the following tasks:

##### Task 3.1: Define Fargo's decision-making framework for growth

- Present a framework anchored to a vision for growth that is supported by specific values, planning principles, and priorities—all distilled from work completed in Phase 1.

##### Task 3.2: Create conceptual diagrams of preferred growth scenario

- Generate graphics—including maps and potentially transects—that convey the direction and character of growth and redevelopment under the preferred growth scenario; fine-tune the diagrams as communications tools to build public understanding while aiding the work of elected officials and staff.

##### Task 3.3: Produce future land use maps

- Convey desired land use patterns of the preferred growth scenario, citywide, through a series of future land use maps that are ready for use during the LDC updating process.

##### Task 3.4: Provide guidance on LDC updates

- Translate the preferred vision for growth into broad guidelines for the LDC updating process to accelerate the work; take findings from Fargo's LDC Diagnostic into account.

##### Task 3.5: Produce reconciliation analysis of existing plans/CIPs

- Summarize existing policies and plans and their level of conformity or fit with the preferred growth scenario. Provide recommendations on how to bolster alignment, where necessary.

- Develop capital investment recommendations to ensure that CIPs are a reflection of the preferred growth scenario.

**Task 3.6: Develop consistency guidelines for future planning**

- To ensure that future policies, area plans, service plans, and CIPs align with the preferred growth scenario, outline a set of guidelines for future planning processes to follow so that scopes of work and outcomes have a high probability of reinforcing Fargo's vision for growth.

**Task 3.7: Finalize and Adopt Growth Management Plan**

- Summarize all recommended implementation steps into a Growth Management Action Plan for the coming 2, 5, and 10 years.
- Advise and assist with the process of Growth Plan adoption through presentations and discussions as necessary.

**Deliverables**

Through the performance of these tasks, czb and its team will deliver the following discrete deliverables by the end of Phase 3:

- Decision-making framework
- Library of growth diagrams
- Future land use maps
- LDC integration guidance
- Existing plan reconciliation recommendations
- Future plan consistency guidelines
- Growth Management Action Plan



## Proposed Work Program - Engagement Activities



In our experience the core of effective public participation is a representative steering committee that can both reflect the public in its group conversations but also act as a conduit back to the community. The right steering committee acts as a "force multiplier," making public outreach efforts more effective by penetrating a community and its different neighborhoods and interest groups with word-of-mouth advertising for surveys, public events, and other opportunities to exchange views. We found this to be true during the Core Neighborhoods Master Plan, when our team successfully managed multiple layers of steering committees.

Beyond the committee, we have found the following activities to be effective when used together as a "mixed-method" approach to engagement:

### **Presentations**

Routine presentations throughout the planning process to the Planning Commission, City Commission, Public Works Project Evaluation Committee, and other relevant agencies will ensure that elected and appointed officials remain well-informed and are not surprised by the deliverables that emerge during Phase 3—and that they have opportunities to communicate their concerns. Such presentations are also important touchpoints with highly engaged members of the public who attend these meetings.

### **Kitchen Table Conversations**

We dubbed these small group discussions as Kitchen Table Conversations (KTC) because they were originally designed to take place inside committee members' homes with other residents of the community, although we adapted them for a virtual environment in 2020. Our team designs hypothetical scenarios requiring deep thought and discussion between small groups of residents, and challenging existing views on issues in the community. The scenarios range from the very likely to the farfetched, and ask participants to play the role of a Planning Commissioner or a member of the City Commission who must decide on some invented proposal. What if X was proposed and was in front of you for a decision? What would you do? What reasoning would you use? They are an effective way to quickly and deeply engage 50-100 residents each time the committee completes a round.

### **Stakeholder Interviews**

We make sure to connect with key stakeholders in the community, including elected officials, civic leaders, the faith community, developers, neighborhood advocates, and others. We work with clients to develop an interview protocol and then conduct interviews with individuals and small groups. The findings from these interviews help us identify key issues, conflicts, challenges and opportunities.

### **Open House "Road Shows"**

One-off opportunities for public input are little more than box checking exercises. Instead, we have often had great success by doing multiple events across a variety of sites in a few days. This allows us to meet residents where they are and gather substantial feedback across a large area in a short amount of time. On top of the face-to-face options, we have also developed an online version which allows much more time for residents to browse information and provide written comments at a time that works for them (even if that's the middle of the night) while also offering scheduled video conference opportunities to talk directly to our team.

### **Online Surveys**

We have used online surveys for years. They are easy to construct, and we have learned over time how to ask the most important questions in the shortest amount of time so that residents can contribute quickly and not miss time out of their busy lives. Surveys are always designed in collaboration with the steering committee and staff.

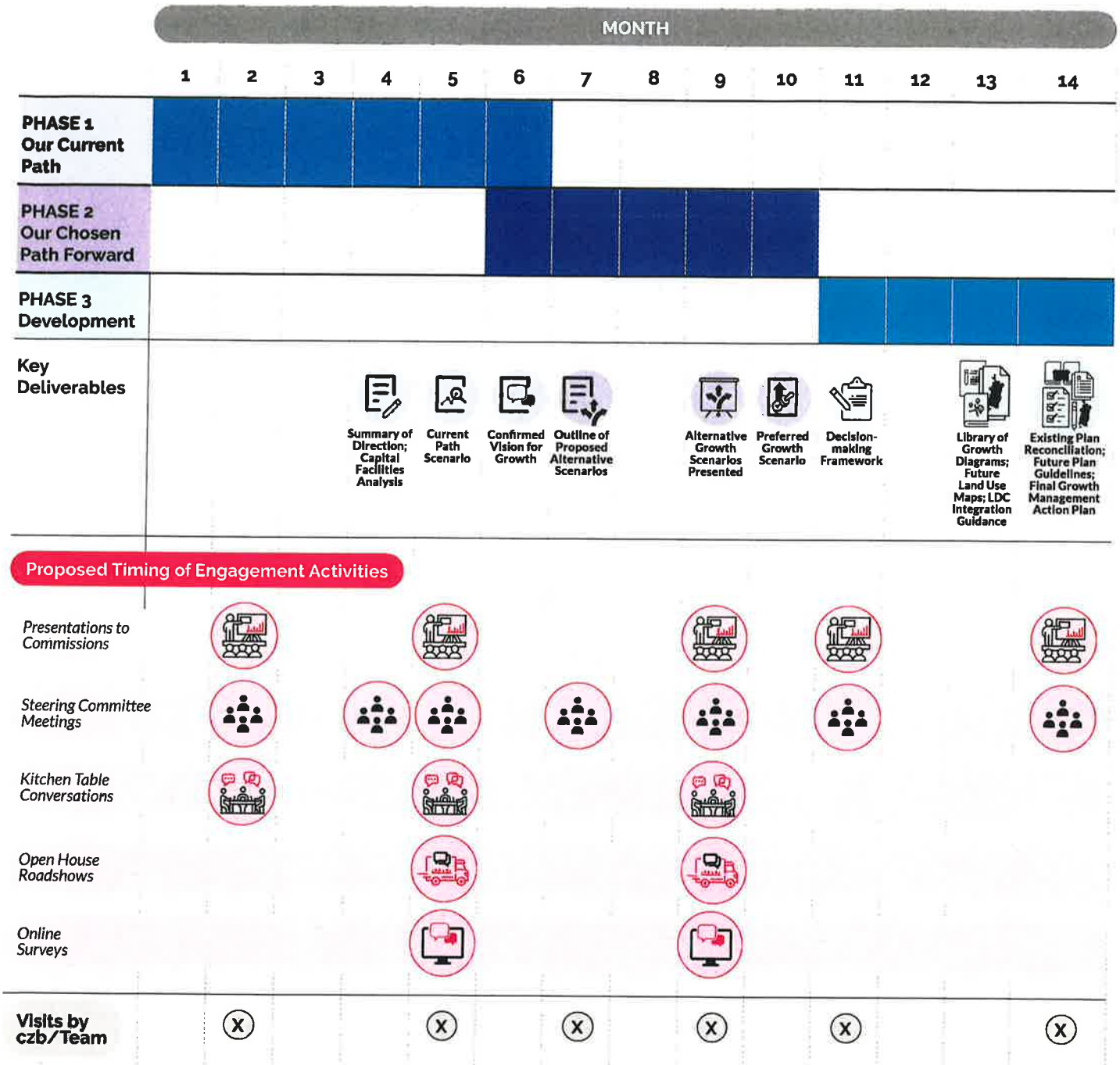
ATTACHMENT “B”

Schedule of Work

[see attached]

## Proposed Work Program - Schedule

The three-phase, 14-month Program of Work outlined on the preceding pages is presented in the schedule below. It includes six visits by the project team, including three intensive visits (in months 5, 9, and 14) that would feature steering committee meetings, open houses, and presentations to commissions.








ATTACHMENT "C"

Schedule of Rates and Hours

[see attached]

## Cost

czb proposes to complete the Program of Work, inclusive of all tasks, public engagement activities, and travel, for a lump-sum fee of \$776,000. The distribution of hours and costs across phases, tasks, personnel, and firms are summarized below.

|  | czb             |                   |                 |                  |                  | Strategic Economics |                 | MRB Group       |                   |                 | Code Studio     |                  |
|--|-----------------|-------------------|-----------------|------------------|------------------|---------------------|-----------------|-----------------|-------------------|-----------------|-----------------|------------------|
|  | Charles Buki    | Karen Beck Pooley | Matt Ingalls    | Thomas Eddington | Peter Lombardi   | Dena Belzer         | Tatum Troutt    | Matt Horn       | Timothy Carpenter | Jordan Everhart | Lee Einsweiler  | TOTAL            |
| <b>Rates</b>   | \$200           | \$175             | \$175           | \$175            | \$175            | \$200               | \$150           | \$175           | \$200             | \$175           | \$225           |                  |
|  <b>PHASE 1</b>   | <b>120</b>      | <b>160</b>        | <b>180</b>      | <b>220</b>       | <b>240</b>       | <b>220</b>          | <b>240</b>      | <b>80</b>       | <b>100</b>        | <b>80</b>       | <b>0</b>        | <b>1,640</b>     |
| 1.1: Analyze existing plans, etc.  | 40              | 0                 | 40              | 80               | 40               | 40                  | 40              | 40              | 60                | 60              | 0               | 440              |
| 1.2: Analyze demographic & econ. trends  | 0               | 80                | 0               | 0                | 40               | 80                  | 120             | 0               | 0                 | 0               | 0               | 320              |
| 1.3: Develop current path scenario   | 40              | 0                 | 40              | 40               | 40               | 20                  | 40              | 20              | 0                 | 0               | 0               | 240              |
| 1.4: Assess current path scenario  | 40              | 80                | 40              | 40               | 40               | 80                  | 40              | 20              | 40                | 20              | 0               | 440              |
| 1.5: Confirm vision for growth   | 0               | 0                 | 40              | 40               | 40               | 0                   | 0               | 0               | 0                 | 0               | 0               | 120              |
| Phase 1 public engagement  | 0               | 0                 | 20              | 20               | 40               | 0                   | 0               | 0               | 0                 | 0               | 0               | 80               |
|  <b>PHASE 2</b> | <b>140</b>      | <b>20</b>         | <b>120</b>      | <b>160</b>       | <b>140</b>       | <b>120</b>          | <b>140</b>      | <b>40</b>       | <b>40</b>         | <b>20</b>       | <b>20</b>       | <b>960</b>       |
| 2.1: Define and analyze alt. growth scenarios  | 80              | 20                | 40              | 80               | 40               | 80                  | 80              | 40              | 40                | 20              | 20              | 540              |
| 2.2: Present growth scenarios for vetting  | 40              | 0                 | 40              | 40               | 40               | 0                   | 20              | 0               | 0                 | 0               | 0               | 180              |
| 2.3: Ratify preferred scenario   | 20              | 0                 | 20              | 20               | 20               | 40                  | 40              | 0               | 0                 | 0               | 0               | 160              |
| Phase 2 public engagement  | 0               | 0                 | 20              | 20               | 40               | 0                   | 0               | 0               | 0                 | 0               | 0               | 80               |
|  <b>PHASE 3</b> | <b>80</b>       | <b>0</b>          | <b>140</b>      | <b>140</b>       | <b>180</b>       | <b>120</b>          | <b>80</b>       | <b>40</b>       | <b>60</b>         | <b>20</b>       | <b>280</b>      | <b>1,140</b>     |
| 3.1 through 3.6: Draft all components and maps for Growth Management Action Plan                   | 40              | 0                 | 80              | 80               | 80               | 80                  | 80              | 20              | 40                | 20              | 160             | 680              |
| 3.7: Finalize and Adopt Growth Management Plan   | 40              | 0                 | 40              | 40               | 80               | 40                  | 0               | 20              | 20                | 0               | 120             | 400              |
| Phase 3 public engagement  | 0               | 0                 | 20              | 20               | 20               | 0                   | 0               | 0               | 0                 | 0               | 0               | 60               |
| <b>TOTAL HOURS</b>   | <b>340</b>      | <b>180</b>        | <b>440</b>      | <b>520</b>       | <b>560</b>       | <b>460</b>          | <b>460</b>      | <b>160</b>      | <b>200</b>        | <b>120</b>      | <b>300</b>      | <b>3,740</b>     |
| Sub-Total Cost   | \$68,000        | \$31,500          | \$77,000        | \$91,000         | \$98,000         | \$92,000            | \$69,000        | \$28,000        | \$40,000          | \$21,000        | \$67,500        | \$683,000        |
| Trips  | 4               | 0                 | 6               | 6                | 6                | 2                   | 2               | 2               | 1                 | 1               | 1               |                  |
| Cost Per Trip  | \$3,000         | \$3,000           | \$3,000         | \$3,000          | \$3,000          | \$3,000             | \$3,000         | \$3,000         | \$3,000           | \$3,000         | \$3,000         |                  |
| Travel Costs   | \$12,000        | \$0               | \$18,000        | \$18,000         | \$18,000         | \$6,000             | \$6,000         | \$6,000         | \$3,000           | \$3,000         | \$3,000         | \$93,000         |
| <b>TOTAL COST</b>  | <b>\$80,000</b> | <b>\$31,500</b>   | <b>\$95,000</b> | <b>\$109,000</b> | <b>\$116,000</b> | <b>\$98,000</b>     | <b>\$75,000</b> | <b>\$34,000</b> | <b>\$43,000</b>   | <b>\$24,000</b> | <b>\$70,500</b> | <b>\$776,000</b> |

January 9, 2023

Honorable Board of City Commissioners  
City Hall  
225 4<sup>th</sup> St N, Fargo, ND 58102

Commissioners:

Through the RFP process, rates were secured for four (4) forestry related contracted services. These agreements - city commission previously approved along with the option to negotiate and extend additional seasons.

Agreement status:

1. Tree/Stump Removal - 2023 will be season 3 of a 5-year agreement (Cougar Tree Care, Inc.)
2. Landscape Maintenance Services – 2023 will be season 2 of a 5-year agreement (All-Terrain Grounds Maintenance)
3. Tree Injection – 2023 will be season 5 of a 5-year agreement (Paul Bunyan Nurseries)

| <u>Activity/Service</u> | <u>2022 rate</u>                     | <u>2023 proposed rates</u>          |
|-------------------------|--------------------------------------|-------------------------------------|
| Tree Removal            | \$22.00 per diameter inch            | \$22.66 per diameter inch           |
| Stump Removal           | \$171.35 per stump                   | \$176.49 per stump                  |
| Landscape Maintenance   | \$2370 bi-weekly                     | no change                           |
| Tree Injection          | \$9.25 (med. rate) per diameter inch | \$8.25 per diameter inch (decrease) |

The 2023 forestry budget can support the proposed rate changes.

**Recommended motion:**

**Move to approve 2023 contracted forestry services agreements with Cougar Tree Care, Inc. for tree and stump removal (RFP21023), All-Terrain Grounds Maintenance for landscape bed maintenance (RFP22004), and Paul Bunyan Nurseries for injection services (RFP19008).**

Your approval of this request is appreciated.

Sincerely,



Scott Liudahl, City Forester

Cc: Ben Dow

Commission 2023 contract agreements.doc

## **Tree and Stump Removal Services - 2023**

### **I. Agreement**

This agreement is between the City of Fargo (City) and Cougar Tree Care, Inc. (Contractor) to provide tree and stump removal services for the City. This agreement shall commence upon signing by both parties and expire on December 31, 2023. The term of this agreement may be extended, if accepted and signed by the Contractor and City, for two (2) additional one (1) year extensions, provided the negotiated extension is signed by both parties on or around January 1st of the contract year.

### **II. Scope of Services Summary**

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

### **III. Responsibility of the City**

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

### **IV. Contractor's Compensation and Method of Payment**

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

### **V. Termination of the Agreement**

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

### **VI. Assignability**

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

### **VII. Hold Harmless and Insurance**

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

### **VIII. Contractor Records**

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

**IX. Monitoring and Evaluation**

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

**X. Independence of Recipient**

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

**XI. Conflict of Interest**

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

**XII. Entire Agreement**

This agreement constitutes the entire agreement between the parties.

**XIII. Law**

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

**XIV. Time of the Essence**

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

**XV. Third Parties**

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

**XVI. Headings**

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

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 12-27-22

CONTRACTOR

Cougar Tree Care, Inc.

A handwritten signature in black ink, appearing to read 'James Danielson', written over a horizontal line.

By (signature): James Danielson

Its: President

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Timothy J. Mahoney, Mayor

ATTEST:

\_\_\_\_\_  
Steve Sprague, City Auditor

## **Landscape Maintenance Services - 2023**

### **I. Agreement**

This agreement is between the City of Fargo (City) and All-Terrain Grounds Maintenance (Contractor) to provide landscape maintenance services for the City. This agreement shall commence upon signing by both parties and expire on approximately October 31, 2023. The term of this agreement may be extended for one-year periods for a maximum of three (3) additional years, if approved and accepted in writing by both the contractor and the city prior to the season start of the appropriate year.

### **II. Scope of Services Summary**

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

### **III. Responsibility of the City**

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

### **IV. Contractor's Compensation and Method of Payment**

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

### **V. Termination of the Agreement**

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

### **VI. Assignability**

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

### **VII. Hold Harmless and Insurance**

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

### **VIII. Contractor Records**

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

**IX. Monitoring and Evaluation**

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

**X. Independence of Recipient**

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

**XI. Conflict of Interest**

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

**XII. Entire Agreement**

This agreement constitutes the entire agreement between the parties.

**XIII. Law**

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

**XIV. Time of the Essence**

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

**XV. Third Parties**

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

**XVI. Headings**

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



IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 1/3/2023

CONTRACTOR

All-Terrain Grounds Maintenance

Matt Langen

By: Matt Langen

Its: Customer Relations Manager

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Timothy J. Mahoney, Mayor

ATTEST:

\_\_\_\_\_  
Steve Sprague, City Auditor

## **Tree Injection Services - 2023**

### **I. Agreement**

This agreement is between the City of Fargo (City) and Paul Bunyan Nurseries (Contractor) to provide tree injection services for the City. This agreement shall commence upon signing by both parties and expire on December 31, 2023. *The terms of this agreement may be extended, if accepted and signed by the Contractor and City, for one (1) additional year extension, provided the negotiated extension is signed by parties on or around February 15<sup>th</sup> of the contract year.*

### **II. Scope of Services Summary**

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

### **III. Responsibility of the City**

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

### **IV. Contractor's Compensation and Method of Payment**

Partial billing is acceptable at any time. City will compensate Contractor per proposal price.

### **V. Termination of the Agreement**

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

### **VI. Assignability**

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

### **VII. Hold Harmless and Insurance**

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

### **VIII. Contractor Records**

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

**IX. Monitoring and Evaluation**

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

**X. Independence of Recipient**

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

**XI. Conflict of Interest**

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

**XII. Entire Agreement**

This agreement constitutes the entire agreement between the parties.

**XIII. Law**

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

**XIV. Time of the Essence**

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

**XV. Third Parties**

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

**XVI. Headings**

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

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 12-29-2022

CONTRACTOR

Paul Bunyan Nurseries



By: Steve Kiemle

Its: CFO

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Timothy J. Mahoney, Mayor

ATTEST:

\_\_\_\_\_  
Steve Sprague, City Auditor

(17)

January 9, 2023

City of Fargo Commissioners  
225 N 4<sup>th</sup> Street  
Fargo, ND 58102

Dear Commissioners:

The City of Fargo has provided transit service in West Fargo for many years. An annual Mass Transit Agreement defines the level and cost of the service, and West Fargo provides Fargo with an appropriate amount of funds to pay for local costs of the transit service. A portion of the cost of transit service is paid for with grants from the Federal Transit Administration and the State of North Dakota.

Agreements for these services for 2022 and 2023 are attached for your consideration. Under the terms of these agreements, the City of West Fargo will contribute monthly towards the cost of fixed route transit and paratransit services.

RECOMMENDED MOTION: Approval of the Mass Transit Agreements between the Cities of Fargo and West Fargo for 2022 and 2023.

Sincerely,



Julie Bommelman  
City of Fargo Transit Director  
476-6737

/enc

## MASS TRANSIT AGREEMENT

This AGREEMENT made and entered into this 1st day of January, 2022, by and between the City of West Fargo, North Dakota (hereinafter "West Fargo") and the City of Fargo, North Dakota (hereinafter "Fargo").

WHEREAS, Fargo provides regular transit service and Paratransit service for its citizens; and

WHEREAS, West Fargo would like to provide such services to the citizens of West Fargo; and

WHEREAS, Fargo is agreeable to provide such transit service to West Fargo on the terms and conditions set out below;

NOW THEREFORE, be it agreed between West Fargo and Fargo as follows:

1. Fargo will provide regular transit service to West Fargo during the term of this agreement under the following conditions:
  - A. Fargo and West Fargo shall agree to routes, schedules, and stopping points of the transit service in West Fargo. It is understood that such West Fargo routes will tie into the Fargo route system at West Acres. Route 20 and stopping points must be such that the route can be completed in approximately thirty (30) minutes; the route will run once each hour. Route 24 and stopping points must be such that the route can be completed in approximately 60 minutes; the route will run once each hour.
  - B. West Fargo shall pay Fargo, on a monthly basis, \$18,246.87 a month in 2022, with payment being due by the 10th day of each month, for Route 20 and Route 24 transit service to be available in West Fargo. Fargo will use these funds for the local share of the overall cost of these services and for transit capital needs.
  - C. Persons who get onto the bus in West Fargo shall not be charged a fee to transfer onto other bus routes of the bus system, and may transfer onto another bus with no transfer fee.
  - D. The bus fare for using the buses in West Fargo shall be the same fare that is charged to passengers using the bus service in Fargo.
  - E. Fargo shall be responsible for all administrative responsibilities regarding the bus transit service provided to West Fargo, including dispatching, complaint issues, annual grant applications, marketing of routes, preparation and revision of route maps and schedules, and filing of any necessary reports.
2. Fargo shall provide West Fargo transit service for persons with disabilities through the Paratransit service on the following conditions:

- A. The service shall be available to the citizens of West Fargo on the same basis that it is available to citizens in Fargo.
  - B. The cost of the service to the citizens of West Fargo shall be the same cost as available to the citizens of Fargo.
  - C. It is understood between West Fargo and Fargo, that Fargo contracts with a provider for drivers services for the Paratransit service. West Fargo shall pay Fargo \$12.85 per ride in 2022, for paratransit services taken by a resident of West Fargo, except for those rides that are paid at an agency rate or those rides that are paid by Medicaid. West Fargo will not pay for rides billed at an agency rate or those rides that are paid by Medicaid. Fargo will track the number of rides for which West Fargo will be billed, as described herein, and will submit a monthly invoice to West Fargo. West Fargo will remit payment to Fargo by the 10th day of the following month. Fargo will use these funds for the local share of the overall cost of these services and for transit capital needs.
  - D. West Fargo, by written notification to Fargo, may limit the hours of Paratransit service in West Fargo, provided that such limitation would not cause any violation of any state or federal law.
- 3. West Fargo shall adhere to the Emergency Service Guidelines that Fargo has implemented.
  - 4. This agreement shall be for a period of twelve (12) months, beginning on January 1, 2022 and terminating on December 31, 2022.
  - 5. Either party may terminate or reduce the amount of service to be rendered if there is, in the opinion of either party's City Commission, a significant increase in local costs; or, in the opinion of either party's City Commission, insufficient state or federal funding available for the service, thereby terminating this agreement or reducing the service and compensation to be paid under this agreement. In such event the terminating party will notify the other party in writing one hundred eighty (180) days in advance of the date such actions are to be implemented. In the event of any termination, West Fargo shall pay the agreed rate only for services delivered up to the date of termination. West Fargo has no obligation to Fargo, of any kind, after the date of termination.
  - 6. This agreement shall not be amended, except in writing executed by both parties.
  - 7. Nothing in this agreement shall be deemed a waiver by West Fargo or Fargo of the limits of liability set forth in N.D.C.C. § 32-12.1-03 or a waiver of any available immunities or defenses. Additionally, the limitations on liability for West Fargo and Fargo shall not be added together or stacked to increase the maximum amount of liability.
  - 8. West Fargo and Fargo are each responsible for securing liability insurance that it believes, in its discretion, will be adequate for this agreement. Additionally, West Fargo and Fargo are each responsible for securing workers' compensation insurance and

employer's liability insurance at levels required under state law, or within its discretion, to cover any of its respective employees working under this agreement.

9. Both parties agree to indemnify, save, and hold harmless the other and its agents and employees from any and all liability, loss, cost, damages, expenses, claims, or causes of action, including attorney's fees, arising out of or by reason of actions of the other or its agents or employees in connection with or in the execution, performance, or failure to adequately perform obligations pursuant to this agreement. The indemnification and hold harmless obligations set forth in this agreement shall survive the termination of this Agreement.
10. The parties will cooperate and use their best efforts to ensure that the various provisions of this agreement are fulfilled. The parties agree to act in good faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this agreement.
11. The District Court of Cass County, North Dakota, will be the sole and exclusive venue for any lawsuit pertaining to this agreement, and the Parties consent to the personal jurisdiction in said court in the event of any such lawsuit.
12. This agreement shall not be assigned without the express written consent of the other party.
13. Each provision, section, sentence, clause, phrase, and word of this agreement is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid whatsoever, such illegality or invalidity will not affect the validity of the remainder of this agreement.
14. No party will be liable to another party during any period in which its performance is delayed or prevented, in whole or in part, by circumstances beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials, or a restriction imposed by legislation, an order or a rule, or regulation of a governmental entity. If such a circumstance occurs, the party claiming the delay must undertake reasonable action to notify the other party of the same.
15. All notices, certificates, or other communications required under this agreement will be deemed sufficiently given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:

If to West Fargo:

City Administrator  
City of West Fargo  
800 4th Avenue East, Suite #1  
West Fargo, ND 58078



If to Fargo:

City Administrator  
City of Fargo  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

16. This agreement will be controlled by the laws of the State of North Dakota.
17. This agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. All parties will receive a fully-executed counterpart. The facsimile, email, or other electronically delivered signatures of the parties will be deemed to constitute original signatures, and facsimile or electronic copies hereof will be deemed to constitute duplicable originals.
18. This agreement constitutes the entire agreement by and between the parties, and any other prior representations or agreements are deemed merged herein, and those not specified herein do not represent any agreements or promises or covenants or representations on the part of either party hereto.

IN WITNESS WHEREOF, the parties have caused this Mass Transit Agreement to be executed on the day and year first above written.

CITY OF WEST FARGO  
BY:   
Bernie L. Dardis, President, City Commission

ATTEST:   
City Auditor

CITY OF FARGO

BY: \_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

ATTEST: \_\_\_\_\_  
City Auditor

## MASS TRANSIT AGREEMENT

This AGREEMENT made and entered into this 1st day of January, 2023, by and between the City of West Fargo, North Dakota (hereinafter "West Fargo") and the City of Fargo, North Dakota (hereinafter "Fargo").

WHEREAS, Fargo provides regular transit service and Paratransit service for its citizens; and

WHEREAS, West Fargo would like to provide such services to the citizens of West Fargo; and

WHEREAS, Fargo is agreeable to provide such transit service to West Fargo on the terms and conditions set out below;

NOW THEREFORE, be it agreed between West Fargo and Fargo as follows:

1. Fargo will provide regular transit service to West Fargo during the term of this agreement under the following conditions:
  - A. Fargo and West Fargo shall agree to routes, schedules, and stopping points of the transit service in West Fargo. It is understood that such West Fargo routes will tie into the Fargo route system at West Acres. Route 20 and stopping points must be such that the route can be completed in approximately thirty (30) minutes; the route will run once each hour. Route 24 and stopping points must be such that the route can be completed in approximately 60 minutes; the route will run once each hour.
  - B. West Fargo shall pay Fargo, on a monthly basis, \$19,460.42 a month in 2023, with payment being due by the 10th day of each month, for Route 20 and Route 24 transit service to be available in West Fargo. Fargo will use these funds for the local share of the overall cost of these services and for transit capital needs.
  - C. Persons who get onto the bus in West Fargo shall not be charged a fee to transfer onto other bus routes of the bus system, and may transfer onto another bus with no transfer fee.
  - D. The bus fare for using the buses in West Fargo shall be the same fare that is charged to passengers using the bus service in Fargo.
  - E. Fargo shall be responsible for all administrative responsibilities regarding the bus transit service provided to West Fargo, including dispatching, complaint issues, annual grant applications, marketing of routes, preparation and revision of route maps and schedules, and filing of any necessary reports.
2. Fargo shall provide West Fargo transit service for persons with disabilities through the Paratransit service on the following conditions:

- A. The service shall be available to the citizens of West Fargo on the same basis that it is available to citizens in Fargo.
  - B. The cost of the service to the citizens of West Fargo shall be the same cost as available to the citizens of Fargo.
  - C. It is understood between West Fargo and Fargo, that Fargo contracts with a provider for drivers services for the Paratransit service. West Fargo shall pay Fargo \$16.95 per ride in 2023, for paratransit services taken by a resident of West Fargo, except for those rides that are paid at an agency rate or those rides that are paid by Medicaid. West Fargo will not pay for rides billed at an agency rate or those rides that are paid by Medicaid. Fargo will track the number of rides for which West Fargo will be billed, as described herein, and will submit a monthly invoice to West Fargo. West Fargo will remit payment to Fargo by the 10th day of the following month. Fargo will use these funds for the local share of the overall cost of these services and for transit capital needs.
  - D. West Fargo, by written notification to Fargo, may limit the hours of Paratransit service in West Fargo, provided that such limitation would not cause any violation of any state or federal law.
- 3. West Fargo shall adhere to the Emergency Service Guidelines that Fargo has implemented.
  - 4. This agreement shall be for a period of twelve (12) months, beginning on January 1, 2023 and terminating on December 31, 2023.
  - 5. Either party may terminate or reduce the amount of service to be rendered if there is, in the opinion of either party's City Commission, a significant increase in local costs; or, in the opinion of either party's City Commission, insufficient state or federal funding available for the service, thereby terminating this agreement or reducing the service and compensation to be paid under this agreement. In such event the terminating party will notify the other party in writing one hundred eighty (180) days in advance of the date such actions are to be implemented. In the event of any termination, West Fargo shall pay the agreed rate only for services delivered up to the date of termination. West Fargo has no obligation to Fargo, of any kind, after the date of termination.
  - 6. This agreement shall not be amended, except in writing executed by both parties.
  - 7. Nothing in this agreement shall be deemed a waiver by West Fargo or Fargo of the limits of liability set forth in N.D.C.C. § 32-12.1-03 or a waiver of any available immunities or defenses. Additionally, the limitations on liability for West Fargo and Fargo shall not be added together or stacked to increase the maximum amount of liability.
  - 8. West Fargo and Fargo are each responsible for securing liability insurance that it believes, in its discretion, will be adequate for this agreement. Additionally, West Fargo and Fargo are each responsible for securing workers' compensation insurance and

employer's liability insurance at levels required under state law, or within its discretion, to cover any of its respective employees working under this agreement.

9. Both parties agree to indemnify, save, and hold harmless the other and its agents and employees from any and all liability, loss, cost, damages, expenses, claims, or causes of action, including attorney's fees, arising out of or by reason of actions of the other or its agents or employees in connection with or in the execution, performance, or failure to adequately perform obligations pursuant to this agreement. The indemnification and hold harmless obligations set forth in this agreement shall survive the termination of this Agreement.
10. The parties will cooperate and use their best efforts to ensure that the various provisions of this agreement are fulfilled. The parties agree to act in good faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this agreement.
11. The District Court of Cass County, North Dakota, will be the sole and exclusive venue for any lawsuit pertaining to this agreement, and the Parties consent to the personal jurisdiction in said court in the event of any such lawsuit.
12. This agreement shall not be assigned without the express written consent of the other party.
13. Each provision, section, sentence, clause, phrase, and word of this agreement is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid whatsoever, such illegality or invalidity will not affect the validity of the remainder of this agreement.
14. No party will be liable to another party during any period in which its performance is delayed or prevented, in whole or in part, by circumstances beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials, or a restriction imposed by legislation, an order or a rule, or regulation of a governmental entity. If such a circumstance occurs, the party claiming the delay must undertake reasonable action to notify the other party of the same.
15. All notices, certificates, or other communications required under this agreement will be deemed sufficiently given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:

If to West Fargo:

City Administrator  
City of West Fargo  
800 4th Avenue East, Suite #1  
West Fargo, ND 58078

If to Fargo:

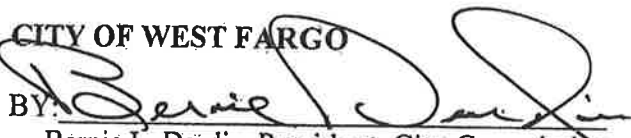
City Administrator  
City of Fargo  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

16. This agreement will be controlled by the laws of the State of North Dakota.
17. This agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. All parties will receive a fully-executed counterpart. The facsimile, email, or other electronically delivered signatures of the parties will be deemed to constitute original signatures, and facsimile or electronic copies hereof will be deemed to constitute duplicable originals.
18. This agreement constitutes the entire agreement by and between the parties, and any other prior representations or agreements are deemed merged herein, and those not specified herein do not represent any agreements or promises or covenants or representations on the part of either party hereto.

IN WITNESS WHEREOF, the parties have caused this Mass Transit Agreement to be executed on the day and year first above written.

CITY OF WEST FARGO

BY:

  
Bernie L. Dardis, President, City Commission

ATTEST:

  
City Auditor

CITY OF FARGO

BY:

\_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

ATTEST:

\_\_\_\_\_  
City Auditor

December 23, 2022

Board of City Commissioners  
City of Fargo  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

**Re: Memorandum of Offer to Landowner  
Permanent Easements – Improvement District #SN-22-A1**

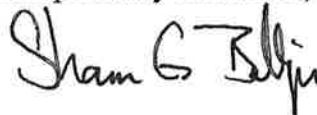
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of (2) permanent easements in association with Improvement District #SN-22-A1. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

**RECOMMENDED MOTION:** I/we hereby move to approve and authorize purchase of (2) permanent easements from **Lisa M. Madsen** in association with Improvement District #SN-22-A1 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner document on behalf of the City of Fargo.

Please return the signed original.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Nancy J. Morris

**MEMORANDUM OF OFFER TO LANDOWNER**

City of Fargo, Engineering Department

|   |                |                               |
|---|----------------|-------------------------------|
| Project<br>SN-22-A1                             | County<br>Cass | Parcel(s)<br>0-8421-00120-000 |
| Landowner Lisa M Madsen                         |                |                               |
| Mailing Address 2506 64th Ave S Fargo, ND 58104 |                |                               |


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

See attached exhibit(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 19,831.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

|                               |    |           |
|-------------------------------|----|-----------|
| Land                          | \$ |           |
| Easement and Access Control   | \$ | 19,831.00 |
| Improvements on Right of Way* | \$ |           |
| Damages to Remainder          | \$ |           |
| Total Offer                   | \$ | 19,831.00 |

\*Description of Damages to Remainder are as follows:

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

  
 Shawn G. Bullinger  
 Land Acquisition Specialist, City of Fargo

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



Timothy J. Mahoney  
 MAYOR  
 SIGNATURE  
 DATE

# EXHIBIT A

## Description:

A tract of land in Lot 16 of SOUTH HAVEN SUBDIVISION in the Northeast Quarter of Section 11, Township 138 North, Range 49 West of the 5th Principal Meridian, City of Fargo, Cass County, North Dakota more particularly described as follows:

That part of the easterly 57.00 feet of said Lot 16 lying westerly of a line commencing at the northeast corner of said Lot 16; thence South  $89^{\circ}11'10''$  West, on the north lines of Lots 15 and 16 of said SOUTH HAVEN SUBDIVISION, a distance of 115.98 feet to the point of beginning of the line to be described; thence southeasterly 52.83 feet along a nontangential curve, concave to the southwest, having a central angle of  $43^{\circ}14'19''$ , a radius of 70.00 feet and chord bearing of South  $66^{\circ}17'38''$  East; thence South  $44^{\circ}40'29''$  East, tangent to said curve, a distance of 33.74 feet; thence 100.33 feet along a tangential curve, concave to the west, having a central angle of  $82^{\circ}07'16''$  and a radius of 70.00 feet; thence 67.12 feet along a reverse curve, concave to the east, having a central angle of  $39^{\circ}42'54''$  and a radius of 96.82 feet to a point on the south line of said Lot 16, said point lying 100.00 feet west of the east line of said Section 11 as measured perpendicular to said east line and there terminating.

Said tract contains 2,284 square feet, more or less.

Bearings are based on the City of Fargo Ground Coordinate System, December 1992.



ENGINEERING DEPT.

## SANITARY SEWER EASEMENT

LOT 16, SOUTH HAVEN SUBDIVISION,  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: BWW

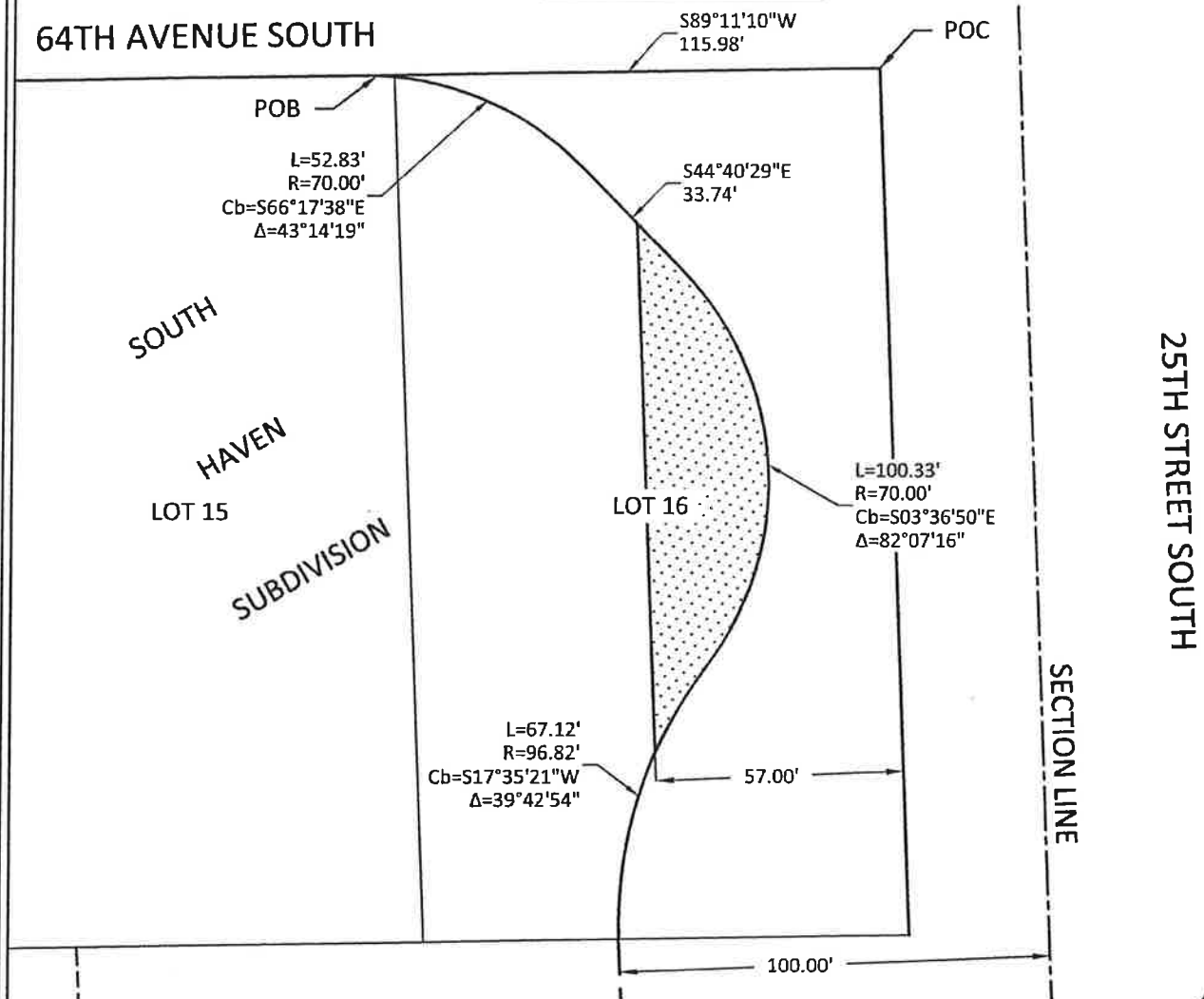
APPROVED BY: BWW

DATE: DECEMBER 13, 2022

SHEET 1 OF 2



# EXHIBIT A



## LEGEND

- NEW EASEMENT AREA
- SECTION LINE
- STREET R/W
- LOT BOUNDARY



ENGINEERING DEPT.

## SANITARY SEWER EASEMENT

**LOT 16, SOUTH HAVEN SUBDIVISION,  
 CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**

DRAWN BY: BWV

APPROVED BY: BWV

DATE: DECEMBER 13, 2022

SHEET 2 OF 2

# EXHIBIT A

## Description:

A tract of land in Lots 15 and 16 of SOUTH HAVEN SUBDIVISION in the Northeast Quarter of Section 11, Township 138 North, Range 49 West of the 5th Principal Meridian, City of Fargo, Cass County, North Dakota lying easterly of the following described line:

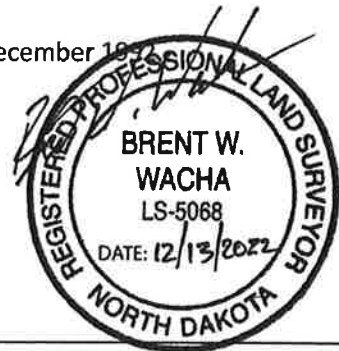
Commencing at the northeast corner of said Lot 16; thence South 89°11'10" West, on the north lines of said Lots 15 and 16, a distance of 115.98 feet to the point of beginning; thence southeasterly 52.83 feet along a nontangential curve, concave to the southwest, having a central angle of 43°14'19", a radius of 70.00 feet and chord bearing of South 66°17'38" East; thence South 44°40'29" East, tangent to said curve, a distance of 33.74 feet; thence 100.33 feet along a tangential curve, concave to the west, having a central angle of 82°07'16" and a radius of 70.00 feet; thence 67.12 feet along a reverse curve, concave to the east, having a central angle of 39°42'54" and a radius of 96.82 feet to a point on the south line of said Lot 16, said point lying 100.00 feet west of the east line of said Section 11 as measured perpendicular to said east line and there terminating.

LESS

That part of said Lot 16 lying east of a line described in document 1336123 on file at the Cass County Recorder's Office as commencing at the northeast corner of said Lot 16; thence South 89°11' 10" West, assumed bearing, along the north line of said Lot 16 a distance of 62.84 feet to the point of beginning of said line thence southeasterly 11.16 feet along a nontangential curve concave to the southwest having a central angle of 7°06'21" and a radius of 90.00 feet, the chord of said curve bears South 48°13'40" East; thence South 44°40'29" East, tangent to said curve, 33.74 feet; thence southerly 129.66 feet along a tangential curve concave to the west having a central angle of 82°32'42" and a radius of 90.0 feet; thence southerly 53.62 feet along a reverse curve concave to the east having a central angle of 37°27'56" and a radius of 82.0 feet to the south line of said Lot 16 and there terminating.

Said tract contains 4,645 square feet, more or less.

Bearings are based on the City of Fargo Ground Coordinate System, December 1972.



ENGINEERING DEPT.

## STREET & UTILITY EASEMENT

LOTS 15 AND 16, SOUTH HAVEN SUBDIVISION,  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

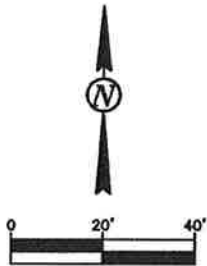
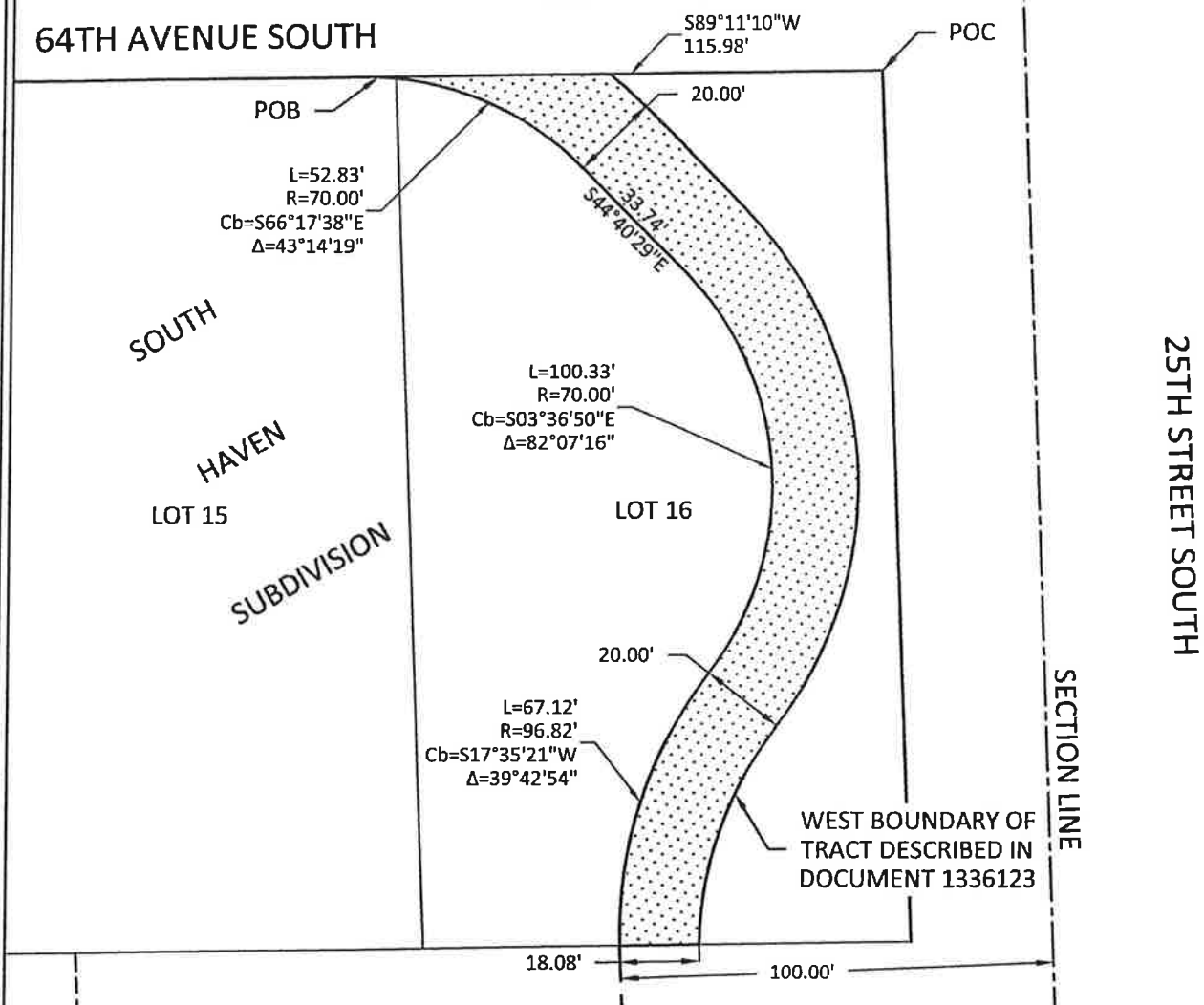
DRAWN BY: BWW

APPROVED BY: BWW

DATE: DECEMBER 13, 2022

SHEET 1 OF 2

# EXHIBIT A



BEARINGS BASED ON  
CITY OF FARGO GROUND COORDINATE  
SYSTEM, DECEMBER 1992

## LEGEND

- NEW EASEMENT AREA
- SECTION LINE
- STREET R/W
- LOT BOUNDARY



ENGINEERING DEPT.

## STREET & UTILITY EASEMENT

LOTS 15 AND 16, SOUTH HAVEN SUBDIVISION,  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

DRAWN BY: BWW

APPROVED BY: BWW

DATE: DECEMBER 13, 2022

SHEET 2 OF 2