

FARGO CITY COMMISSION AGENDA  
Monday, July 24, 2023 - 5:00 p.m.

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, July 10, 2023).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. Findings of Fact, Conclusions and Order of the Board of City Commissioners of the City of Fargo for property located at 421 15th Avenue North.
- 2. Waive requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of an Ordinance Amending Section 25-1506 of Article 25-15 of Chapter 25 of the Fargo Municipal Code, Relating to Licenses-Classifications.
- 3. 2nd reading and final adoption of the following Ordinances; 1st reading, 7/10/23:
  - a. Rezoning a Certain Parcel of Land Lying in Veterans Industrial Park Addition to the City of Fargo, Cass County, North Dakota.
  - b. Enacting Article 25-38 of Chapter 25 of the Fargo Municipal Code Relating to Commercial Pedal Car Vehicles.
  - c. Amending Section 8-0311 of Article 8-03 of Chapter 8 of the Fargo Municipal Code Relating to Regulations Governing Operators.
- 4. Pledged securities as of 6/30/23.
- 5. Amended Gaming Site Authorization for Sharehouse, Inc. at Speck's Bar.
- 6. Applications for Games of Chance:
  - a. El Zagal Shrine Temple for a calendar raffle from January through December 2024.
  - b. Fargo North High School for a raffle on 4/13/24.
  - c. Fargo North High School for a raffle from 8/8/23 to 5/30/24.
  - d. Fargo North High School for a raffle from 11/20/23 to 2/29/24.
  - e. HERO; Healthcare Equipment Recycling Organization for a raffle and raffle board on 9/29/23.
  - f. Legacy Children's Foundation for a raffle on 8/21/23.
  - g. St. John Paul II Catholic Schools for a raffle on 4/27/24.
  - h. YMCA of Cass and Clay Counties for a raffle and raffle board on 8/1/23.
  - i. Nativity Church of Fargo for a raffle on 11/5/23.
  - j. Holy Spirit Catholic Church for bingo and a raffle from 9/13/23 to 10/8/23.
- 7. Task Order No. 2 with KLJ Engineering LLC in the amount of \$401,182.60 for Floodwall Repair Project No. FM-24-A0.

8. Change Order No. 5 for a time extension to the substantial and final completion dates of 8/16/23 and 8/31/23 for Project No. MP-20-A2.
9. Contract Amendment No. 1 in the amount of \$68,100.00 for Project No. MS-23-C0.
10. Contract Amendment No. 1 in the amount of \$25,500.00 for Project No. NR-24-B0.
11. Payment to Key Contracting, Inc. in the amount of \$274,513.00 to complete emergency sanitary sewer repairs (Project No. UR-23-C1).
12. Consent to Construction Agreement with Dakota Plains Properties, LLC at 315 27th Circle South.
13. Encroachment Agreement with Great Plains 1001 Holdings, LLC.
14. Encroachment Agreement with C. Nicholas and Ene K. Vogel for property located at 1001 8th Street South.
15. Memorandum of Offer to Landowner for Easement (Temporary Construction Easement) with Mark E. and Barbara B. McCourt (Project No. FM-19-C).
16. Memorandum of Offer to Landowner for Easement (Temporary Construction Easement) with Darrell R. and Jessica L. Johnson (Project No. FM-19-C).
17. Contract and bond for Project No. UN-23-B2.
18. Contract and bond for Project No. TR-23-A1.
19. Final Balancing Change Order No. 8 in the amount of \$2,805.68 for Improvement District No. BN-21-H1.
20. Change Order No. 2 in the amount of \$69,240.00 for Improvement District No. BN-22-C1.
21. Final Balancing Change Order No. 2 in the amount of \$1,971.00 for Improvement District No. PN-23-C1.
22. Bid award to Dakota Underground Company, Inc. in the amount of \$1,666,648.81 for Improvement District No. BN-23-C1.
23. Contract and bond for Improvement District No. BR-23-H1.
24. Supplement No. 3 to Ground Lease with Park District of the City of Fargo regarding the Carlson Library and Senior Center.
25. Sole Source Procurement with HVS Convention, Sports and Entertainment Facilities Consulting in the amount of \$25,600.00 for updated expansion projections (SSP23145).
26. Agreement for Services with Folkways.
27. Purchase of Service Agreement with Cass County Human Service Zone.
28. Funding Approval/Agreement with the US Department of Housing and Urban Development for the 2023 Community Development Block Grant and HOME Investment Partnership allocations.

Inter-Local Agreement with Cass County, ND and allocation of the 2023 Edward Byrne Memorial Justice Assistance Grant (JAG) Program Funding (CFDA #16.738).

30. Request to transfer and reallocate funds from the Landfill Capital Improvements budget line to the Recycling Drop Site Improvement budget line to complete improvements as presented at the Osgood Recycling Drop Site.
31. Support Equipment and Vehicles Lease Agreement City of Fargo – City of Moorhead.
32. Hazard Mitigation Grant Program Subgrant Agreement for PDM 2018 with The North Dakota Department of Emergency Services (Project No. WW1707).
33. Task Order No. 27 with AE2S in the amount of \$203,400.00 for Project No. WA2252.
34. Task Order No. 9 with Apex Engineering Group in the amount of \$634,118.00 for Project No. WA2255.
35. Amendment I to the Agreement for Cost-Share Reimbursement Fargo Regional Water System Distribution Extensions Project with the State of North Dakota through the State Water Commission.
36. Resolutions Authorizing Filing of an Application with the ND Department of Environmental Quality for a Loan Under the Clean Water Act and/or the Safe Drinking Water Act:
  - a. Solid Waste Utility - Clean Water State Revolving Fund (CWSRF) Loan 2 (Cell #s 21 and 22).
  - b. Water Utility – Drinking Water State Revolving Fund (DWSRF) (Project No. WA2255).
  - c. Water Reclamation – Clean Water State Revolving Fund (CWSRF) Loan Amendment (Project No. WW1701).
37. Bills.

**REGULAR AGENDA:**

38. **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](http://FargoND.gov/VirtualCommission)).

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

39. **PUBLIC HEARING** – Application for a Class “N” Alcoholic Beverage License for Horse Race North Dakota d/b/a The North Dakota Horse Park to be located at 5180 19th Avenue North.
40. **PUBLIC HEARING** – Application to transfer a Class “FA-RZ-M” Alcoholic Beverage License from Wurst Pub LLC d/b/a Wurst Bier Hall to Two Star Boys LLC d/b/a Wurst Bier Hall to be located at 630 1st Avenue North.
41. **PUBLIC HEARING** – WITHDRAWN - Valley View Estates Fourth Addition (3606-4890 Decorah Way South); approval recommended by the Planning Commission on 2/7/23; continued from the 5/1/23 and 6/12/23 Regular Meetings.
  - a. Zoning Change from SR-4, Single-Dwelling Residential and P/I, Public and Institutional to SR-4, Single-Dwelling Residential with a C-O, Conditional Overlay.
  - b. 1st reading of rezoning Ordinance.
  - c. Plat of Valley View Estates Fourth Addition.

42. **PUBLIC HEARING** – CONTINUE to 8/21/23 - Southwest Fargo Mission Second Addition (4451, 4455, and 4475 40th Avenue South); approval recommended by the Planning Commission on 5/2/23; continued from the 7/10/23 Regular Meeting:
  - a. Zoning Change from P/I, Public and Institutional to P/I, Public and Institutional and GC, General Commercial with a C-O, Conditional Overlay.
  - b. 1st reading of rezoning Ordinance.
  - c. Plat of Southwest Fargo Mission Second Addition.
43. **PUBLIC HEARING** - Plat of Radio Second Addition (5709, 5710, 5729, 5739, 5750, 5759, 5769, 5770, 5789 and 5790 53rd Avenue South); approval recommended by the Planning Commission on 4/4/23.
44. **PUBLIC HEARING** - Application filed by The Wave by EPIC, LLC for a Payment in Lieu of Tax Exemption (PILOT) a project to be located at 4410 and 4471 24th Avenue South which the applicant will use in operating a full-service water park resort.
45. Recommendation to approve the Interim Financing Agreement Series D for Fargo's 25% local cost share for years 2023-2025 construction activities associated with the Red River Valley Water Supply Project.
46. Recommendation for appointment to the Special Assessment Commission.
47. Liaison Commissioner Assignment Updates.

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

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



**CITY ATTORNEY**

Nancy J. Morris

**ASSISTANT CITY ATTORNEYS**

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

9

July 20, 2023

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

**RE: Dangerous Building located at 421 15<sup>th</sup> Avenue North, Fargo, North Dakota**

Dear Commissioners,

Enclosed for your review and approval are proposed Findings of Fact, Conclusions and Order, and Notice regarding the dangerous building proceeding for the property at 421 15<sup>th</sup> Avenue North. At its July 10<sup>th</sup>, 2023 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 Findings of Fact, Conclusions and Order, and Notice.

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

Sincerely,



Alissa R. Farol  
Assistant City Attorney

Enclosure

cc: Shawn Ouradnik, Inspections Department

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

Property Address: 421 15<sup>th</sup> Avenue North, Fargo, North Dakota

Property Owner: Dawn M. Novotny, aka Dawn M. Hanley

A hearing was held before the Board of City Commissioners of the City of Fargo on the 10<sup>th</sup> day of July, 2023 regarding the property located at 421 15<sup>th</sup> Avenue North, Fargo, North Dakota. Shawn Ouradnik, city of Fargo Building Inspections Director, appeared on behalf of the city of Fargo Inspections Department and provided testimony as to the condition of the property. The Property Owner additionally appeared and provided testimony.

The Board heard the testimony offered by the Inspections Director and Property Owner, considered the reports, evidence and other information presented, and hereby makes the following Findings of Fact:

**FINDINGS OF FACT**

1. That Dawn M. Novotny, aka Dawn M. Hanley, is the owner of the following described real property located in the City of Fargo, County of Cass and State of North Dakota:

Lot Twelve (12), Block Two (2), Hogan's Addition to the city of Fargo

Street address: 421 15<sup>th</sup> Avenue North, Fargo, North Dakota, 58102

[hereinafter "Subject Property"].

2. That on March 23, 2023, and various inspections from April 24, 2023 through May 30, 2023, Bill Thompson, Residential/Rental Inspector to the city of Fargo, inspected the Subject Property and found the building, consisting of a single-story, single-stall detached garage to be dangerous buildings within the standards set forth in Article 21-04 of the Fargo Municipal Code and Section 111.1.5 of the International Property Maintenance Code concerning dangerous structures.

3. That the building is unsafe and dangerous in the following respects: (a) no weather barrier; (b) inoperable walk-in door and overhead door; (c) missing sheathing attachment; (d) deterioration of materials due to exposure; (e) unpermitted structure attached to the north side of the garage that does not meet minimum code requirements; (f) tarp is being used in place of the inoperable overhead door; and (g) extension cords are run inside the garage from the house to give electricity to the garage.

4. That the following conditions exist with respect to the Subject Property:

- a. The building is unsafe, fails to provide the amenities essential to decent living, and is unfit for human habitation; and
- b. The building is unsafe or dangerous to the health, moral safety or general welfare of the people of the City of Fargo.

5. That the information in the files of the Inspections Department stemming from various inspections of the property on or before March 23, 2023, and April 24, 2023 through May 30, 2023, in respect to the Subject Property is hereby accepted as true and correct.

6. That Notice of Dangerous Building was posted on the property on or about April 25, 2023, in accordance with Municipal Code § 21-0404. The Notice of Dangerous Building informed the owner and all occupants, if any, that the “dangerous buildings” must be vacated and secured, and the buildings must be demolished or any necessary and valid permits be obtained within thirty (30) days from the date of the notice.

**CONCLUSIONS AND ORDER**

Based on the foregoing Findings of Fact, the Board of City Commissioners hereby makes the following Conclusions:

1. That the garage located at 421 15<sup>th</sup> Avenue North, Fargo, North Dakota 58102, is hereby found to be a “dangerous building.”
2. That the owner or anyone claiming to have an ownership interest in said building has not sufficiently presented cause why the “dangerous building” should not be demolished.
3. That despite being ordered that the building on the Subject Property should be demolished or necessary and valid permits be obtained within thirty (30) days of the notice, the owner or anyone else claiming to have an ownership interest in said building has failed to do so.

**IT IS HEREBY ORDERED** that Dawn M. Novotny aka Dawn M. Hanley or anyone else claiming an ownership interest, shall demolish the “dangerous building” and remove all building debris and construction materials located at 421 15<sup>th</sup> Avenue North, Fargo, North Dakota by August 8<sup>th</sup>, 2023.

It is further ordered that if the owner fails to demolish said “dangerous building,” the City Auditor, Building Inspector and City Attorney are directed to act on behalf of the city of Fargo to cause the “dangerous building” to be demolished, and the cost of said demolition to be assessed against the Subject Property as provided in Section 21-0405 of the Fargo Municipal Code.

DATED this \_\_\_\_\_ day of July, 2023.

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

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

ATTEST:

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

**NOTICE OF ENTRY OF ORDER**

TO: DAWN M. NOVOTNY aka DAWN M. HANLEY AND ALL OTHER PERSONS  
HAVING INTEREST IN THIS PROPERTY

RE: PROPERTY AT 421 15<sup>TH</sup> AVENUE NORTH, FARGO, NORTH DAKOTA 58102

YOU ARE HEREBY GIVEN NOTICE that you shall have thirty (30) days from the date of service of Findings of Fact and Conclusions and Order of the Board of City Commissioners of the City of Fargo (“Order”) upon you in which to appeal the Order to the District Court of Cass County, North Dakota, or to take such other legal action to enjoin the enforcement of this Order as you deem proper, all-in accordance with the appeal procedure set forth in Fargo Municipal Code § 21-0412. You are further given notice that the “dangerous building” on the Subject Property may be demolished by the city of Fargo at any time on or after August 8<sup>th</sup>, 2023.

DATED this \_\_\_\_\_ day of July, 2023.

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

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

ATTEST:

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

**CITY ATTORNEY**

Nancy J. Morris

2

**ASSISTANT CITY ATTORNEYS**

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

July 20, 2023

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

**RE: Ordinance Amendment – Class FA Liquor license – Food Sales Requirements (25-1506(J))**

Dear Mayor Mahoney and Commissioners,

I am enclosing for your consideration an amendment to Fargo Municipal Code § 25-1506(J) (Class FA Liquor License). This amendment is intended to clarify the city of Fargo's position that food must be prepared by the licensee, with ingredients purchased by the licensee, in order to be included in food sales to meet the 50/50 food to alcohol sales ratio for audit purposes. Specifically, this language is meant to avoid a similar situation to the court's interpretation in the Northstar Hospitality matter.

**Suggested Motion:** I move to waive receipt and filing of the enclosed ordinance one week prior to first reading and that this be the first reading, by title of An Ordinance amending Fargo Municipal Code § 25-1506 of Article 25-15 of Chapter 25, relating to Liquor License-Classifications.

Sincerely,



Nancy J. Morris

Enclosure

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTION 25-1506 OF ARTICLE 25-15  
OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE,  
RELATING TO LICENSES-CLASSIFICATIONS

1  
2 WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in  
3 accordance with Chapter 40-05.1 of the North Dakota Code; and,

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

6  
7 WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said  
8 home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict  
9 therewith and shall be liberally construed for such purposes; and,

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

12 NOW, THEREFORE,

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

14 Section 1. Amendment.

15  
16 Section 25-1506 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby  
17 amended as follows:

18 \* \* \* \*

19  
20  
21  
22  
23



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

J. Class FA.—A Class "FA" license shall authorize the licensee to sell "on-sale" only, subject to the following restrictions and conditions:

1. A Class "FA" licensee may sell alcoholic beverages in a restaurant which holds a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages. Meals must be prepared by the licensee or its employees on the licensed premises from ingredients purchased by the licensee. Food not prepared by the licensee that is sold on the licensed premises shall not be included in gross receipts derived from food sales.

\* \* \* \*

Section 2. Effective Date.

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

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

Attest:

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

First Reading:  
Second Reading and Final Passage:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

*30*

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REZONING A CERTAIN PARCEL  
OF LAND LYING IN VETERANS INDUSTRIAL PARK ADDITION  
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

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

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on May 2, 2023; and,

WHEREAS, the rezoning changes were approved by the City Commission on July 10, 2023,

NOW, THEREFORE,

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

Section 1. The following described property:

All of Veterans Industrial Park Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "L/I", Limited Industrial, District.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

(SEAL)

Attest:

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

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

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

36

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ENACTING  
ARTICLE 25-38 OF CHAPTER 25  
OF THE FARGO MUNICIPAL CODE  
RELATING TO COMMERCIAL PEDAL CAR VEHICLES

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

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

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

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

NOW, THEREFORE,

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

Section 1. Enactment.

Article 25-38 of Chapter 25 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 25-38

25-3801. Definitions.

As used in this section, the following terms shall have the meanings indicated:

1. Alcohol beverages shall have the meaning given in Fargo Municipal Code § 25-1501.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

- 1 2. Commercial pedal car vehicle shall mean a vehicle with fully operational pedals for  
2 propulsion entirely by human power, that has four wheels and is operated in a  
3 manner similar to a bicycle, that is designed to be occupied by a driver and  
4 passengers providing pedal power to the drive train of the vehicle containing not  
5 less than 5 drive trains, and that is operated by the vehicle owner or an employee of  
6 the owner.
- 7 3. Commercial pedal car business shall mean the operating of one (1) or more  
8 commercial pedal car vehicle(s) for profit or not-for-profit.
- 9 4. Commercial pedal car driver shall mean any person who is responsible for the safe  
10 operation of a commercial pedal car, including but not limited to the steering and  
11 braking and maintaining compliance with all state and local traffic and parking  
12 regulations.
- 13 5. Commercial pedal car driver license shall mean a license granted in accordance with  
14 this Article.
- 15 6. Street shall mean any street or roadway under the jurisdiction of the city of Fargo,  
16 and specifically excludes privately owned roadways, roadways owned and operated  
17 by the Fargo Park District, or roadways located on the campus of North Dakota State  
18 University.

25-3802. License required.

- 19 A. Commercial pedal car business license. No person or business may engage in a  
20 commercial pedal car business without first obtaining a commercial pedal car  
21 business license and after full compliance with this Article.
  - 22 1. Application for a commercial pedal car business license shall be made  
23 in writing to the Auditor's office, upon forms furnished by the Auditor, which the  
owner of the business shall sign. For a partnership, the name of the business and  
the names and addresses of the partners must also be given, and one of the partners  
shall sign the application. For an LLC or a corporation, the applicant shall also  
provide the names and addresses of the principal officers, and the president and  
secretary shall sign the application.
  - 2. The license application shall identify each commercial pedal car owned  
by the license holder. The license holder shall provide an amendment to the  
application for a commercial pedal car business license before adding any  
commercial pedal cars into service.
- B. Commercial pedal car vehicle license. No person shall operate or permit the  
operation of a commercial pedal car vehicle upon any street, sidewalk or other

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

public place unless a commercial pedal car vehicle license has been issued for said commercial pedal car, and unless the commercial pedal car vehicle has a valid license/sticker visible in the proper registration area.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

1. Application for a commercial pedal car license shall be made by the owner of the pedal car, in writing, upon forms furnished by the Auditor. Such application shall be signed by the owner and granted by the Auditor, or his/her designee, on an annual basis.

2. At the time of application, the applicant shall provide evidence of certification by an employee of a bicycle repair shop located within the city of Fargo of the safety and roadworthiness of the commercial pedal car vehicle. The Auditor may designate minimum safety standards for pedal car equipment, construction and design. A separate fee as established in the license fee schedule may be required for inspections performed throughout the license period. Commercial pedal cars found to not meet minimum inspection standards shall be identified as "out of service" and shall not operate until such defects have been repaired and approved by the Auditor.

3. In addition to the minimum standards designated by the Auditor, the following equipment requirements shall apply to all commercial pedal car vehicles:

i. Tires. Tires shall be of a size appropriate for the commercial pedal car with no mismatched tires per the design of the vehicle. There shall be no cuts to the tires, localized worn spots that expose the ply, or visible tread wear indicators.

ii. Operational horn or bell. The commercial pedal car shall be equipped with a fully operational horn or bell.

iii. Brakes. It shall be unlawful to operate, or cause to be operated, a commercial pedal car that is not equipped with front and rear braking systems capable of being manipulated by the driver from the driver's normal position of operation and capable of causing a commercial pedal car with a loaded passenger compartment to come to a complete stop in a linear path of motion when each wheel of the commercial pedal car is in contact with the ground on dry, level, clean pavement. The braking system controlling the rear wheels shall be hydraulic or mechanical disc or drum brakes, unaffected by rain or wet conditions.

iv. Headlight. A headlight capable of projecting a beam of white light for a distance at a minimum of three hundred (300) feet which shall be clearly

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

visible during darkness and must be illuminated at all times during darkness.

1 v. Mirrors. A side mounted mirror or a wide-angle rear view mirror  
2 affixed to the pedal car to reflect to the pedal car driver a view of the street  
3 for a distance of at least two hundred (200) feet from the rear of the pedal  
4 car.

5 vi. Rear Illumination and Brake Lights. A red light and brake light  
6 affixed to the rear of the pedal car which must be visible for a distance of  
7 at least two hundred (200) feet from the rear of the pedal car and must be  
8 illuminated at all times during darkness. Turn signals must be affixed to  
9 the front and rear of the vehicle.

10 vii. Reflectors. All pedal cars shall have reflectors on the frame and a red  
11 reflector mounted on each side of the rear of the pedal car, at least one (1)  
12 inch from the outer edge and centered. In addition, the international slow  
13 moving triangle must be displayed on the rear of the pedal car.

14 viii. Hi Restraints. Hip restraints as defined by the American National  
15 Standards Institute (ANSI)/National Golf Carts Manufacturers Association  
16 (NGCMA) shall be installed for every seat on the vehicle. The driver of  
17 the commercial quadricycle shall not operate the vehicle unless each  
18 passenger thereon is wearing a hip restraint. The failure of a passenger to  
19 wear a hip restraint shall not be considered evidence of negligence,  
20 comparative or otherwise, including apportionment of fault, on the part of  
21 the passenger, and shall not be evidence used to diminish any recovery for  
22 damages arising out of the ownership, maintenance, occupancy, or  
23 operation of a vehicle.

4. No commercial pedal car vehicle shall travel at a speed greater than 25 miles per hour,

5. Commercial pedal cars shall be exempt from Fargo Municipal Code section 8-0506- Impeding traffic. When safe and appropriate to do so, the commercial pedal car operator shall exit the lane of travel in order to allow traffic to pass safely.

6. The Auditor shall have the right to examine and inspect any licensed commercial pedal car at any reasonable time in order to ensure compliance with all applicable ordinances, laws and rules.

7. If an inspection finds a commercial pedal car in operation exhibiting continuing and present safety concerns, the commercial pedal car may



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

1 be immediately ordered out of service until necessary repairs are made or the  
2 safety concerns are resolved. Qualifying safety concerns may include but are not  
3 limited to failure to abide by applicable ordinances, laws or rules, flat tires,  
4 inoperable head lights or taillights, or other mechanical or operational issues  
5 making the vehicle unsafe to operate.

6 C. Commercial pedal car vehicle operator's license. No person shall drive or operate  
7 a commercial pedal car vehicle upon any street, sidewalk or other public place  
8 without first obtaining a commercial pedal car operator's license.

9 1. Written application for a commercial pedal car operator's license  
10 shall be made to the City Auditor, giving the name, residence address, date of  
11 birth, all residing addresses within the previous five (5) years, and North Dakota  
12 driver's license number of the applicant. Every pedal car driver shall meet and  
13 maintain the following requirements in order to hold a pedal car driver license:

- 14 i. Must be at least 21 years of age; and
- 15 ii. Must possess a valid state driver's license which is not suspended,  
16 revoked, canceled or expired; and
- 17 iii. Shall not have had more than three (3) moving violations in the last  
18 three (3) years and no more than two (2) moving violations in the last  
19 year; and
- 20 iv. Shall indicate the name of the pedal car business for which the driver  
21 works; and
- 22 v. Shall not have been convicted of careless or reckless driving or any  
23 moving violation within the past three (3) years; and
- vi. Shall have completed mandatory server training as defined in Fargo  
Municipal Code § 25-1501 (26).

25-3803. License Denial.

17 The Auditor shall issue a license under section 25-3802 only if all requirements have been  
18 met and if issuance is in the best interest of the city. The Auditor may deny any license under  
19 section 25-3802 in his/her full discretion in the interest in public safety or if the application is not  
20 in the best interest of the city. The Auditor shall take into account any objections from the City  
21 Administrator, the Police Chief, the Fire Chief, a Building Inspector, the Director of Planning  
22 and Development, and the City Engineer, or their designees. If the Auditor denies a license, the  
23 applicant may appeal said denial to the board of city commissioners.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

25-3804. Term of License.

1 Any license issued pursuant to this subsection shall be issued upon granting and shall expire  
on March 1 of the year following its issuance.

2 25-3805. Fees.

3 All fees for the operation of a commercial pedal car business in the city of Fargo shall be  
established by Resolution approved by the board of city commissioners.

4 25-3806. Routes.

5 The license application shall identify the proposed route or routes over which the  
6 commercial pedal car shall operate. No license shall be issued under this Article until the  
Auditor, in consultation with other city personnel, including the Chief of Police, Fire Chief, City  
7 Engineer, Director of Planning, and Transit Director, or his/her designee, has approved the  
proposed route or routes. Each commercial pedal car license application is limited to no more  
8 than four (4) approved routes at any one time, to be presented at the time of the yearly license  
application for approval. Prohibited and restricted roadways shall be identified on the city of  
9 Fargo website for reference purposes only. Route amendments may be submitted due to road  
closures or other impediments to commercial pedal car operation. Such route amendments must  
10 be approved in advance of operation.

11 All commercial pedal car businesses shall operate tours only from approved commercial  
locations on private property approved by the Auditor. These sites shall be used by the licensed  
12 business as the locations for patrons to gather and assemble prior to embarking on a commercial  
pedal car tour and to disembark at the conclusion of the tour. Approved sites shall provide patron  
13 access to restroom facilities and a minimum of three (3) off-street customer parking spaces per  
pedal car operated from the site.

14 25-3807. Insurance.

15 No license shall be issued or renewed without proof of commercial general liability  
16 insurance in the minimum amount of two million dollars (\$2,000,000.00). Proof of insurance  
shall name the city of Fargo as an additional insured and provide for the payment of damages for  
17 bodily injury, loss of consortium or death of a person, and for injury to or destruction of property  
of a person or entity, due to the liability of the owner or operator of the commercial pedal car  
18 arising out of the ownership, operation, use, or maintenance of a commercial pedal car. The  
policy shall provide that the insurer shall give the city notice of any cancellation or nonrenewal  
19 of the policy. The commercial pedal car licensee shall maintain on file with the Auditor's office  
20 a copy of the current policy of comprehensive general liability insurance required by this section.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

25-3808. Advertising on commercial pedal cars.

1 Advertisements shall only be allowed on the manufactured body of the commercial pedal  
car. No banners, poles, flags, detached signs, or any other addition or object will be permitted.

2 25-3809. Parking.

3 No person shall park or permit the parking of a commercial pedal car upon any sidewalk  
4 or in any place not specifically designated for parking. The commercial pedal car may occupy up  
to two designated parking stalls for no more than 1 hour.

5 25-3810. Hours of operation.

6 Hours of operation shall be from 10:00 a.m. to 10:00 p.m. May through September, and  
10:00 a.m. to 8:00 p.m. October through April. The prohibitions of hours of operation may be  
7 waived for special events upon proper application to the Auditor.

8 25-3811. Vehicle operation.

9 Every commercial pedal car shall be operated in compliance with all applicable federal,  
state and local traffic laws and regulations, and in a manner so as to assure the safety of persons  
and property.

10 25-3812. Operating restrictions and conditions.

- 11 1. No commercial pedal car shall be operated or parked on a public sidewalk.
- 12 2. No commercial pedal car shall use any public street or other public property as a  
13 waiting area unless such area is a legal motor vehicle parking area. No pedal car  
14 shall park or wait in a taxi stand or passenger loading and unloading area as  
designated.
- 15 3. No commercial pedal car driver shall consume any alcoholic beverages while on  
duty or operate a commercial pedal car while impaired in any manner.
- 16 4. All commercial pedal cars shall be clean and maintained in a good state of repair.  
17 All commercial pedal cars shall be maintained by the commercial pedal car  
business so as to be well painted and have an appearance free of damage or  
18 deterioration, and a safe operational condition.
- 19 5. All commercial pedal cars shall display a valid license decal conspicuously  
displayed, issued by the Auditor.
- 20 6. All commercial pedal cars shall have the trade name and phone number of the  
licensee conspicuously displayed on the pedal car.
- 21 7. All commercial pedal car passengers consuming alcohol shall be of legal age.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

- 1 8. Commercial pedal car drivers shall have in their possession proof of insurance,  
2 valid state driver's license and a commercial pedal car driver's license while in  
3 control of any commercial pedal car and shall operate the pedal car in compliance  
4 with all applicable federal, state, and local traffic laws, ordinances, or other  
5 applicable regulations and in a manner so as to assure the safety of persons and  
6 property. These documents shall be made available upon request of law  
7 enforcement, the license official, or traffic control agent.
- 8 9. All commercial pedal car drivers shall obey and comply with any lawful order or  
9 direction of any police officer, traffic control agent, or license inspector, and shall  
10 refrain from interference with such officials while in the performance of their  
11 duties.
- 12 10. No commercial pedal car driver shall permit more passengers to be carried in a  
13 commercial pedal car than the commercial pedal car's normal seating capacity and  
14 no more than two (2) persons in addition to the driver may be in the center aisle  
15 while the pedal car is in motion.
- 16 11. No commercial pedal car driver shall allow a passenger or other individuals to  
17 drive their commercial pedal car unless that individual also holds a commercial  
18 pedal car driver's license.
- 19 12. All beverages must be in cans not exceeding 16 ounces. No glassware of any  
20 kind shall be allowed on a commercial pedal car, including but not limited to  
21 bottles, plastic cups, or other drinking glasses.
- 22 13. No music or amplified sound shall be played, nor yelling or conversation be  
23 conducted, in such a manner that violates Article 11-02 of the Fargo Municipal  
Code.
- 14 14. No more than two (2) alcoholic beverages may be permitted per passenger.  
15 Obviously intoxicated persons shall not be permitted to be carried on the  
16 commercial pedal car, and the licensed pedal car driver shall confiscate any  
17 alcoholic beverages permitted by this Article from any intoxicated passenger.
- 18 15. It is the responsibility of the commercial pedal car driver to properly dispose of all  
19 trash.
- 20 16. A commercial pedal car driver must be properly attired with a shirt, pants, skirt or  
21 shorts and secure footwear.
- 22 17. A commercial pedal car driver shall not stop to load or unload passengers or their  
23 belongings in the intersections of any street, crosswalk or in any manner or other  
location that would be considered unsafe. No commercial pedal car driver shall

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

load or unload in any such manner that will in any way impede or interfere with the orderly flow of traffic on the streets.

1 18. It shall be unlawful for any commercial pedal car driver to allow or cause to be  
2 operated a pedal car in any unsafe manner or operating condition.

3 19. It is the responsibility of the commercial pedal car driver to actively and  
4 affirmatively manage the behavior of the passengers of the commercial pedal car  
5 so that that their behavior remains law-abiding during the excursion, both while  
6 the pedal car is in motion and at a stop. Behavior which shall be prohibited and  
7 prevented includes specifically, but is not limited to, indecent exposure,  
8 disorderly conduct, public urination and littering.

25-3813. Commercial pedal car company licenses.

Every licensed pedal car company shall:

- 1 1. Take affirmative measures to ensure that all of its owners and drivers comply with
- 2 the terms of this Article.
- 3 2. Be responsible for the operation of the pedal car at all times.
- 4 3. Ensure that no pedal car is operated in an unsafe mechanical condition or
- 5 continues to operate after it has been ordered out of service.
- 6 4. Promptly respond to all requests for information from the Auditor.
- 7 5. Promptly report any and all accidents involving pedal cars operating in Fargo to
- 8 the Auditor.
- 9 6. Every licensed pedal car company shall be deemed the agent of service of all
- 10 notices, orders, and other correspondences from the city of Fargo to pedal car
- 11 drivers operating under their company license.
- 12
- 13
- 14
- 15

25-3814. Licenses nontransferable.

Licenses issued under this Article are non-transferrable, and cessation of operation shall immediately result in license termination.

25-3815. Revocation.

In addition to all other penalties, any violation of the terms of this Article shall be grounds for revocation, suspension, or non-renewal of the license. Any applicant or licensee whose license has been denied, suspended or revoked under the provisions of this Article may appeal said denial, suspension or revocation to the board of city commissioners.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

Section 2. Penalty.

1 A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person,  
2 firm or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished  
3 by a fine not to exceed \$1,500.00, or by imprisonment not to exceed 30 days, or by both such fine and  
4 imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke  
5 the suspension thereof. In addition to such fine and/or imprisonment, the court, in its discretion, may  
6 assess a fee in an amount not to exceed \$25.00 as provided in North Dakota Century Code section 27-01-  
7 10.

Section 3. Effective Date.

8 This ordinance shall be in full force and effect from and after its passage, approval and  
9 publication.  
10  
11

12 (SEAL)

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

13 Attest:

14  
15 \_\_\_\_\_  
Steven Sprague, City Auditor

16 First Reading:  
17 Second Reading and Final Passage:  
18 Publication:  
19  
20  
21  
22  
23

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

30

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTION 8-0311 OF  
ARTICLE 8-03 OF CHAPTER 8 OF THE FARGO MUNICIPAL CODE  
RELATING TO REGULATIONS GOVERNING OPERATORS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 8-0311 of Article 8-03 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-0311. Unlawful to have opened receptacle containing beer, alcohol, or alcoholic beverages in motor vehicles, truck, or bus.

Except as provided in § 39-08-18 of the North Dakota Century Code, and as a passenger on a commercial pedal car containing not less than five (5) drive trains, no person shall drink or consume beer, alcohol, or alcoholic beverages, as defined by state law, in a motor vehicle, truck or other commercial vehicle, or bus or keep in a motor vehicle, truck or other commercial vehicle, or bus any bottle or receptacle containing beer, alcohol, or alcoholic beverages, as defined by state law, which has been opened or the contents of which have been partially consumed.



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

Section 2. Penalty.

1 A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every  
2 person, firm or corporation violating an ordinance which is punishable as a Class B misdemeanor  
3 shall be punished by a fine not to exceed \$1,500.00, or by imprisonment not to exceed 30 days,  
4 or by both such fine and imprisonment, in the discretion of the court; the court to have power to  
5 suspend said sentence and to revoke the suspension thereof. In addition to such fine and/or  
6 imprisonment, the court, in its discretion, may assess a fee in an amount not to exceed \$25.00 as  
7 provided in section 27-01-10, N.D.C.C.

Section 3. Effective Date.

8 This ordinance shall be in full force and effect from and after its passage, approval and  
9 publication.  
10

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

12 Attest:

13  
14 \_\_\_\_\_  
Steven Sprague, City Auditor

15 First Reading:  
16 Second Reading:  
17 Final Passage:  
18 Publication:  
19  
20  
21  
22  
23

4

**MEMORANDUM**

---

**TO: Board of City Commissioners**  
**FROM: Steven Sprague, City Auditor**  
**SUBJECT: Approval of Pledged Securities**  
**DATE: July 6, 2023**

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

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

Wells Fargo BNY Mellon	\$ 7,427,918
US Bank (Letter of Credit)	\$ 5,000,000
Total Pledged Collateral	\$ 12,427,918

Detailed pledge security reports are attached for your review.

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

**Recommended Motion:**

**Approve the listing of pledged securities as of June 30, 2023.**

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

Date: 06/30/23

ATTN: STEVEN SPRAGUE  
 CITY OF FARGO  
 225 4TH STREET NORTH  
 FARGO ND 58012-4817

Account Id: WUB366

Tax Id Number: 456002069

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

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

Date: 06/30/23

The collateral segregated on your behalf on 06/30/23 is as follows:

CUSIP	DESCRIPTION	QUANTITY	MARKET VALUE
36179XDF0	GNMA G2SF 5.000% 08/20/52	6,656,184.00	6,274,084.48
36179XHY5	GNMA G2SF 4.500% 10/20/52	1,220,884.00	1,153,833.88
TOTAL MKT VALUE			7,427,918.36

BROKER DEALER SERVICES DIVISION  
 PRICING, INDICATIVE DATA AND OTHER DISCLOSURES

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

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

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

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

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

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

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

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

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

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

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

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

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

affiliates. All rights reserved.



Issue Date: May 1, 2023

LOC No.: 570435

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

Ladies and Gentlemen:

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

This letter of credit is irrevocable, unconditional and nontransferable.

Drafts drawn under this letter of credit must be accompanied by the original letter of credit and be presented in substantially the form attached as Exhibit A, at the office identified below by an authorized officer of the beneficiary no later than 2:00 P.M., Cincinnati time, on Wednesday, November 01, 2023.

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read 'Lisa Wishart', written above a horizontal line.

Lisa Wishart  
Vice President

A handwritten signature in cursive script, appearing to read 'Markus Pepper', written above a horizontal line.

Markus Pepper  
Credit Operations Officer

c: Patricia Finnemore  
U.S. Bank National Association

Amended

5



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

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

Full, Legal Name of Gaming Organization  
Sharehouse, Inc.

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

Name of Location  
Speck's Bar

Street City ZIP Code County  
2011 Main Ave FARGO 58103 CASS

Beginning Date(s) Authorized Ending Date(s) Authorized Number of Twenty-One tables, if zero, enter "0"  
7/24/23 6-30-24 0

Specific location where games of chance will be conducted and played at the site (required)  
games conducted & played in NE section of Bar

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

RESTRICTIONS FOR CITY/COUNTY USE ONLY

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

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

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

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

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

APPROVALS

Attorney General	Date
Signature of City/County Official	Date <u>7/24/23</u>
PRINT Name and official position of person signing on behalf of city/county above <u>Steven Sprague/City Auditor</u>	

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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





# APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

PLV

Page 33 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
GAMING DIVISION  
SFN 9338 (5-2023)

*(Handwritten initials)*

Applying for (check one)

Local Permit       Restricted Event Permit\*

Games to be conducted

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

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

### ORGANIZATION INFO

Name of Organization or Group <b>El Zagel Shrine Temple</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>Jan - Dec 2024</b>	
Organization or Group Contact Person <b>Bruce Ridgway</b>		E-mail <b>bruce@ridgwaylawns.com</b>	Telephone Number <b>701-429-0547</b>
Business Address <b>1429 3rd St N</b>		City <b>Fargo</b>	State <b>ND</b>
Mailing Address (if different) <b>1429 3rd St N</b>		City <b>Fargo</b>	ZIP Code <b>58102</b>

### SITE INFO

Site Name <b>El Zagel Shrine Temple</b>		County <b>Cass</b>	
Site Physical Address <b>1429 3rd St N</b>		City <b>Fargo</b>	State <b>ND</b>
		ZIP Code <b>58102</b>	

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

**\$25/day**      **\$300 - 3rd Tuesday/Mo**  
**\$100/each Sunday**

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

Game Type	Description of Prize	Exact Retail Value of Prize
Calendar Raffle	\$25/day	
	\$100/Sunday	
	\$300 3rd Tuesday	
Total (limit \$40,000 per year)		<b>\$ 16,250.00</b>

Intended Uses of Gaming Proceeds  
**Temple functions + Administration of Transportation Funds**

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

Yes     No

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

Yes     No

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

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

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

Yes     No

Printed Name of Organization Group's Permit Organizer <b>El Zagel Shrine</b>	Telephone Number <b>701-429-0547</b>	E-mail Address <b>bruce@ridgwaylawns.com</b>
Signature of Organization Group's Permit Organizer <i>Bruce Ridgway</i>	Title <b>HIGH Priest &amp; President</b>	Date <b>7-11-23</b>

66



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 GAMING DIVISION  
 SFN 9338 (2-2023)

Applying for (check one)  
 Local Permit       Restricted Event Permit\*  
 Games to be conducted  
 Bingo     Raffle     Raffle Board     Calendar Raffle     Sports Pool     Poker\*     Twenty-One     Paddlewheels\*

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

**ORGANIZATION INFO**

Name of Organization or Group <b>Fargo North High School</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>4/13/2024</b>	
Organization or Group Contact Person <b>Dan Shultis</b>	E-mail <b>shultid@fargo.k12.nd.us</b>	Telephone Number <b>701-446-2407</b>	
Business Address <b>801 17th Ave North</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58102</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>Fargo North High School</b>	County <b>Cass</b>
Site Physical Address <b>801 17th Ave North</b>	City <b>Fargo</b>
	State <b>ND</b>
	ZIP Code <b>58102</b>

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)  
**4/13/2024 - High School Prom 50/50 Raffle**

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

Game Type	Description of Prize	Exact Retail Value of Prize
<b>50/50 Raffle</b>	<b>Winner receives half the prize money</b>	<b>1,000.00</b>
	Total (limit \$40,000 per year)	\$ <b>1,000.00</b>

**Intended Uses of Gaming Proceeds**

**Will go towards the Prom budget for the following school year.**

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

Yes     No

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

Yes     No

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

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

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

Yes     No

Name <b>Dan Shultis</b>	Title <b>Assistant Principal/Activities Coordinator</b>	Telephone Number <b>701-446-2407</b>	E-mail Address <b>shultid@fargo.k12.nd.us</b>
Signature of Organization or Group's Top Official 		Title <b>Assistant Principal/Activities Coordinator</b>	Date <b>6/2/2023</b>



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 GAMING DIVISION  
 SFN 9338 (2-2023)

Applying for (check one)

Local Permit       Restricted Event Permit\*

Games to be conducted

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

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

**ORGANIZATION INFO**

Name of Organization or Group <b>Fargo North High School</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>8-8-23-5-30-24</b>	
Organization or Group Contact Person <b>Dan Shultis</b>	E-mail <b>shultid@fargo.k12.nd.us</b>	Telephone Number <b>701-446-2407</b>	
Business Address <b>801 17th Ave North</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58102</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>Fargo North High School</b>		County <b>Cass</b>	
Site Physical Address <b>801 17th Ave North</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58102</b>

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

**Fall/Winter/Spring activity programs starting 8-21-23/5-30-2024**

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

Game Type	Description of Prize	Exact Retail Value of Prize
<b>50/50 raffle</b>	<b>winner receives half the prize money</b>	<b>37,000.00</b>
Total (limit \$40,000 per year)		<b>\$ 37,000.00</b>

**Intended Uses of Gaming Proceeds**  
**Athletic Program Funding**

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

Yes     No

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

Yes     No

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

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

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

Yes     No

Name <b>Dan Shultis</b>	Title <b>Assistant Principal/Activities</b>	Telephone Number <b>701-446-2407</b>	E-mail Address <b>shultid@fargo.k12.nd.us</b>
Signature of Organization or Group's Top Official 		Title <b>Assistant Principal / Activities Coordinator</b>	Date <b>6-1-2023</b>



*lad*

**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 GAMING DIVISION  
 SFN 9338 (2-2023)

Applying for (check one)

Local Permit       Restricted Event Permit\*

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

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

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

**ORGANIZATION INFO**

Name of Organization or Group <b>Fargo North High School</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>11/20/23-2/29/24</b>	
Organization or Group Contact Person <b>Dan Shultis</b>	E-mail <b>shultid@fargo.k12.nd.us</b>	Telephone Number <b>701-446-2407</b>	
Business Address <b>801 17th Ave North</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58102</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>Fargo Coliseum</b>		County <b>Cass</b>	
Site Physical Address <b>801 17th Ave North</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58102</b>
Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)			
<b>11/20/23-2/29/2024 - Home Hockey games boys and girls</b>			

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

Game Type	Description of Prize	Exact Retail Value of Prize
<b>50/50 Raffle</b>	<b>Winner receives half the prize money</b>	<b>3,000.00</b>
Total (limit \$40,000 per year)		<b>\$ 3,000.00</b>

**Intended Uses of Gaming Proceeds**

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

Yes     No

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

Yes     No

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

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

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

Yes     No

Name <b>Dan Shultis</b>	Title <b>Activities Coordinator</b>	Telephone Number <b>701-446-2407</b>	E-mail Address <b>shultid@fargo.k12.nd.us</b>
Signature of Organization or Group's Top Official 		Title <b>Activities Coordinator</b>	Date <b>6/2/2023</b>



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 GAMING DIVISION  
 SFN 9338 (5-2023)

*(Handwritten initials)*

Applying for (check one)

Local Permit       Restricted Event Permit\*

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

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

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

**ORGANIZATION INFO**

Name of Organization or Group <b>HERO; Healthcare Equipment Recycling Organization</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>9/29/23</b>	
Organization or Group Contact Person <b>Stephanie Ressler</b>	E-mail <b>stephanie@herofargo.org</b>	Telephone Number <b>701-212-1921</b>	
Business Address <b>5012 53rd St S Suite C</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58104</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>Avalon Events Center</b>		County <b>United States</b>	
Site Physical Address <b>2525 9th Ave S</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58103</b>

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)  
**9/29/23**

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

Game Type	Description of Prize	Exact Retail Value of Prize
<b>Raffle Tickets</b>	<b>TBD - prizes are being donated, estimated 5-6 prizes</b>	<b>\$200-\$300</b>
<b>50/50 Raffle</b>	<b>random ticket is chosen - half of all ticket sales will go to the winner</b>	<b>3800 depends on # sold</b>
<b>Big Board (Raffle Board)</b>	<b>variety of TBD donated prizes</b>	<b>\$200-\$500</b>
Total (limit \$40,000 per year)		<b>\$ 3800</b>

Intended Uses of Gaming Proceeds  
**HERO Cares Program**

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

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

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

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

Printed Name of Organization Group's Permit Organizer <b>Stephanie Ressler</b>	Telephone Number <b>701-212-1921</b>	E-mail Address <b>stephanie@herofargo.org</b>
Signature of Organization Group's Permit Organizer <i>Stephanie Ressler</i>	Title <b>Development Coordinator</b>	Date <b>7/13/23</b>



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 GAMING DIVISION  
 SFN 9338 (5-2023)

Applying for (check one)

Local Permit       Restricted Event Permit\*

Games to be conducted

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

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

**ORGANIZATION INFO**

Name of Organization or Group <b>Legacy Children's Foundation</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>August 21, 2023</b>	
Organization or Group Contact Person <b>Mary Jean Dehne</b>	E-mail <b>legacychildrensfoundation@gmail.com</b>	Telephone Number <b>7017937600</b>	
Business Address <b>725 28th St N</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58102</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>Edgewood Golf Course</b>	County <b>Cass</b>
Site Physical Address <b>19 Golf Course Ave N</b>	City <b>Fargo</b>
	State <b>ND</b>
	ZIP Code <b>58102</b>

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

**One time on Monday, August 21, 2023.**

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

Game Type	Description of Prize	Exact Retail Value of Prize
<b>Raffle</b>	<b>Cooler, golf club</b>	<b>600.00</b>
<b>Raffle</b>	<b>50/50</b>	<b>400.00</b>
		<b>Total (limit \$40,000 per year) \$ 1,000.00</b>

Intended Uses of Gaming Proceeds

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

Yes     No

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

Yes     No

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

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

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

Yes     No

Printed Name of Organization Group's Permit Organizer <b>Mary Jean Dehne</b>	Telephone Number <b>701 793 7600</b>	E-mail Address <b>legacychildrensfoundation@gmail.com</b>
Signature of Organization Group's Permit Organizer <i>Mary Jean Dehne</i>	Title <b>Executive Director</b>	Date <b>Jul 19, 2023</b>





147088

*(Handwritten initials)*

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

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

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

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

Name of Organization or Group of People permit is issued to St. John Paul II Catholic Schools	Dates of Activity 08/01/2023 - 04/27/2024	If raffle, provide drawing date 04/27/2024	
Organization or Group Contact Person Liz Bassett	Title or Position Special Events Coordinator	Telephone Number 701-893-3242	
Business Address 5600 25th Street S	City Fargo	State ND	ZIP Code 58104
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) Delta Hotels by Marriott			
Site Address 1635 42nd Street SW	City Fargo	ZIP Code ND	County 58103

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle	St. John Paul II Catholic School Tuition	\$7,000
Total (limit \$40,000 per year)		\$7,000

Intended Uses of Gaming Proceeds  
 Help fund athletic needs at Shanley High School

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

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

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

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

Organization or Group Contact Person

Name Liz Bassett	Title Special Events Coordinator	Telephone Number 701-893-3242	E-mail Address liz.bassett@jp2schools.org
Signature of Organization or Group's Top Official <i>(Handwritten Signature)</i>		Title Special Events Coordinator	Date 02/14/2023



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
GAMING DIVISION  
SFN 9338 (5-2023)

pd ✓  
*(Handwritten initials)*

Applying for (check one)

Local Permit       Restricted Event Permit\*

Games to be conducted

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

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

**ORGANIZATION INFO**

Name of Organization or Group <b>YMCA of Cass and Clay Counties</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>August 1, 2023</b>	
Organization or Group Contact Person <b>Ashleigh Brown</b>	E-mail <b>ashleigh.brown@ymcacassclay.org</b>	Telephone Number <b>701.364.4120</b>	
Business Address <b>400 1st Ave S</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58103</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>Edgewood Golf Course</b>	County <b>Cass</b>
Site Physical Address <b>19 Golf Course Rd</b>	City <b>Fargo</b>
	State <b>ND</b>
	ZIP Code <b>58102</b>

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)  
**One time event, held on August 1st, 2023 at Edgewood Golf Course. The raffle and raffle board will be held at this event.**

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	Minnesota Family Fun Package	\$1,500.00
Raffle	Gift Cards	\$100.00
Raffle	Liquor Package	\$1,000.00
Total (limit \$40,000 per year)		\$ <b>3,575.00</b>

Intended Uses of Gaming Proceeds  
**Supporting YMCA and creating more accessibility to accomodate those who have mental or physical disability by improving ammenit**

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

Yes     No

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

Yes     No

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

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

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

Yes     No

Printed Name of Organization Group's Permit Organizer <b>Ashleigh Brown</b>	Telephone Number <b>701.364.4120</b>	E-mail Address <b>ashleigh.brown@ymcacassclay.org</b>
Signature of Organization Group's Permit Organizer <i>Ashleigh Brown</i>	Title <b>Annual Campaign and Development Director</b>	Date <b>7.10.23</b>





# APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

Page 41

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
GAMING DIVISION  
SFN 9338 (5-2023)

li ✓

Applying for (check one)

Local Permit       Restricted Event Permit\*

Games to be conducted

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

\*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.

**LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS**

### ORGANIZATION INFO

Name of Organization or Group <i>Nativity Church of Fargo</i>		Dates of Activity (Does not include dates for the sales of tickets) <i>11-5-2023</i>	
Organization or Group Contact Person <i>Karen Donahue</i>		E-mail <i>office@nativitycatholicchurch.net</i>	Telephone Number <i>701-232-2414</i>
Business Address <i>1825 11<sup>th</sup> Street S.</i>		City <i>Fargo</i>	State <i>ND</i>
Mailing Address (if different)		City	ZIP Code <i>58103</i>

### SITE INFO

Site Name <i>Nativity Church</i>		County <i>Cass</i>	
Site Physical Address <i>1825 11<sup>th</sup> Street S.</i>		City <i>Fargo</i>	State <i>ND</i>
			ZIP Code <i>58103</i>

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

*11-5-2023*

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

Game Type	Description of Prize	Exact Retail Value of Prize
	<i>See Back</i>	
Total (limit \$40,000 per year)		\$ <i>1,700.00</i>

Intended Uses of Gaming Proceeds  
*Charitable Causes & Facility Needs*

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

Yes     No

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

Yes     No

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

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

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

Yes     No

Printed/Name of Organization Group's Permit Organizer <i>Karen Donahue</i>	Telephone Number <i>701-361-4263</i>	E-mail Address <i>k.l.donahue0@gmail.com</i>
Signature of Organization Group's Permit Organizer <i>Karen Donahue</i>	Title <i>Fall Festival Treasurer</i>	Date <i>7-19-2023</i>



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
GAMING DIVISION  
SFN 9338 (5-2023)

*(Handwritten initials)*

Applying for (check one)

Local Permit       Restricted Event Permit\*

Games to be conducted

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

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

**ORGANIZATION INFO**

Name of Organization or Group <i>Holy Spirit Catholic Church</i>		Dates of Activity (Does not include dates for the sales of tickets) <i>9-13-23 - 10-8-23</i>	
Organization or Group Contact Person <i>Barbara Stenberg</i>	E-mail <i>barb@holyspiritfargo.com</i>	Telephone Number <i>701-232-5900</i>	
Business Address <i>1420 7th St N</i>	City <i>Fargo</i>	State <i>ND</i>	ZIP Code <i>58102</i>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <i>Holy Spirit Catholic Church</i>	County <i>Cass</i>
Site Physical Address <i>1420 7th St N</i>	City <i>Fargo</i>
State <i>ND</i>	ZIP Code <i>58102</i>

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

*Bingo - Oct 8, 2023 Raffle 9/13, 9/20, 9/27, 10/4, 10/8*

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

Game Type	Description of Prize	Exact Retail Value of Prize
<i>Raffle</i>	<i>Cash</i>	<i>2450</i>
<i>Bingo</i>	<i>Turkeys / Ham / misc games</i>	<i>700</i>
Total (limit \$40,000 per year)		<i>\$ 3150</i>

Intended Uses of Gaming Proceeds  
*Help Individuals in their Faith and serve the poor in the community*

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

Yes     No

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

Yes     No

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

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

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

Yes     No

Printed Name of Organization Group's Permit Organizer <i>Barbara Stenberg</i>	Telephone Number <i>701-232-5900</i>	E-mail Address <i>barb@holyspiritfargo.com</i>
Signature of Organization Group's Permit Organizer <i>Barbara Stenberg</i>	Title <i>Business mgr</i>	Date <i>7-13-23</i>

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No.: FM-24-A0

Type: Task Order

Location: University Dr & 52<sup>nd</sup> Ave S

Date of Hearing: 7/17/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>7/24/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Nathan Boerboom</u>

The Committee reviewed the accompanying correspondence from Division Engineer, Nathan Boerboom, regarding a Task Order with KLJ to complete the design, construction administration, inspection, and survey for the University Drive South floodwall repairs, Project No. FM-24-A0.

In 2019, there was movement detected within the riverbank adjacent to South University Drive, just north of 52<sup>nd</sup> Avenue South that resulted in a section of the adjacent floodwall to have settled. At that time, the City hired KLJ, Houston Engineering, and Braun Intertec to review the geotechnical stability of the riverbank, the floodwall structural integrity, and potential repair options for the floodwall. It was determined that the floodwall was still structurally sound and the riverbank movement was likely due to erosion of the lower portion adjacent to the river. It was determined to complete an erosion protection project adjacent to the river to eliminate any future erosion and complete the repair of the floodwall at a later date.

Since then, the erosion protection project has been bid and construction is scheduled to be completed this fall. We have also been continuing to monitor the inclinometers and floodwall for any additional movement, which some has been detected. This movement was determined to be sufficient enough that staff is recommending to move forward with the repair of the floodwall at this time. KLJ has been selected to complete the design, construction administration, inspection, and survey for the floodwall repair. Project costs will be reimbursed by the Diversion Authority.

On a motion by Steve Sprague, seconded by Bruce Grubb, the Committee voted to recommend approval of the Task Order with KLJ in the amount of \$401,182.60 for Floodwall Repair Project No. FM-24-A0.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Task Order #2 with KLJ in the amount of \$401,182.60 for Floodwall Repair Project No. FM-24-A0.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dawn Stollenwerk
Michael Redlinger, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Interim Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs, P.E.  
 City Engineer

# Memorandum

**To:** Members of PWPEC  
**From:** Nathan Boerboom, Division Engineer  
**Date:** July 17, 2023  
**Re:** Project No. FM-24-A0 – Consultant Assistance  
University Drive South Floodwall Repairs

---

**Background:**

In 2019, there was movement detected within the riverbank adjacent to South University Drive, just north of 52<sup>nd</sup> Avenue South, that resulted in a section of the adjacent floodwall to have settled. At that time, the City hired KLJ, Houston Engineering, and Braun Intertec to review the geotechnical stability of the riverbank, the floodwall structural integrity and potential repair options for the floodwall. From these reviews, it was determined that the floodwall was still structurally sound and that the riverbank movement was likely due to erosion of the lower portion adjacent to the river. As a result of this determination, it was decided to complete an erosion protection project adjacent to the river to eliminate any future erosion of the riverbank and complete the repair of the floodwall at a later date while continuing to monitor it for additional settlement.

Since then, the erosion protection project has been bid, and construction of it is scheduled to be completed this fall. We have also been continuing to monitor the inclinometers and floodwall for any additional movement, which some movement has been detected over the past year. This movement has been determined to be sufficient enough that staff is recommending to move forward with the repair of the floodwall at this time. We have worked with KLJ to develop a scope for the design and construction administration for the floodwall repair project. KLJ was determined to be the best consultant to most efficiently complete these services due to their existing knowledge of the floodwall.

Attached with this Memorandum is a Task Order with KLJ, as well as a scope of services from them for the design, construction administration, inspection, and survey for the floodwall repair. This project has been coordinated with the Diversion Authority staff and the project costs will be reimbursed by the Diversion Authority.

**Recommendation Motion:**

Approve the attached task order to KLJ for \$401,182.60 to complete the design, construction administration, inspection, and survey for the University Drive South floodwall repairs, Project No. FM-24-A0.

NAB/klb  
Attachments

In accordance with paragraph 1.1 of the Task Order Agreement between Owner and Engineer for Master Professional Services, dated January 11, 2023 (“Agreement”), Owner and Engineer agree as follows:

**1. Specific Project Data**

- A. Project Title: Project FM-24-A0 – University Drive South Floodwall Repair
  
- B. Description: This Task Order is only for the design, construction administration, observation and survey services for FM-24-A0, which will include repairs to the floodwall located adjacent to University Drive South, north of 52<sup>nd</sup> Avenue South.

**2. Services of Engineer**

Services to be completed by the Engineer are as specified in the proposal submitted by KLJ dated July 11, 2023. Proposal is attachment A of this Task Order.

**3. Owner’s Responsibilities**

Owner shall have those responsibilities set forth in Master Services Agreement dated January 11, 2023.

**4. Times for Rendering Services**

Phase	Completion Date
Phase 1: Project Management	TBD
Phase 2: Design Preparation	October 13, 2023
Phase 3: Utility Coordination	October 13, 2023
Phase 4: Geotechnical Analysis	October 13, 2023
Phase 5: Construction Engineering	TBD

**5. Payments to Engineer**

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

Phase	Compensation Method	Lump Sum, or Estimate of Compensation for Services
Phase 1:	Hourly Not to Exceed	\$23,524.40
Phase 2:	Hourly Not to Exceed	\$72,790.00
Phase 3:	Hourly Not to Exceed	\$7,385.60
Phase 4:	Hourly Not to Exceed	\$26,074.40
Phase 5:	Hourly Not to Exceed	\$271,408.20
		Total Services = \$ 401,182.60

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

**6. Attachments**

- Attachment A – Proposal submitted by KLJ dated July 11, 2023.
- Attachment B – Commission ROA dated \_\_\_\_\_.<<Note: Commission ROA required if Task Order is greater than \$150,000>>

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

The Effective Date of this Task Order is July 24, 2023.

Owner: City of Fargo

Engineer: KLJ Engineering LLC

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: Dr. Tim Mahoney

Name: Ben Dzioba

Title: Mayor

Title: Vice President, CS

Designated Representative for Task Order:

Designated Representative for Task Order:

Name: \_\_\_\_\_

Name: Scott Middaugh

Title: \_\_\_\_\_

Title: Roadway Group Leader

Approval Requirements

\$15,000 or less – City Engineer

\$15,001 - \$150,000 – PWPEC

Over \$150,000 – PWPEC & Commission



**Appendix A  
July 2023**

**Final Design & Plan Preparation  
Scope of Services**

**City of Fargo Project No FM-24-A0  
University Drive Floodwall Slope Failure Repair**

## **I. Background & Purpose**

The floodwall along University Drive just north of 52<sup>nd</sup> Ave was constructed in 2009. In 2019 settlement of the floodwall was noticed. It was determined that remobilization of a historic riverbank failure caused the floodwall settlement. In 2020 Braun Intertec, Houston Engineering, and KLJ developed preliminary design alternatives to mitigate the slope failure and correct any issues the failure has caused.

Since that time, the City of Fargo has requested that KLJ prepare final plans and specifications for the slope failure mitigation. The City has selected the driven pile alternative for the slope failure mitigation as outlined in the March 2020 Geotechnical Evaluation Report Addendum prepared by Braun Intertec.

The purpose of this appendix is to describe the scope of services and responsibilities of KLJ and its subconsultants to complete final plans and specifications for the slope failure mitigation.

The project will be generated using the following formats and standards:

- AutoCAD Civil 3D
- City of Fargo Standard Specifications for Construction
- NDDOT Standard Specifications for Road and Bridge Construction (for structural specifications)

## **II. Subconsultants**

Braun Intertec will provide geotechnical engineering during design. Geotechnical design considerations are outlined in the January 2020 Geotechnical Report and the March 2020 Geotechnical Evaluation Report Addendum prepared by Braun Intertec.

## **III. Schedule**

### **Project Schedule**

The project will be bid in November of 2023 with construction taking place in 2024.

### **Project Milestones**

- Notice to Proceed – July 24, 2023
- 50% Plan Submittal – August 25, 2023
- 90% Plan Submittal – September 22, 2023
- Final Plan Submittal – October 13, 2023



## **IV. Final Design & Plan Preparation**

### **1. Project Management**

#### **Management & Coordination**

KLJ will manage the project and provide overall coordination of the work completed by KLJ and its subconsultants. KLJ will manage the project budget and schedule and inform the City of Fargo if revisions to either may be required.

#### **Project Review Committee Meetings (4 Meetings)**

KLJ will schedule project review committee meetings with the City of Fargo and the Fargo Park District. KLJ will run the meeting and take minutes for distribution after the meeting. The meetings will be used to update the City on the projects progress, get any questions needed for design answered, and get the City's input on design recommendations.

#### **ND Department of Water Resources Coordination**

KLJ will coordinate with the NDDWR to discuss the project. KLJ will inform the NDDWR of the project and post construction conditions. Because the project is anticipated to restore the existing ground to its current conditions, it is anticipated that no permitting or river hydraulic analysis will be required.

### **2. Design & Plan Preparation**

#### **Structural Design**

The landslide mitigation will follow the recommendation from the January 2020 Geotechnical Report and the March 2020 Geotechnical Evaluation Report Addendum prepared by Braun Intertec. KLJ will analyze the structural requirements of the pile system and pile cap recommended and make any revisions required for the plans.

#### **Sanitary Sewer Lining**

KLJ will prepare plans, specifications, and a bypass pumping plan for a CIPP sanitary sewer liner for the existing VCP sanitary sewer located between the floodwall and the Red River. The sewer will be lined from the manhole located in 52<sup>nd</sup> Ave just east of University Dr to between 775' to 100' north. Prior to the development of the plans and specs, the City of Fargo will televise the line for KLJ to review if there are any existing deficiencies.





### **Plan Preparation**

It is anticipated that the following plan sections will be required for this plan set:

- Section 1 – Title Sheet
- Section 2 – TOC/Sheet Layout
- Section 20 – General Details/Structural Details
- Section 40 – Removals
- Section 60 – Sidewalk Replacement/Sanitary Sewer Lining
- Section 70 – Pile Cap Plan & Profile
- Section 75 – Erosion & Sediment Control
- Section 100 – Traffic Control
- Section 210 – Special Instructions to Bidders
- Section 220 – Quantities

### **Questions During Bidding**

KLJ will address any questions received during the bid advertisement period.

### **Permitting**

KLJ will complete a Floodplain Development Permit application and submit to the City of Fargo floodplain administrator for review and approval. No additional permits are anticipated.

### **Survey**

A topographic survey was completed in Spring of 2020. KLJ will utilize that survey for plan production. Additional hours have been included to facilitate any pickup survey or temporary staking for utility coordination.

## **3. Utility Coordination**

### **Utility Coordination**

KLJ will send design memos to all local utility contacts informing them of the project. The memo will request maps of their facilities to determine what utilities are in the project area.

### **Utility Conflict Plans**

KLJ will prepare utility conflicts and work with the utility companies to inventory and determine any anticipated conflicts. The utility conflict plans will identify the existing utilities in plan and cross sections views and display whether the utilities are anticipated to be impacted or not impacted by the project.

Based on the 2020 topographic survey the following utilities are present:

- Sprint – no impacts anticipated
- 2 Water lines (Fargo Park District & Sunset Memorial Gardens) – impacts anticipated



#### **4. Geotechnical Analysis (Completed by Braun Intertec)**

##### **Geotechnical Validation Analysis**

Braun will complete an analytical confirmation of stabilization elements with Plaxis (retention forces, retention requirements, structural element properties, etc.). A summary report (Addendum 2 to the January 2020 Geotechnical Report) will be prepared and KLJ's structural engineers will develop plans, profiles, and specifications.

##### **Plans/Specifications Consultation and Review**

Braun will consult with KLJ on the interpretation and application of Addendum 2 recommendations when developing plans, profiles, and specifications.

#### **5. Construction Engineering**

##### **Construction Administration (5 hrs/week)**

Construction is anticipated to be completed in 2024. KLJ assumes a 26-week construction timeframe. Throughout construction, KLJ will review material certifications to ensure that all products permanently incorporated in the project meet the Buy American Act. KLJ will review payrolls and perform labor compliance jobsite interviews to ensure that the contractor is meeting the Davis-Bacon wage requirements.

##### **Construction Observation (40 hrs/week)**

Throughout construction, KLJ will document construction progress, quantities, and constructor labor/equipment workforce. KLJ will perform observation duties to determine if the contractor is meeting the contract requirements.

##### **Construction Staking (10 hrs/week)**

KLJ will complete the construction staking as requested by the contractor.

##### **Construction Materials Testing**

Braun Intertec will perform the construction materials testing for the project. The following items will be tested:

- Concrete
- Pile welds
- Aggregate analysis
- Compaction test



### **Contractor Submittals**

KLJ will review contractor submittals for compliance with the contract requirements. Such items include but are not limited to pile hammer specifications, piling submittals, and concrete mix design.

Braun Intertec will review excavation stability, temporary loading, excavation and slope stability monitoring. (Items noted here and others not yet identified are considered the responsibility of the contractor and would require submittals addressing the means and methods employed to mitigate risks associated with ground movement and further movement of the existing floodwall, including independent engineering analyses and reports.)

## **6. Excluded Items**

The following items are not included in the overall Scope of Services:

- Utility Relocation Agreements
- Easement Exhibits/Legal Descriptions
- Environmental Documentation



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

8

Project No. MP-20-A2 Type: Time Extension (CO #5)  
 Location: Roberts Alley Power Date of Hearing: 7/17/2023

Routing Date  
 City Commission 7/24/2023  
 PWPEC File X  
 Project File Kristy Schmidt

The Committee reviewed the accompanying correspondence from Project Manager, Kristy Schmidt, regarding a time extension (CO #5), which is needed for supply issues of electrical materials and work associated with converting overhead to underground and is described below:

Original Completion Dates	Revised Previously	Revised This Memo
Substantial – June 14, 2022 Final – June 28, 2022	Substantial – June 16, 2023 Final – July 1, 2023	Substantial – August 16, 2023 Final – August 31, 2023

Staff is recommending approval of the time extension (CO #5).

On a motion by Steve Sprague, seconded by Bruce Grubb, the Committee voted to recommend approval of the time extension (CO #5) as described above to Magnum Electric.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the time extension (CO #5) to the Substantial and Final Completion Dates bringing them to August 16 and August 31, 2023 to Magnum Electric.

PROJECT FINANCING INFORMATION:


Recommended source of funding for project: Street Sales Tax

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

COMMITTEE

	Present	Yes	No	Unanimous
				<input checked="" type="checkbox"/>
Tim Mahoney, Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dawn Stollenwerk
Michael Redlinger, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Interim Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

  
 Tom Knakmuhs, P.E.  
 City Engineer

C: Kristi Olson

# Memorandum

**To:** Members of PWPEC  
**From:** Kristy Schmidt, Project Engineer  
**Date:** July 5, 2023  
**Re:** Project No. MP-20-A2 –Time Extension (CO #5)  
 Roberts Alley between 2<sup>nd</sup> and 4<sup>th</sup> Avenue North

**Background:**

Project No. MP-20-A2 is for the burying of the overhead lines in Roberts Alley between 2<sup>nd</sup> and 4<sup>th</sup> Avenue North.

The General Contractor, Magnum Electric, has been delayed on this project due to Xcel Energy supply issues of electrical materials and work associated with converting overhead to underground, which is required for Magnum to complete their work.

**Recommended Motion:**

Approve the time extension (CO #5) to the Substantial and Final Completion Dates as described below:

Original Completion Dates	Revised Previously	Revised This Memo
Substantial – June 14, 2022 Final – June 28, 2022	Substantial – June 16, 2023 Final – July 1, 2023	Substantial – August 16, 2023 Final – August 31, 2023

KLS/jmg  
 Attachments

C: Duston Hoffner, MBN



**CHANGE ORDER REPORT**  
**ROBERTS ALLEY POWER**  
**PROJECT NO. MP-20-A2**  
**ROBERTS ALLEY FROM 2ND TO 4TH AVE**

Change Order No 5 Change Order Date 7/5/2023  
 Contractor Magnum Electric, Inc.

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

**EXPLANATION OF CHANGE** Change Order # 5

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
									Sub Total	\$0.00

Summary


Source Of Funding	Street Sales Tax
Net Amount Change Order # 5 (\$)	\$0.00
Previous Change Orders (\$)	\$16,739.00
Original Contract Amount (\$)	\$498,660.00
Total Contract Amount (\$)	\$515,399.00

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

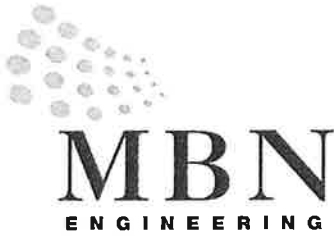
CONTRACT DATES

Current Substantial Completion Date	6/16/2023	Current Final Completion Date	7/1/2023
Additional Days Substantial Completion	61	Additional Days Final Completion	61
New Substantial Completion Date	8/16/2023	New Final Completion Date	8/31/2023
New Interim Completion Date #1		Interim Completion Dates	
		Current Interim Completion Date #1	



  
 APPROVED  
 For Contractor Magnum Electric, Inc.  
 Title VP of Business Development

APPROVED DATE  
 Department Head  
 Mayor  
 Attest  

**To:** Kristy Schmidt City of Fargo  
**From:** Duston Hoffner  
**Date:** 6/29/2023  
**Subject:** Roberts Alley Power – City of Fargo Project #MP-20-A2 – Change In Contract Time

---

Kristy,

Magnum Electric has requested to Change the Contract Time (per Article 11.05) from current substantial completion date of June 16th of 2023 and final completion date of July 1st of 2023 to new substantial completion date of August 16<sup>th</sup> of 2023 and new final completion date of August 31<sup>st</sup> of 2023. After reviewing the most current attached information from Magnum and with Xcel Energy I feel the extension is required and acceptable. Xcel's equipment was delayed, causing this issue. It is now here and them and Magnum have a schedule set up. With that being said, and the attached information from Magnum Electric, I support this extension to the project. If you have any further questions, please don't hesitate to ask.

Sincerely,

A handwritten signature in black ink that reads "Duston Hoffner".

Duston Hoffner  
Electrical Designer  
MBN Engineering

**MAGNUM ELECTRIC***"Quality doesn't cost, it pays"*

June 29, 2023

City of Fargo  
 Attn: Kristy Schmidt  
 225 4<sup>th</sup> St N  
 Fargo, ND 58102

RE: Roberts Alley Power-City of Fargo Project Number MP-20-A2

Kristy -

Magnum Electric, Inc is requesting a ***Change in Contract Time per Article 11.05*** to complete the project due to Electrical Supply Chain delivery issues we are experiencing on the Roberts Alley Power project (City of Fargo Project Number MP-20-A2). The original final completion date of the project was June 28<sup>th</sup> of 2022 and an extension as granted until 11/30/2022. We received an additional extension to June 1<sup>st</sup>, 2023. We filed for and received an additional extension for a July 1<sup>st</sup> completion date due to Xcel Energy not having all their components delivered or installed. Xcel was to receive the main connection cabinet on June 7<sup>th</sup> but that was delayed as well. They now have the cabinet, and we are scheduling the shutdowns for 2<sup>nd</sup> and 3<sup>rd</sup> weeks of July to push towards completion of the project. Magnum Electric, Inc is committed to completing this project as soon as possible and we will insure to do our due diligence to inform everyone involved of any future timeline changes.

**Project Timeline:**

- Bid Date 10/27/2021
- Contract Date 11/15/2021
- Approved by Commissioners 11/29/2021
- Supply Manufacture Pricing Evaluation 12/6/2021-12/28/2021
- PO issued to Supplier 12/29/2021
- Drawings back with clarifications 1/27/2022
- Additional Clarifications on JLG site 2/8/2022
- Additional site clarifications made 3/2/2022
- Release sent to Suppler (CED) 3/7/2022
- PR-1 Change Revisions 3/16/2022
- Approved changes made for PR-1 3/21/2022
- PR-2 Change Revision 4/6/2022
- Approved changes made for PR-2 4/8/2022
- CT Cabinets Shipped 5/4/2022
- SEMS's and MCT's Shipping 6/30/2022
- Additional Time Extension Approved 6/6/2022
- FMRU rated Equipment Shipping 10/7/2022 (Now moved to Spring of 2023) **Installed.**
- Xcel Energy Waiting on Material 6/7/2023 **Material Just Arrived End of June**
- Xcel Energy Scheduling July Shutdowns 6/29/2023

**Corporate Office - Fargo**  
 471 Christianson Drive W  
 West Fargo, ND 58078

**Jamestown**  
 318 Business Loop W  
 Jamestown, ND 58401

**Grand Forks**  
 2822 Heartland Bus. Loop  
 Grand Forks, ND 58201

**Bismarck**  
 820 South 18<sup>th</sup> Street  
 Bismarck, ND 58504

**Dickinson**  
 124 48<sup>th</sup> Avenue SW  
 Dickinson, ND 58601

# **MAGNUM ELECTRIC**

*"Quality doesn't cost, it pays"*

---

We are requesting an additional contract time change to **8/31/2023** to allow for Xcel Energy to install utility equipment for Magnum to complete our final shutdowns. We will continue to update the City and MBN on schedule and progress in the future.

Thank you for the consideration of the time extension and understanding of the current Electrical Supply Chain issues we are experiencing. Please call or e-mail me at [pat@magnumelectric.net](mailto:pat@magnumelectric.net) if you have any questions.

Sincerely,

*Patrick Johnson*

Patrick Johnson  
VP Director of Business Development  
Magnum Electric, Inc.

REPORT OF ACTION

9

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. MS-23-C0

Type: Contract Amendment #1

Location: 76<sup>th</sup> Ave S & I-29

Date of Hearing: 7/17/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>7/24/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Eric Hodgson</u>

The Committee reviewed the accompanying correspondence from Project Engineer, Eric Hodgson, related to Contract Amendment #1 submitted by Bolton & Menk in the amount of \$68,100.00 for additional work.

Staff is recommending approval of Contract Amendment #1 in the amount of \$ 68,100.00, bringing the total contract amount to \$160,587.00.

On a motion by Steve Sprague, seconded by Bruce Grubb, the Committee voted to recommend approval of Contract Amendment #1 to Bolton & Menk.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Contract Amendment #1 in the amount of \$68,100.00, bringing the total contract amount to \$160,587.00 to Bolton & Menk.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Infrastructure Sales Tax

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
Tim Mahoney, Mayor	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
Nicole Crutchfield, Director of Planning	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
Steve Dirksen, Fire Chief	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
Michael Redlinger, City Administrator	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
Ben Dow, Director of Operations	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
Steve Sprague, City Auditor	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
Tom Knakmuhs, City Engineer	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
Susan Thompson, Interim Finance Director	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>

ATTEST:

  
 Tom Knakmuhs, P.E.  
 City Engineer

C: Kristi Olson

# Memorandum

**To:** Members of PWPEC  
**From:** Eric Hodgson, Civil Engineer II  
**Date:** July 17<sup>th</sup>, 2023  
**Re:** Project No. MS-23-C0 - Amendment #1  
76<sup>th</sup> Avenue South and I-29 Interchange

---

**Background:**

Bolton & Menk was hired by the City to perform Engineering Consultant Services for the tied projects: 64<sup>th</sup> Avenue South & I-29 Interchange and 76<sup>th</sup> Avenue South & I-29 Interchange. On April 14, 2023, the NDDOT sent a letter to the City of Fargo informing us that the Federal monies that had been secured previously for the 64<sup>th</sup> Avenue South & I-29 Interchange, to be built in 2024, would no longer be available for next year's construction.

As such, the 64<sup>th</sup> Avenue Interchange construction is on hold and Engineering staff has decided to look more in-depth at the 76<sup>th</sup> Avenue South Interchange option. The original scope for the 76<sup>th</sup> Avenue Interchange only included preliminary concepts for the purposes of obtaining ROW. Amendment #1 increases the scope so that we may look at more options and better understand the future traffic demands for each location.

**Recommended Motion:**

Approve Amendment #1 for Project No. MS-23-C0 in the amount of \$68,100.00. This is 100% City Cost.

EBH/klb

**Attachments:**

- Bolton & Menk "MS-23-C0: 76<sup>th</sup> Avenue South & I-29 Interchange" Amendment 1.

**AMENDMENT NO. 1**  
**Project MS-23-C0: 76<sup>th</sup> Avenue South & I-29 Interchange**

This Amendment No. 1 is entered into by and between the City of Fargo and Bolton & Menk, Inc., in order to amend the contract dated February 3<sup>rd</sup>, 2023, thereto as follows:

1. Exhibit A: Scope of Services, is amended to incorporate additional alternatives to study for preliminary design and traffic operations analysis as detailed in Attachment 1.

Task	Description	Original Contract Budget	Amendment #1	Fee After Amendment
1	Project Administration	\$15,160.50	\$3,000.00	\$18,160.50
2	Preliminary Engineering Interchange Alternatives	\$45,396.00	\$57,120.00	\$102,516.00
3	Meetings	\$1,930.50	\$2,730.00	\$4,660.50
4	Legal Descriptions, Exhibits, ROW Survey	\$30,000.00	\$5,250.00	\$35,250.00
	<b>Total</b>	<b>\$92,487.00</b>	<b>\$68,100.00</b>	<b>\$160,587.00</b>

All other terms and conditions of the original contract dated February 3<sup>rd</sup>, 2023 not expressly amended herein remain in full force and effect.

City of Fargo

**BOLTON & MENK, INC.**

By: \_\_\_\_\_

By: Mike Bittner

Name: \_\_\_\_\_

Name: Mike Bittner

Title: \_\_\_\_\_

Title: Principal In Charge of North Dakota

Date: \_\_\_\_\_

Date: 6/29/2023

Attested By: \_\_\_\_\_

Witnessed By: Rachel Carthart



Real People. Real Solutions.

3168 41st Street South  
Suite 2  
Fargo, ND 58104

Ph: (701) 566-5339  
Fax: (701) 566-5348  
Bolton-Menk.com

### **Attachment 1: Scope of Services: Amendment #1**

Project MS-23-C0: 76<sup>th</sup> Avenue South & I-29 Interchange

June 19<sup>th</sup>, 2023

Amendment #1 is needed to provide traffic analysis at the 76<sup>th</sup> Avenue future interchange location to better understand timing needs and contrast priorities to the 64<sup>th</sup> Avenue interchange location. This amendment also accounts for an altered schedule change because of a delay in funding availability. The following tasks denote the changes to the original scope of work and do not include the original contents of work plan.

#### **1. Project Administration**

Additional project administration time required for internal and external coordination of the expanded scope of work.

#### **2. Preliminary Engineering Interchange Alternatives**

Add 76<sup>th</sup> Avenue Interchange Traffic Analysis, which includes the following sub-tasks:

- a. Streetlight Origin-Destination analysis to understand where the demand is coming from (i.e. Horace, West Fargo, Cass County)
- b. Travel Demand Model refinements to better assess reality of aggressive 76<sup>th</sup> Avenue Corridor Study density assumptions.
- c. Microsimulation traffic analysis of 3-5 concepts at 76<sup>th</sup> Avenue. Review 76<sup>th</sup> Avenue assumption to validate whether the expressway style design is still applicable.
- d. Evaluate the benefits to 52<sup>nd</sup> Avenue with a 76<sup>th</sup> Avenue interchange in microsimulation tool to estimate benefits.
- e. Compare merits, timelines and triggers for 64<sup>th</sup> Avenue versus 76<sup>th</sup> Avenue interchanges. Specifically assess cost, timelines, connecting infrastructure needs, regional versus localized benefits, impacts to 52<sup>nd</sup> Avenue, and I-29 spacing and safety implications.
- f. Expand concepts at 76<sup>th</sup> Avenue from three (3) to five (5) for final ROW estimates.

#### **3. Meetings**

Add Commission Presentations for cursory results to better understand preferred timeline and need for 64<sup>th</sup> and 76<sup>th</sup> Avenue Interchanges.

#### **4. Legal Descriptions, Exhibits, ROW Survey**

Sketch level ROW needs overlaying 52<sup>nd</sup> Avenue/I-29 interchange at 76<sup>th</sup> Avenue/I-29. ROW needs will be refined as Task 2 is completed and more detailed concepts are completed.

**Delivery of Data, Format, and Standards:** All data will become property of the City of Fargo upon completion. All data will be generated in the following formats and standards were applicable:

- Microsoft Word, Excel, Teams, and Project
- AutoCAD Civil 3D 2023





- NDDOT CADD Manual
- NDDOT Consultant Survey Manual Chapter 19
- NDDOT CADD Editing Standards Manual Chapter 21
- NDDOT Data Collection Codes and Procedures
- NDDOT Design Manual and Plan Preparation Guide Website
- NDDOT Right of Way Manual
- NDDOT Standard Specifications for Road and Bridge Construction
- City of Fargo Standard Specifications for water and sanitary sewer improvements
- Adobe Acrobat Reader Pro

**Schedule:**

The following schedule is combined for Project MS-23-C0: 76<sup>th</sup> Avenue South & I-29 Interchange and Project BN-25-A0: 64<sup>th</sup> Avenue South & I-29 Interchange:

- 2023: Interchange Access Plan
  - July-August: Meet with City Commission
  - June-September: Analyze and Layout Concepts
  - July: Cursory 76<sup>th</sup> Avenue ROW Needs
  - October: Review and Refine with City and NDDOT Technical Team
  - November: Present to NDDOT Management
  - December: Refine concepts and final 76<sup>th</sup> Avenue ROW Needs
- 2024: Environmental Document, Utility and Geotechnical Engineering, ROW Acquisition
- 2025: Final Design of 64<sup>th</sup> Avenue Interchange

10

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. NR-24-B0

Type: Contract Amendment #1

Location: Lift Stations #11 & #57

Date of Hearing: 7/17/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>7/24/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Roger Kluck</u>

The Committee reviewed the accompanying correspondence from Project Engineer, Roger Kluck, related to Contract Amendment #1 submitted by Houston Engineering in the amount of \$25,500.00 for additional work.

Staff is recommending approval of Contract Amendment #1 in the amount of \$25,500.00, bringing the total contract amount to \$510,700.00.

On a motion by Steve Sprague, seconded by Bruce Grubb, the Committee voted to recommend approval of Contract Amendment #1 to Houston Engineering.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Contract Amendment #1 in the amount of \$25,500.00, bringing the total contract amount to \$510,700.00 to Houston Engineering.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u><input checked="" type="checkbox"/></u>
Tim Mahoney, Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dawn Stollenwerk
Michael Redlinger, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Interim Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

  
Tom Knakmuhs, P.E.  
City Engineer

C: Kristi Olson

# Memorandum

**To:** Members of PWPEC  
**From:** Roger E. Kluck, PE, CFM, Engineer II Storm Sewer/Floodplain  
**Date:** July 12, 2023  
**Re:** Project No. NR-24-B0 – Amendment #1  
Storm Sewer Lift Stations 11 & 57 - Lift Station Replacements

---

## **Background:**

Proposals for Engineering Services for Project No. NR-24-B0 replacement of Storm Lift Stations 11 & 57 were received June 1, 2023. Storm Lift Station 11 & 57 are located south of Kandi Lane in the parking lot adjacent to Trollwood Park. The concept is to replace the two storm lift stations with one lift station. Proposals were reviewed and Houston Engineering Inc. was selected to complete the Design and Construction Engineering for the project.

As preliminary design was being completed, it was discovered that the existing hydraulic modeling performed early in the FM Diversion evaluation process requires upgrades to be made to reflect some recent infrastructure changes. The capabilities of the software used to complete the modeling has also improved to allow greater detail to be added to the model, which will allow for a more complete analysis of the City's storm sewer system. The modeling area is generally bounded by University Drive North to the Red River and roughly the El Zagal Golf Course to approximately 40<sup>th</sup> Avenue North.

Engineering believes the updated storm modeling is necessary to adequately and efficiently design the new combined storm lift station. The detailed description of work to be completed by Houston Engineering, Inc. is identified in the attached memorandum and the proposed Contract Amendment #1 is for an amount of \$25,500.00. Engineering believes the proposal is reasonable and recommends approval.

## **Recommended Motion:**

To approve Contract Amendment #1 for Project No. NR-24-B0 for \$25,500.00 to Houston Engineering for the additional hydraulic modeling work for the replacement of Storm Lift Stations 11 & 57.

REK/klb  
Attachment

1401 21st Avenue North Fargo ND 58102



PROFESSIONAL SERVICES

AMENDMENT NO. 1 - FOR ADDITIONAL ENGINEERING SERVICES

**Project:** City of Fargo Project NR-24-B0 – Storm Sewer Lift Stations #11 & #57 Reconstruction  
HE Project No. 6059-0212

**Client:** City of Fargo  
225 4<sup>th</sup> Street N.  
Fargo, ND 58102  
Phone (701) 241-1545  
Attn: Roger Kluck, PE, CFM

**Location of Project:** City of Fargo, Cass County, North Dakota

**Description of Work:** This contract amendment is for additional Professional Engineering services necessary to complete stormwater model improvements for the above referenced project. At the project kickoff meeting, it was determined that additional InfoSWMM model updates were prudent to conducting an effective analysis of the proposed storm water lift station and outfall that were not included in the initial project scope. In order to complete the model improvements, additional Professional Engineering services beyond the original project scope will be required. The additional services are described in the following section.

**Task 1 – InfoSWMM Model Improvements**

HEI will make several model improvements to the portion of the existing F1 Model directly contributing to the project area. Improvements include reevaluating subcatchments to an inlet-cluster level, adding additional pipe via City GIS & as-built plans to each inlet cluster, applying inlet multipliers to receiving nodes, updating storage curves for subcatchments, and adding overland conveyance links. The following proposed budget amendment is being requested to complete this additional work.

**Task 1 Budget Amendment \$25,500**



Page 2

**Basis of**

**Proposal:** This amendment covers the additional services as described above.

**Fee:** The total budget for the above-described task is \$25,500. Additional work required beyond the scope listed above will be billed at our current hourly rates.

**Conditions:** The work outlined in this amendment will be performed in accordance with the Agreement for Professional Services for City Project # NR-24-B0 dated June 12, 2023.

Upon receipt of written acceptance of this amendment, Houston Engineering, Inc. will begin performing the additional work outlined above.

**HOUSTON ENGINEERING, INC.**

A handwritten signature in black ink that reads 'Gabe Bladow'.

Gabriel L. Bladow, PE  
Project Manager



**F1 InfoSWMM Model Status:** PROJECT NO. NR-24-B0 LIFT STATION NO. 11 AND 57

**To:** City of Fargo Engineering  
Attn: Roger Kluck, PE, CFM

**Date:** July 12, 2023

**Initial Model Review**

HEI completed an initial review of the status of the current F1 model from the USACE FM Feasibility Study. Specifically, the review compared the granularity of the F1 model detail to more recently utilized models such as those used for the lift station 47/48/55/56 projects. The review also identified model components that are likely to skew the accuracy of results or components that could potentially be flagged by a future reviewing agency such as FEMA. The results of the review are as follows:

- Surface storage within the model is represented by a single “Typical” storage curve applied to all storage nodes in the system rather than a unique lidar derived stage/storage curve representing the actual surface within the individual subcatchment. This typical curve was developed in the 2009 model build before there was a standard way to compute lidar derived storage curves. The typical curve was meant to be a representative curve of an average residential roadway sag storage area:
  - Most nodes have a “typical” storage curve on it, regardless of if it is a receiving node or just a storm sewer junction.
  - Large subcatchments have more storage nodes, which results in more overall storage. However, it is likely still not representative of the actual available storage in the subcatchment.
  - This is likely the single largest factor affecting accuracy of peak water surface elevation results/mapping in any particular subcatchment.
- Lack of detail near project extents:
  - Lack of accurate storage and inlet capacity combined with large areas contributing to single points along trunklines (large inflow rate and volume) causes large model instabilities which reduces the effectiveness of evaluating existing conditions and proposed alternatives.
- Lack of detail overall:
  - With no inlet capacity, the effect of surface storage is underestimated.
  - With no surface conveyance links, the effect of out of system inflow or outflow is not accounted for.
- Additional development since model creation:
  - Infrastructure improvements completed as part of the North Oaks and Woodcrest projects have been incorporated into the model, but other pieces such as Edgewood Estates, El Zagal, and work at and near the wastewater treatment plant should also be updated. The most important of these is Edgewood Estates given its proximity to the current project.

### Proposed Model Modifications

HEI proposes modifications to improve model accuracy. The primary purpose of these modifications is to produce accurate results for the explicit purpose of design of the LS 11/57 pump station and outfall. The proposed modifications are focused on achieving these results while minimizing costs to the City by concentrating the highest detail within the primary project area rather than the entire F1 model area. As seen in the attached figures, the northwest portion of the F1 model area is relatively unconnected from adjacent sub-surface storm sewers. This area includes the LS 11/57 project and approximately 5 other outfalls that are all connected via storm sewer. The only direct sub-surface connection from this area to the rest of F1 is to the Broadway trunk line at 28<sup>th</sup> Ave N via 21" RCP. Therefore, the proposed modifications focus on the northeast portion of the model and adjacent subcatchments. The proposed modifications are separated into 4 different areas with varying levels of recommended improvements based on how likely they are to impact the project area. Maps showing the model area boundaries are attached. Descriptions of the 4 areas are as follows:

#### All Model Areas

- Per the initial project scope, hydrology (CN/TOC/rainfall) will be updated for the full model area.

#### Model Area 1

- Woodcrest & North Oaks – No updates required.

#### Model Area 2

- Area Directly Impacting Project - Add additional sub-surface components and inlet capacity.
  - Re-cut or split subcatchments to inlet-cluster level.
    - An example is provided in the attached figures.
  - Add additional pipes via City GIS & as-built plans to each inlet cluster regardless of size.
    - The estimated budget allows for some survey verification of inverts.
  - Add sub-surface 21" pipe connection to Broadway trunk sewer.
  - Apply an inlet multiplier to the receiving node to account for clusters of inlets.
    - Apply standard inlet curve for inlets
      - Street: Neenah R-3405-A (24" x 24")
      - Backyard: Neenah R-2561 (7" Beehive)
  - Update storage curves for all subcatchments.
  - Add overland conveyance.

#### Model Area 3

- Subcatchments Bounding Area 2 – No planned updates.
  - HEI will make modifications only as required for model stability.

#### Model Area 4

- Remaining Model Area – No planned updates.
  - HEI will make modifications only as required for model stability.

**Assumptions and Additional Data Required to Complete the Proposed Work**

- Can the City confirm the North Oaks pump on/off elevations (LS 73 according to City GIS).
- Can the City provide LS 24 (Wastewater Treatment Plant) construction plans, or should we leave as old LS in model?
- Can the City provide El Zagel project as-builts?
- Storm As-Builts Needed to Start
  - 3195, 3213, 3231, 3252, 3256, 3283, 3285, 3297, 3314, 3344, 3347, 3361, 3368, 3392, 3462, 3522, 3563, 3567, 3609, 3637, 3638, 3705, 3856
- Assume all pipes in current model are accurate and will not be changed.

**Estimated Cost to Complete Additional Scope**

The total fee to complete the above-described tasks is \$25,500. Additional work in Model Areas 3 and 4 consistent with those proposed for Model Area 2 do not appear to be required for the LS 11/57 project but could be completed to achieve model uniformity for an additional cost. Tasks will be performed in accordance with our current hourly rates in the year services are provided.



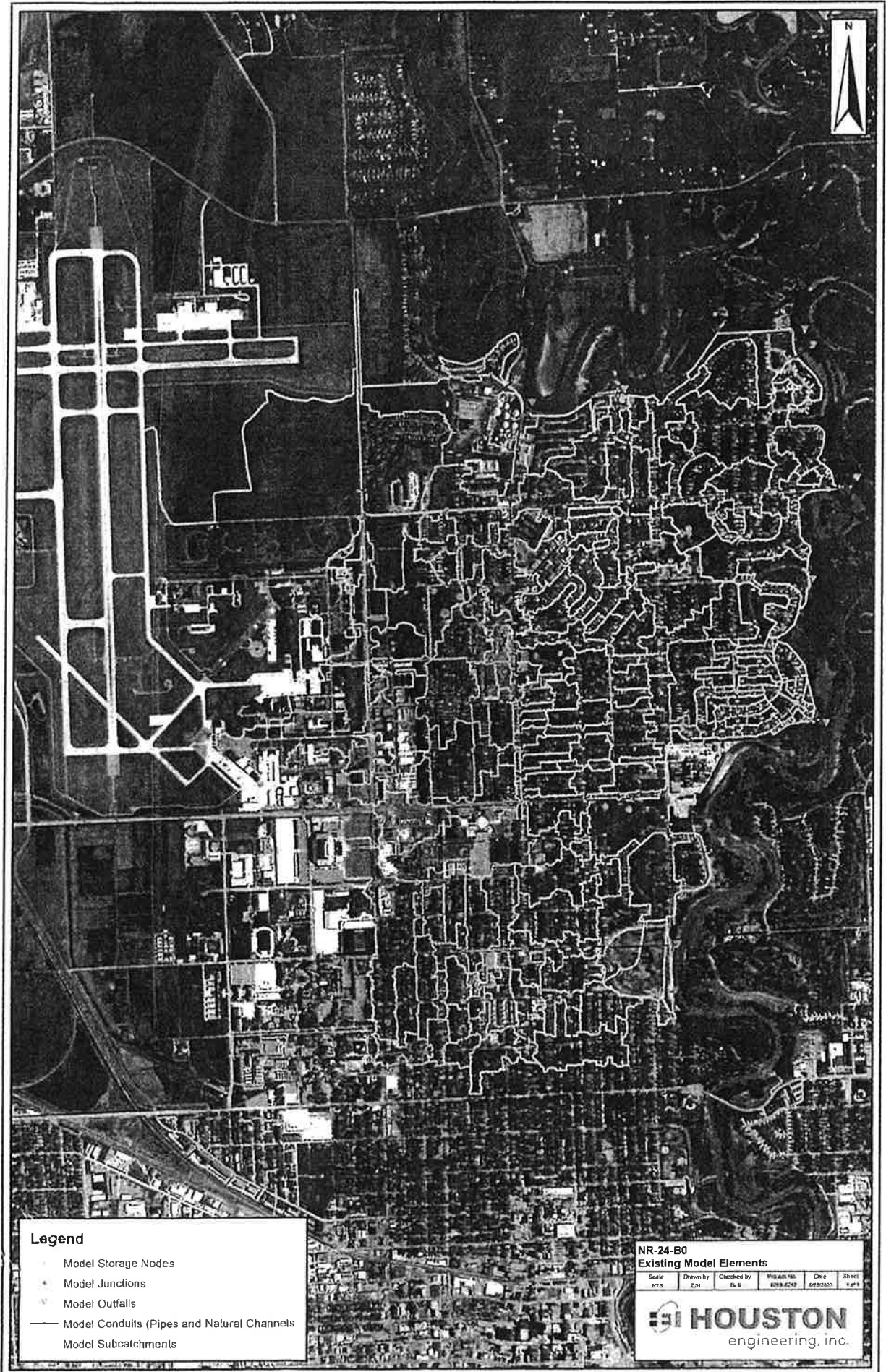
Gabe Bladow, PE

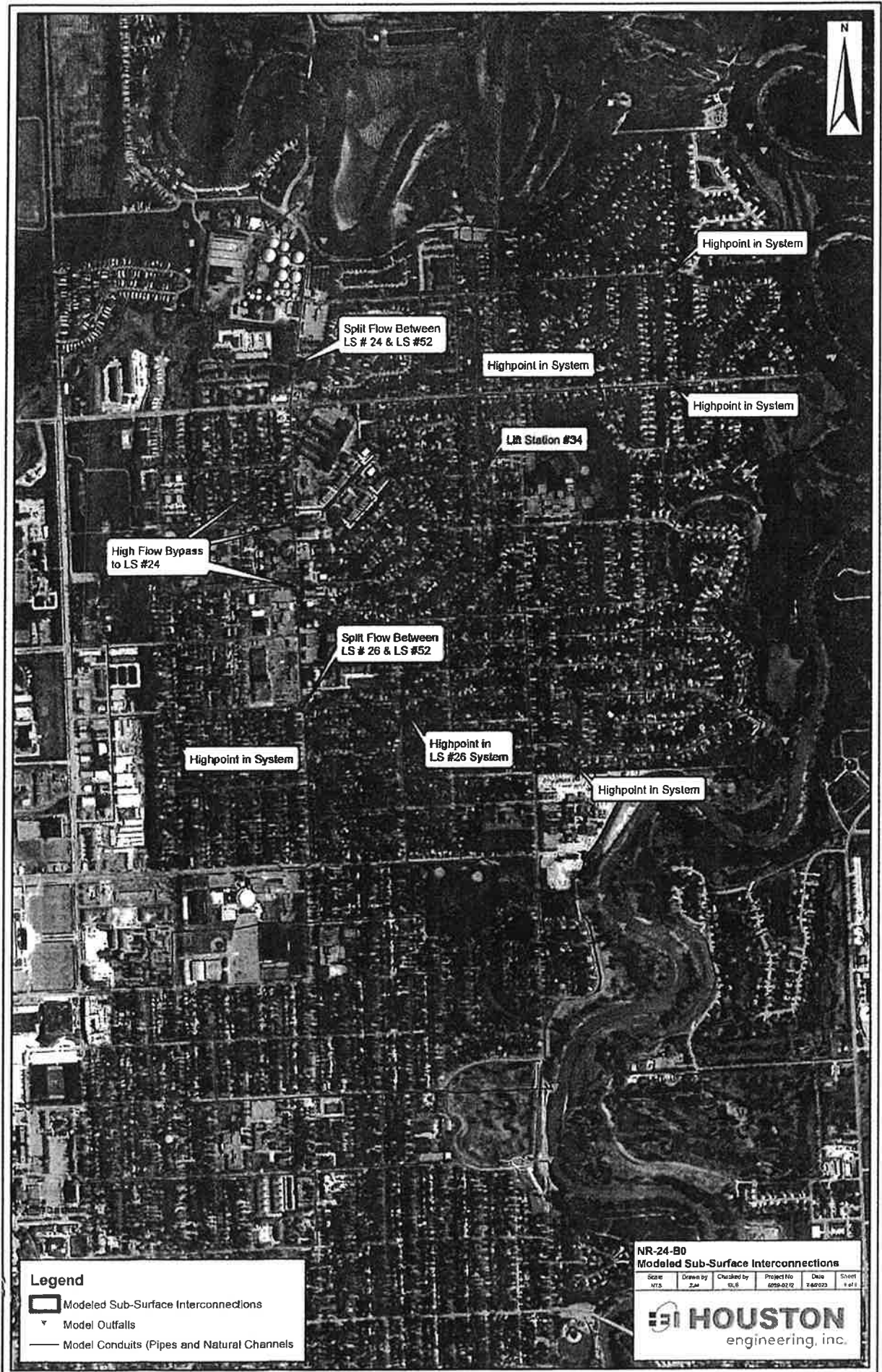
7/12/2023



**CLIENT Project No. NR-24-B0**  
 Lift Station #11 & #57 Reconstruction  
 Amendment #1 Estimate

	Engineering Intern \$111	Engineer 5 \$166	Engineer 9 \$205
<b>EXISTING CONDITIONS MODEL RE-BUILD</b>			
<b>Model Area 1</b>	<b>2</b>	<b>1</b>	<b>1</b>
<b>Model Area 2</b>	<b>60</b>	<b>81</b>	<b>3</b>
<b>Model Area 3</b>	<b>2</b>	<b>1</b>	<b>1</b>
<b>Model Area 4</b>	<b>2</b>	<b>1</b>	<b>1</b>
<b>Model Import / QC</b>	<b>2</b>	<b>12</b>	<b>4</b>
<b>Total Hours</b>	<b>68</b>	<b>96</b>	<b>10</b>









**Legend**

- Model Conduits (Pipes and Natural Channels)
- City of Fargo "Storm Mains"
- Model Subcatchments

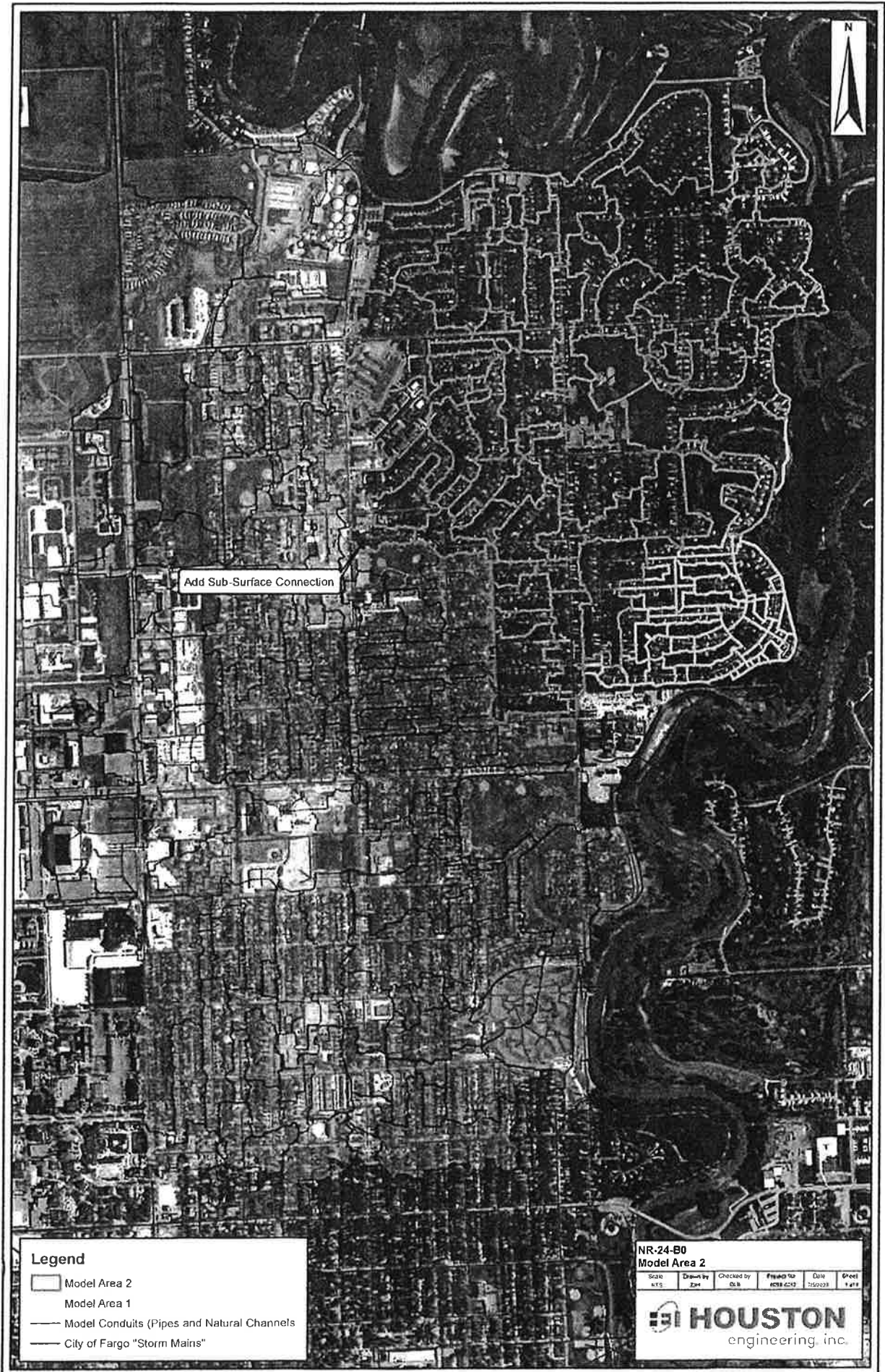
**NR-24-B0**  
**Modeled & Storm Mains Comparison**

Scale	Drawn by	Checked by	Project No.	Date	Sheet
NIS	Zm	O.B.	NR24-B0	05/02/20	1 of 1













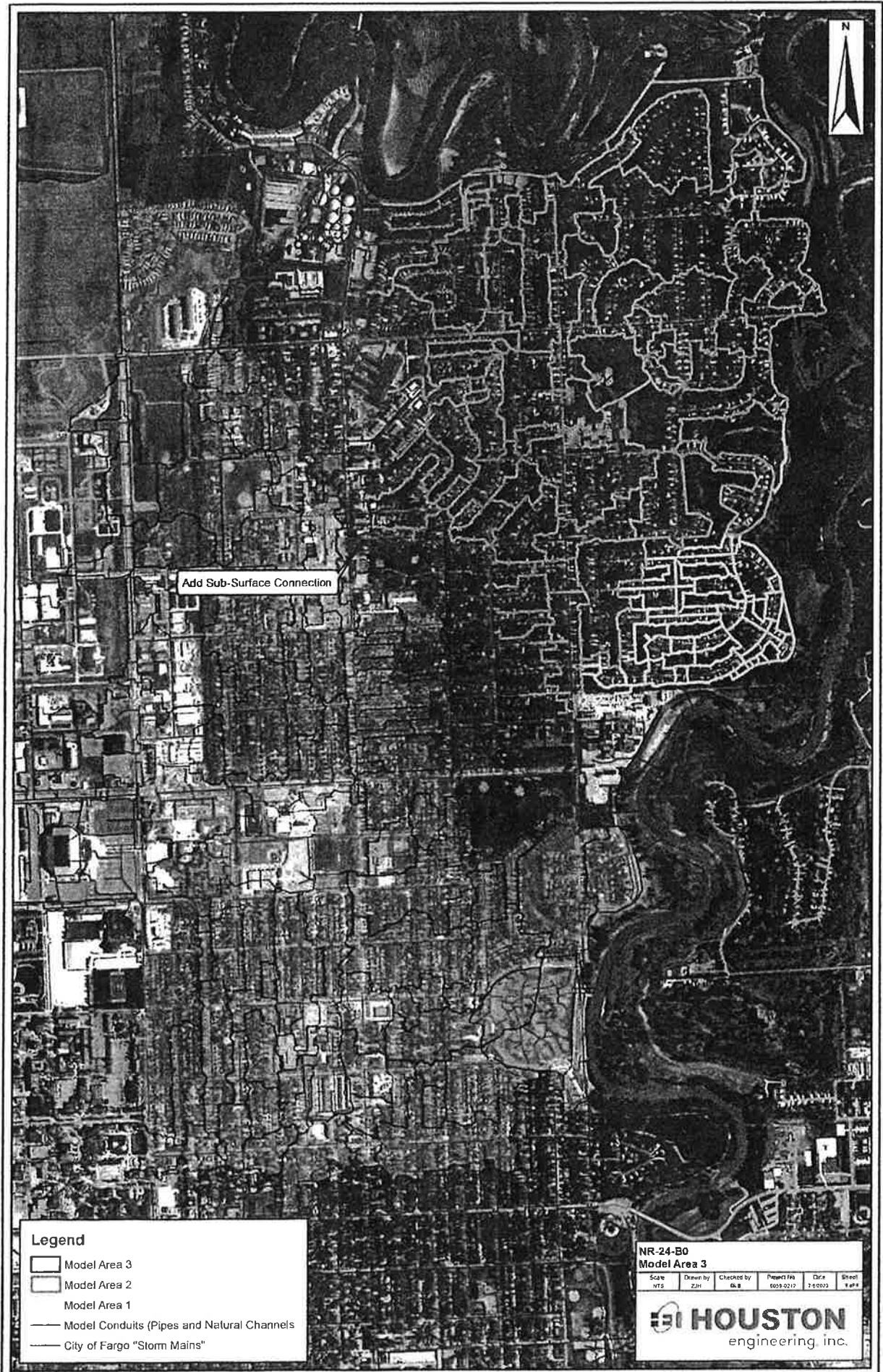
**Legend**

-  Model Area 2
-  Model Area 1
-  Model Conduits (Pipes and Natural Channels)
-  City of Fargo "Storm Mains"

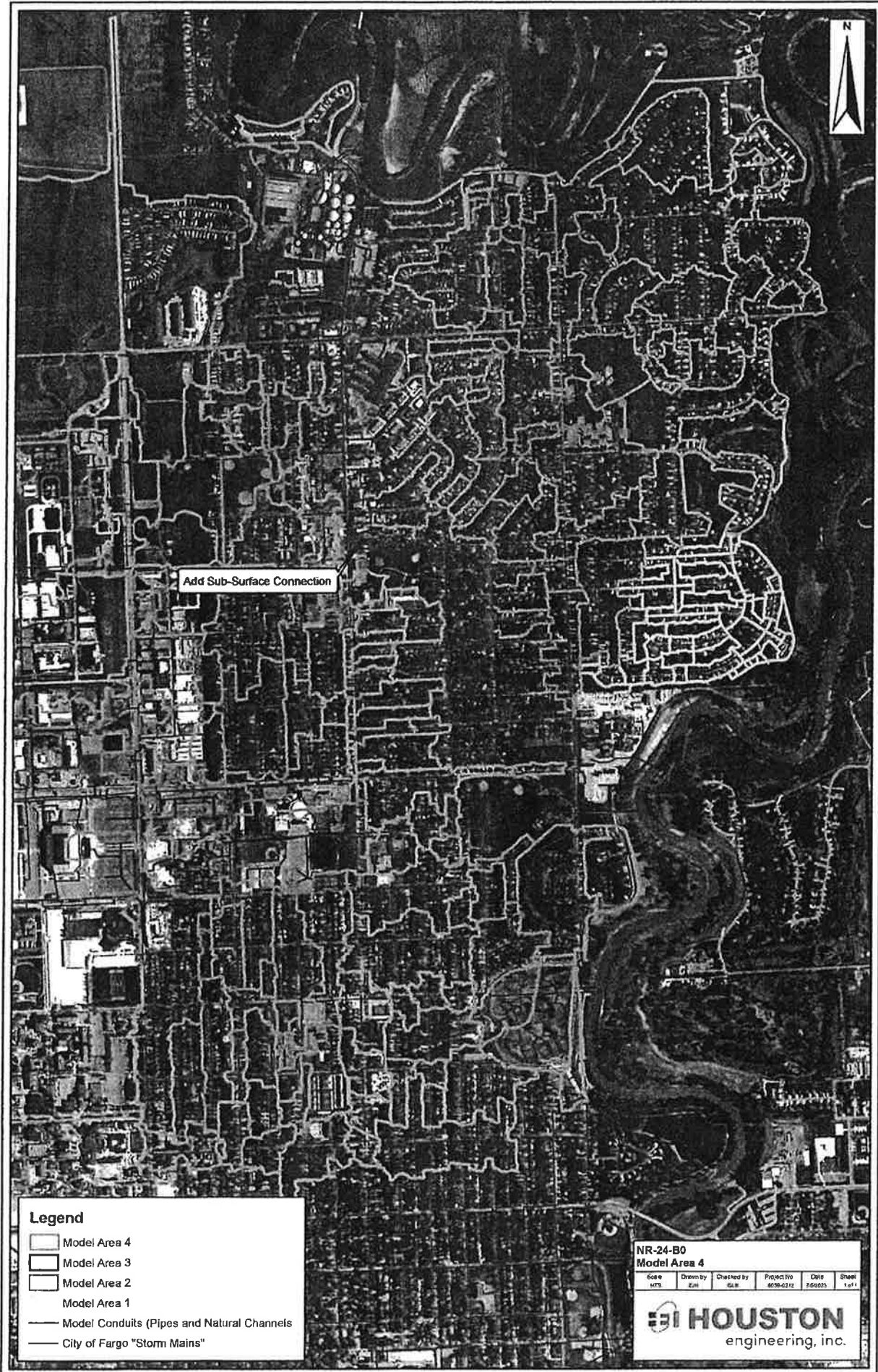
NR-24-B0  
Model Area 2

Scale	Drawn by	Checked by	Project No.	Date	Sheet
N.T.S.	Zm	DLB	NR-24-B0	7/25/2018	1 of 1

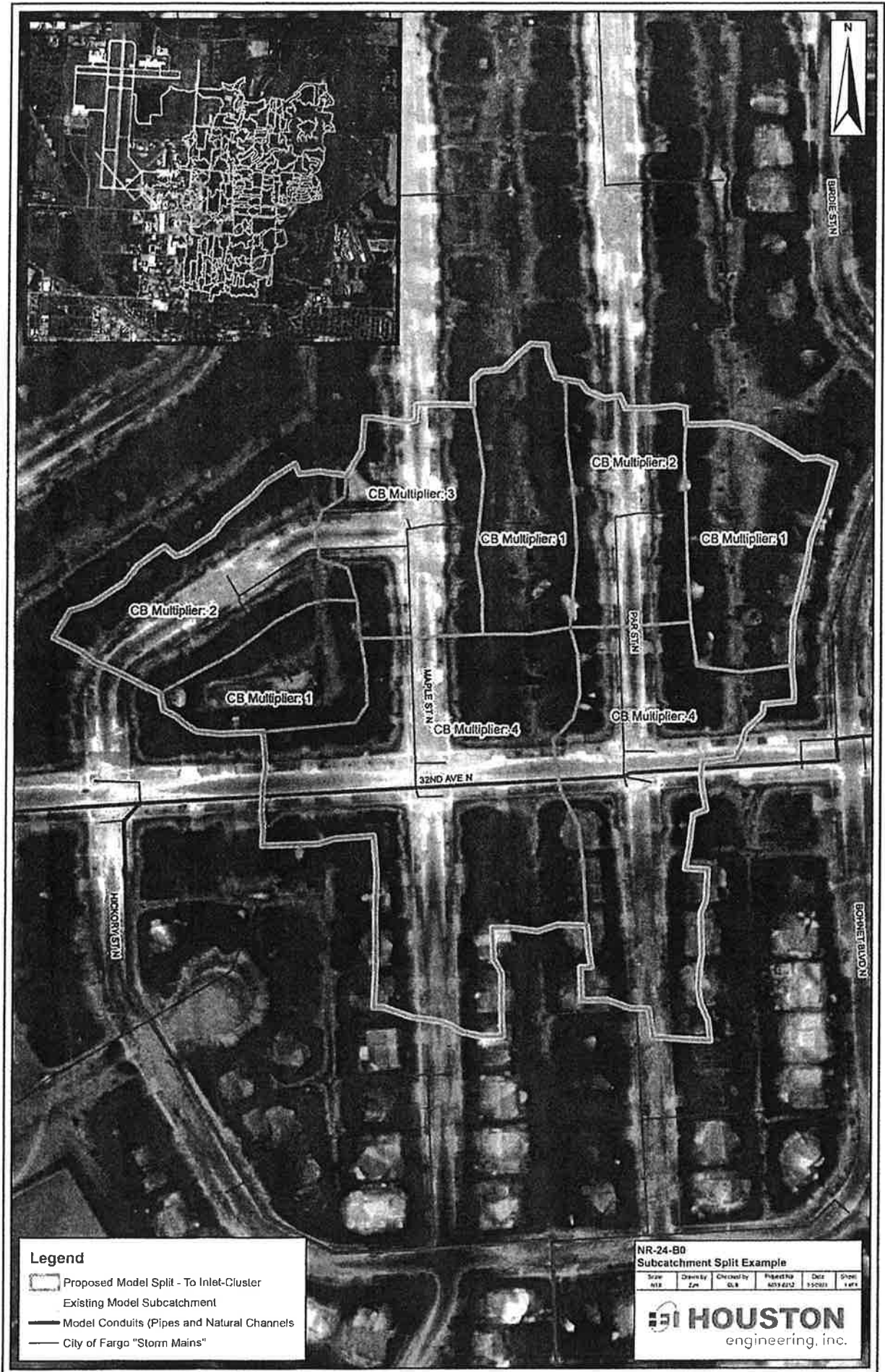












REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

11

Project No. UR-23-C1

Type: Emergency Sanitary Sewer Repair

Location: 24<sup>th</sup> Street & 3<sup>rd</sup> Avenue South

Date of Hearing: 7/17/2023

<u>Routing</u>	Date
City Commission	<u>7/24/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Leonard</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, regarding approval of Emergency Sanitary Sewer Repair for Project No. UR-23-C1.

The Engineering Department and Public Works Department have been working to address two recently discovered sanitary sewer issues at the intersection of 24<sup>th</sup> Street and 3<sup>rd</sup> Avenue South. Public works televised the sanitary sewer main after noticing a settlement to the roadway that has been getting progressively worse. The televising revealed a joint separation on the existing 12" CIP sanitary sewer main that is causing flows to be restricted and soil to enter the main. When investigating the area the sanitary discharge pipes were also televised and it was discovered that the top of the VCP was broken and the top of the pipe was completely gone.

Engineering requested quotes to perform the repair and selected Key Contracting in the amount of \$274,513 to do the work.

On a motion by Bruce Grubb, seconded by Steve Sprague, the Committee voted to recommend approval of payment to Key Contracting in the amount of \$274,513 to complete the Emergency Sewer Repair.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve payment to Key Contracting in the amount of \$274,513 to complete the Emergency Sewer Repair.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sewer Utility Funds

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

COMMITTEE

	Present	Yes	No	Unanimous
				<u>    </u>
Tim Mahoney, Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dawn Stollenwerk
Michael Redlinger, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Interim Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

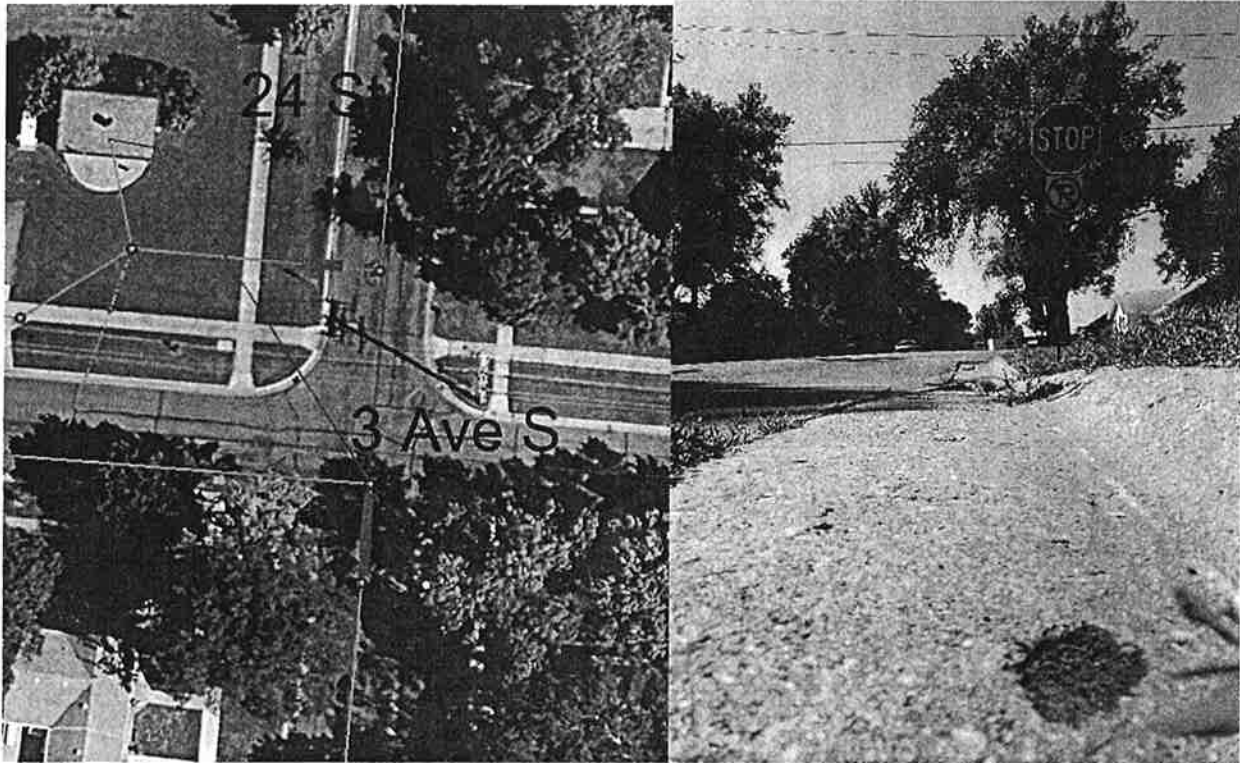
C: Kristi Olson

  
 Tom Knakmuhs, P.E.  
 City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Jason Leonard, Civil Engineer II  
**Date:** July 13, 2023  
**Re:** Emergency Sewer Spot Repair at 24<sup>th</sup> Street & 3<sup>rd</sup> Avenue South

The Engineering Department has been working with the Public Works Department to address two recently discovered sanitary sewer issues at the intersection of 24<sup>th</sup> Street South and 3<sup>rd</sup> Avenue.

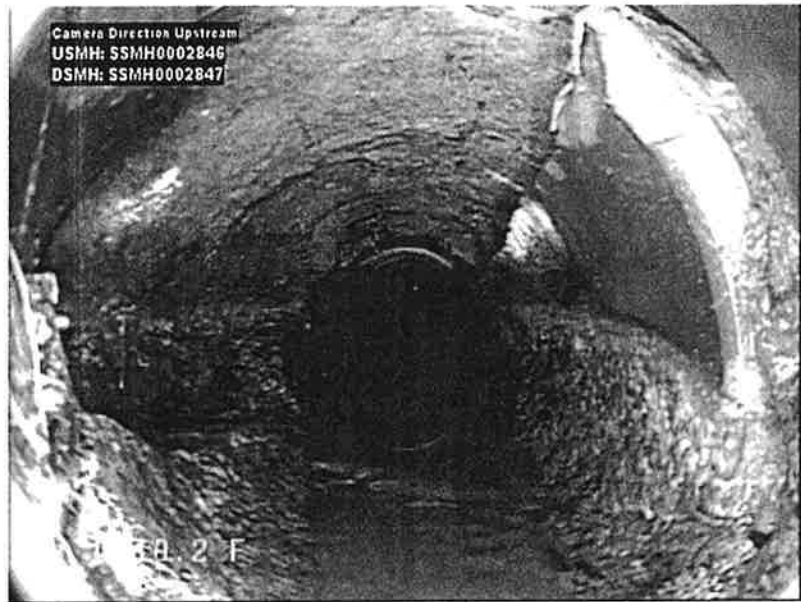


Showing the location of the two failures on the left image and the north failure location on the right image where the curb and roadway has settled 10" due to underground embankment erosion

The Public Works Department televised the sanitary sewer main after noticing a settlement to the roadway that has recently been getting progressively worse. The televising revealed a joint separation on the existing 12" CIP sanitary sewer main that is causing flows to be restricted and soil to enter the main. When investigating this location, the sanitary discharge pipes were also televised and it was discovered that the top of the VCP was broke and the top of the pipe was completely gone.



North Failure – CIP Joint Separation



South Failure – Top of VCP is missing

On June 30, 2023, we requested quotes from five qualified contractors to perform the repair. In addition to the lump sum price, we required the submission of a proposed schedule as to when the contractor would be available to complete the work. We received quotes from two Contractors:

- Key Contracting – lump sum \$274,513.00 with a start date of July 25, 2023.
- Ryan Contracting – lump sum \$289,900.00 with a start date of August 2, 2023.
- Dirt Dynamics – No Bid
- Dakota Underground - No Bid
- R&R Excavating – No Bid

**Recommended Motion:**

Approve Key Contracting quote of \$274,513.00 to perform the Emergency Sewer Repair, paid by Sewer Utility Funds.

	<h1 style="margin: 0;">Purchasing Quote Form</h1>
---	---

This form is required for every purchase between \$10,001 and \$50,000 per item. It applies to purchases made by credit card and/or by purchase order.

Purchase Date: \_\_\_\_\_ Requisition No. or Pcard No. (last 4 digits only): \_\_\_\_\_

Purchaser Name or Purchasing Card Name: \_\_\_\_\_

What is being purchased?

Emergency Sewer Repair @ 24 St & 3 Ave S (UR-23-C1)

Is this an Emergency Purchase YES (Yes/ No) If yes, no quotes are needed. Please indicate the Total Purchase Price, describe the urgent situation in the comment section and have the Department Head sign the signature line below.

Vendor #1 Name and Quote: Key Contracting - \$274,513

Vendor #2 Name and Quote: Ryan Contracting - \$289,900

Vendor #3 Name and Quote: \_\_\_\_\_


Vendor Selected: Key Contracting

Quantity Purchased: \_\_\_\_\_ Total Purchase Price \$: 274,513

**If equipment over \$10,000 per unit was purchased, please complete the Fixed Asset Addition Form.**

Comments:

Emergency repair of sanitary sewer main and discharge pipes.  
Waste Water Utility Funds - 521

Department Head Signature (for Emergency Purchase) 

Return completed form and copy of quotes to Purchasing@FargoND.gov  
A RFQ number will be assigned to reference on the invoices that are sent to your AP tech.  
Questions, please call 701-241-1444

12

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Consent to Construction

Location: 315 27<sup>th</sup> Circle South

Date of Hearing: 7/17/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>7/24/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding a Consent to Construction with Dakota Plains Properties, LLC at 315 27<sup>th</sup> Circle South.

Dakota Plains Properties is working on an expansion project for their property at 315 27<sup>th</sup> Circle South. Part of the expansion includes work adjacent to our storm sewer easement, along with modifications to existing surface improvements on our easement.

Public Works completed a video inspection of the sanitary sewer main and it appears to be in good condition in the area, but it did show some poor quality near the railroad tracks. The easement area would need to be used to access any potential repairs needed as this sewer main crosses the railroad.

Staff is recommending approval of the Consent to Construction.

On a motion by Steve Sprague, seconded by Mark Williams, the Committee voted to recommend approval of the Consent to Construction with Dakota Plains Properties, LLC for the property at 315 27<sup>th</sup> Circle South.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Consent to Construction with Dakota Plains Properties, LLC for the property at 315 27<sup>th</sup> Circle South.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Tim Mahoney, Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dawn Stollenwerk
Michael Redlinger, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Interim Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

  
 Tom Knakmuhs, P.E.  
 City Engineer

C: Kristi Olson

# Memorandum

**To:** Members of PWPEC  
**From:** Kevin Gorder, Division Engineer  
**Date:** July 14, 2023  
**Re:** Consent to Construct – Dakota Plains Properties, LLC  
315 27<sup>th</sup> Circle South

---

## **Background:**

Dakota Plains Properties, LLC is working on an expansion project for their property at 315 27<sup>th</sup> Circle South. Part of the expansion includes work adjacent to our storm sewer easement along with modifications to existing surface improvements on our easement. The improvements also include a fire access on the sanitary sewer easement. The Agreement details concerns about the expansion and current improvements on the easement and the expectations on the use of the property in our easement area.

Public Works completed a video inspection of the sanitary sewer main and it appears to be in good condition in the area Dakota Plains Properties is improving, but it did show some poor quality near the railroad tracks. The easement area would need to be used to access any potential repairs needed as this sewer main crosses the railroad.

## **Recommended Motion:**

Recommend approval of the Consent to Construct on the sanitary sewer easement for the property at 315 27<sup>th</sup> Circle South.

KOG/klb  
Attachment



**CONSENT TO CONSTRUCTION AGREEMENT**

COME NOW, **Dakota Plains Properties, LLC**, a North Dakota limited liability company (“Dakota Plains”), 512 Willow Bend Cir Casselton, ND 58012, and the **City of Fargo**, a North Dakota municipal corporation (“City”), 225 4th Street North, Fargo ND, and enter into this Consent to Construction Agreement (“Agreement”).

**WHEREAS**, by the “Vacation Plat” recorded June 1, 1998 as Document #901335, a portion of 28<sup>th</sup> Street SW street right-of-way was vacated reserving unto the City a 20’ wide sanitary sewer easement centered along the vacated 28<sup>th</sup> Street SW right of way consisting of 10’ on each side of the centerline;

**WHEREAS**, by the “Plat of Lavelle Second Addition” recorded August 27, 2013 as Document #1397797 an additional 10’ wide sanitary sewer easement was dedicated to the City on the northwest side of the existing 20’ wide sanitary sewer easement resulting in a total 30’ wide sanitary sewer easement (the “Easement Area”);

**WHEREAS**, Dakota Plains is the successor in interest to a portion of the vacated street right of way, upon which the City’s sanitary sewer easement is located, more particularly described as:

Lot 2, Block 1 Lavelle Third Addition, City of Fargo, Cass County

**WHEREAS**, Dakota Plains now seeks permission to use the Easement Area in a manner inconsistent with the grant and purpose of the easement. Specifically, Dakota Plains wishes to construct a building adjacent to the Easement Area and continue to use an existing concrete lot constructed over the Easement Area for access across its property (hereinafter “Surface Improvements”).



NOW, THEREFORE, the parties hereby agree and the City consents that Dakota Plains may construct the building, and further may retain the Surface Improvements in the Easement Area under the following terms and conditions.

1. Dakota Plains shall be permitted to construct the building adjacent to the Easement Area upon approval of the plans and location by the City in advance of such installation. Such approval shall not be unreasonably withheld by City. Dakota Plains shall be permitted to retain the Surface Improvements upon the Easement Area in accordance with the terms of this Agreement.
2. Dakota Plains shall protect the sanitary sewer and customary appurtenances ("City Infrastructure") and ensure the City Infrastructure is not damaged during construction. No construction shall occur within 5' of the location of City Infrastructure. Dakota Plains shall follow all North Dakota One Call requirements, N.D. Cent. Code § 49-23-01, prior to any construction activity occurring near the Easement Area. City shall have no responsibility for any costs or expenses incurred by Dakota Plains required to engage in the construction or maintenance of the permitted Surface Improvements or to ensure protection of the City Infrastructure located in the Easement Area.
3. Dakota Plains shall be responsible for the cost of any repairs, removal or relocation to the City Infrastructure for which the grant was given, which is damaged by any of the construction activities undertaken by Dakota Plains as permitted herein or by Dakota Plains' activity upon or near the Easement Area.
4. City shall not be responsible for any damage or repairs to the Surface Improvements permitted herein within, near, or upon the Easement Area.
5. To the extent possible, City shall provide Dakota Plains with 30 days written notice of any scheduled or necessary work on City Infrastructure located within the Easement Area, except in the event of an emergency. If the City, in its sole discretion, determines an emergency exists, the City will begin any necessary repairs without notice to Dakota Plains. The City will then give notice as soon as possible after emergency repairs have started. Upon completion of City's work on City Infrastructure, it will fill the excavation site, if necessary, and return the Easement Area to level surface. If it becomes necessary for the Surface Improvements to be removed for protection of the City Infrastructure, then Dakota Plains shall be solely responsible for the removal and cost thereof as well as replacing the Surface Improvements. City shall not be responsible for the replacement or cost of replacing the Surface Improvements.
6. Dakota Plains Investments shall not be allowed to place any excavation, inventory, supplies, vehicles, construction materials, or other debris on the Easement Area before, during, and after construction.
7. Dakota Plains hereby recognizes and acknowledges that City's sanitary sewer easement located upon Dakota Plains' property affords the City the reasonable right of access to the

Easement Area for the customary use and purpose of the dedication, including the rights of ingress and egress to perform maintenance, repairs, and improvements to the City Infrastructure located within or upon the Easement Area. Dakota Plains hereby agrees it will not undertake any actions to impede or impair the City's right of access.

8. To the fullest extent permitted by law, Dakota Plains agrees to hold the City harmless against any and all expenses, demands, claims, or suits for damages or injury of any kind that may be brought against the City, its officers, agents, and employees arising from Dakota Plains' construction of the building and maintenance of the Surface Improvements.
9. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree that any dispute arising out of this Agreement shall be venued in State District Court in Cass County, North Dakota, and the parties hereby expressly waive any objection to personal jurisdiction.
10. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.
11. This Agreement constitutes the entire agreement between the parties regarding the matters described herein.
12. Any modifications or amendments of this Agreement must be in writing and signed by both parties.

**Remainder of Page Intentionally Left Blank**



IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this

19 day of July, 2023.

Dakota Plains Properties, a North Dakota limited liability company

Kyle Jorissen  
By: \_\_\_\_\_

Its: Owner

STATE OF North Dakota  
) ss.  
COUNTY OF CCSS )

On this 19<sup>th</sup> day of July, 2023, before me, a notary public in and for said county and state, personally appeared Kyle Jorissen, the owner of Dakota Plains Properties, LLC the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.

[Signature]  
\_\_\_\_\_  
Notary Public  
CCSS County, North Dakota  
My Commission expires:  
Nov 05, 2023

(SEAL)

**BRYCE HEITMAN**  
Notary Public  
STATE OF NORTH DAKOTA  
My Commission Expires  
November 05, 2023



13

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Encroachment Agreement

Location: 1001 NP Avenue North

Date of Hearing: 6/30/2023

<u>Routing</u>	<u>Date</u>
City Commission	7/24/2023
PWPEC File	X
Project File	Kristy Schmidt

The Committee reviewed a communication from Civil Engineer II, Kristy Schmidt, regarding an Encroachment Agreement at 1001 NP Avenue North.

During the construction of the development at 1001 NP Avenue North, a retaining block wall was installed 2.0' into the City right of way along NP Avenue. There are also landscaping elements installed along the west side of 10<sup>th</sup> Street and adjacent to their development. The Owner is asking for an Encroachment Agreement and to waive the annual fee of \$500.

Staff is recommending formalizing the existing encroachment with an Encroachment Agreement with the following stipulations:

- Hold the City harmless against any and all expenses, demands, claims or losses sustained by the City by use of the public right of way by the Encroacher.
- Will be responsible for paying all costs above and beyond those the City would have incurred to return the area to a vegetated surface in association with future improvement districts.
- Agreement expires upon sale or transfer of the property.
- Pay \$500 processing fee.

On a motion by Nicole Crutchfield, seconded by Bruce Grubb, the Committee voted to recommend approval of the Encroachment Agreement at 1001 NP Avenue North and waive the annual fee.

RECOMMENDED MOTION

Approve the Encroachment Agreement at 1001 NP Avenue North and waive the annual fee.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

	<u>Yes</u>	<u>No</u>
Developer meets City policy for payment of delinquent specials	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

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Michael Redlinger, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
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"/>	
Susan Thompson, Interim Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs, P.E.  
 City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Kristy Schmidt, CE II  
**Date:** June 27, 2023  
**Re:** Encroachment Agreement – 1001 NP Avenue North – Retaining Block Wall & Landscaping Elements

---

### **Background:**

During the construction of the development at 1001 NP Avenue North, a retaining block wall was installed 2.0' into the City right of way along NP. There are also landscaping elements installed along the west side of 10<sup>th</sup> Street and adjacent to their development. The owner is asking for an Encroachment Agreement and to waive the annual fee of \$500.

Staff is recommending formalizing the existing encroachment with an Encroachment Agreement with the following stipulation:

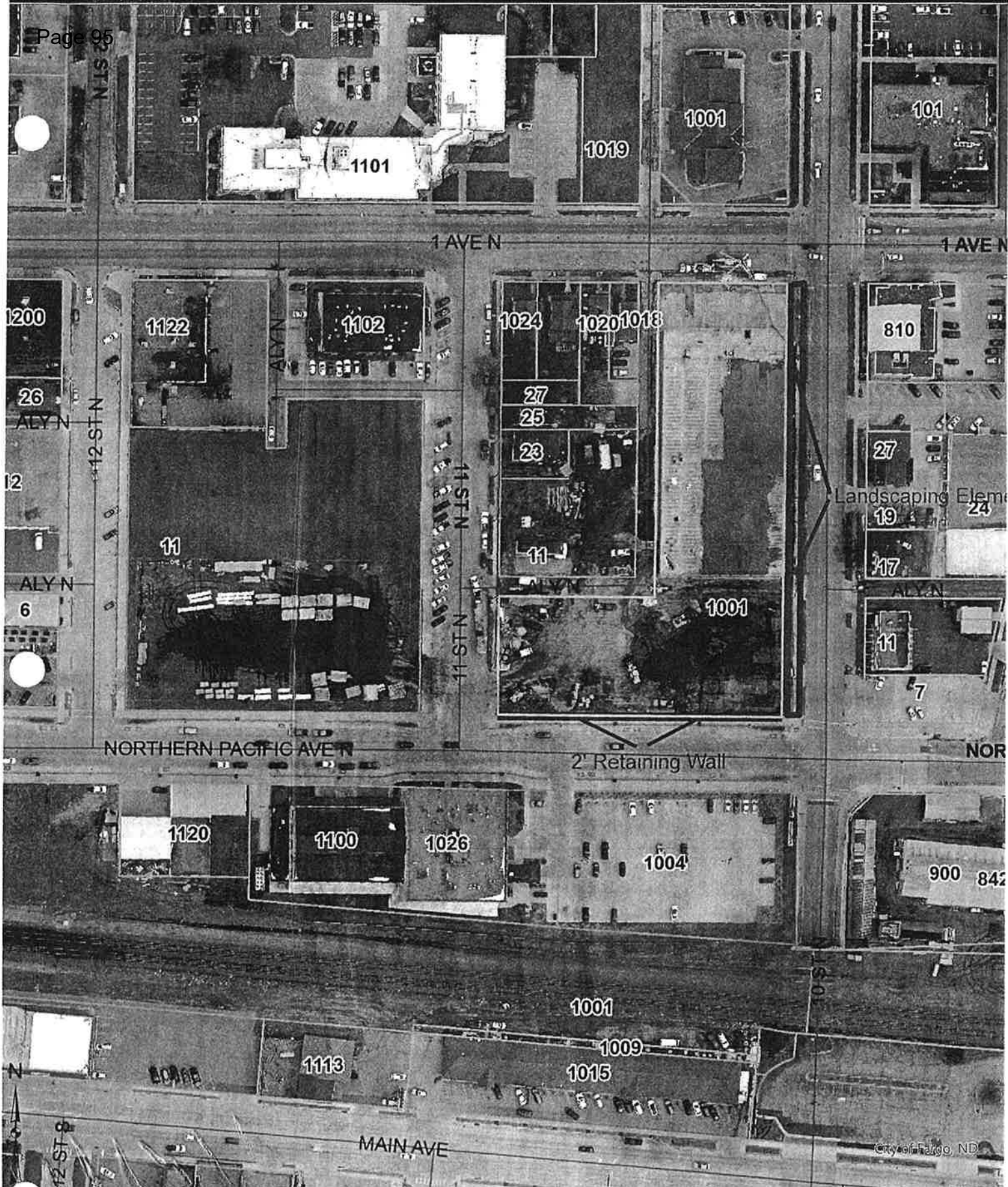
- Hold the City harmless against any and all expenses, demands, claims or losses sustained by the City by use of the public right of way by the Encroacher.
- Will be responsible for paying all costs above and beyond those the City would have incurred to return the area to a vegetated surface in association with future improvement districts.
- Agreement expires upon sale or transfer of the property.
- Pay \$500 processing fee.

### **Recommended Motion:**

Approve the Encroachment Agreement at 1001 NP Avenue North and make a recommendation regarding the \$500 annual fee.

KLS/klb  
Attachments

C: Nathan Lotvedt - KCM



This data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

# 1001 NP Encroachments

1:2,257

6/27/2023 11:39 AM

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.



**ENCROACHMENT AGREEMENT**

**THIS AGREEMENT**, is made and entered into as of the effective date below by and between the **CITY OF FARGO**, a North Dakota municipal corporation [hereinafter "City"] and **Great Plains 1001 Holdings, LLC**, a North Dakota limited liability company [referred to as "Owner"]

**WITNESSETH:**

**WHEREAS**, Owner is the fee title owner of the following described real property (the "Development Property"):

**Parcel A:**

**Lots One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven and Twelve, in Block Twenty-five, of Roberts' Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.**

**Parcel B:**

**Lots Seven, Eight, Nine, Ten, Eleven and Twelve, in Block Twenty-six, of Roberts' Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.**

**Parcel C:**

**The East Seventy feet of Lots One, Two and Three, and the South One foot of the East Seventy feet of Lot Four, in Block Twenty-six, of Roberts' Second Addition to the City of Fargo, situate in the County of Cass and the State of**



**North Dakota.**

**WHEREAS**, Owner has built a mixed-use building (“Development”) on the Development Property; and

**WHEREAS**, the difference between the required floor elevation and the sidewalk along NP Avenue created a need for a short retaining wall. This wall was partially built on the City’s Public Right Of Way (“PROW”)

**WHEREAS**, Owner has also requested additional landscape elements along 10<sup>th</sup> St N to provide planting beds in the street boulevard. Together the retaining wall and planting beds encroachments are defined as “Encroachment Elements”; and

**WHEREAS**, the City agrees to allow the Encroachment Elements under certain terms and conditions stated herein.

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

1. Owner covenants and agrees that it owns all right, title and interest in the Development Property.

2. City hereby grants Owner the right to encroach upon a portion of the PROW and use a portion of the street boulevard along NP Avenue for the purpose of installing and maintaining the Retaining Wall Element (and no other purposes) and only in the specific locations shown on Exhibit A. Said Encroachment Elements have the sole purpose to serve the Development Property.

3. City hereby grants Owner the right to encroach upon a portion of the PROW and use a portion of the street boulevard on 10<sup>th</sup> Street North for the purpose of installing and maintaining Landscaping Elements (and no other purposes). Said Encroachment Elements have the sole purpose to serve the Development Property. Should Landscaping Elements be disturbed by the City, permitted utilities, or franchise utilities the Owner shall be responsible for replacing the Landscaping Elements.

4. This Agreement is personal to Owner and cannot be sold, transferred or otherwise assigned, except as provided for herein. Notwithstanding the foregoing sentence, this Agreement is transferable to subsequent owners, successors and assigns of the Development Property, provided (1) City has not terminated the Agreement as provided herein; and (2) Owner, its successors or assigns, provides a notice of transfer to City within 30 days of such transfer; and (3) Owner, its successors and assigns provides City a certificate of insurance within 30 days of transfer, evidencing continued, uninterrupted insurance as provided for herein. Failure to abide by these requirements may be cause for termination of this Agreement. Further, while in force, this Agreement shall be binding upon subsequent owners, successors and assigns of the Development Property, irrespective of whether the foregoing conditions have been satisfied.

5. Owner is responsible for all costs to design, install, maintain, and replace the Encroachment Elements and any associated public improvements (“Owner’s Work”). City shall have no obligation, liability, or responsibility for costs incurred by the Owner to complete the Encroachment Elements, including, but not limited to, contractor and engineering fees. Owner’s contractor(s) and engineer(s) must be licensed under the laws of the State of North Dakota, and otherwise be responsible contractors and engineers as reasonably determined by City. City shall have no obligation, liability, or responsibility for the costs incurred by the Owner to complete the Owner’s work under this Agreement. In no event will City be responsible for any payments, including payments for additional work or costs occasioned by unforeseen or changed conditions encountered in doing the work. Except as expressly provided otherwise in this Agreement, the parties understand and agree that City shall have no responsibility for repairs or costs thereof to the Encroachment Elements, or damages which may be occasioned by such repairs, in the event City completes any repairs to existing infrastructure upon, within, overlying, or underlying the PROW. Owner also agrees to be responsible for any repair costs caused by any private utilities typically installed in the PROW when private utilities use construction methods typically associated with their installation and maintenance.

6. The parties further understand and agree that the cost of any repairs to the PROW and street boulevard and existing public infrastructure therein or adjacent thereto caused by or resulting from by the Encroachment Elements shall be Owner’s sole financial responsibility, and further understand and agree that the costs thereof shall be assessed directly to the Development Property following the Infrastructure Funding Policy in effect at the time of repairs. City will levy special assessments against the Development Property to recover all costs of the Project, in accordance with N.D.C.C. Chapter 40-22. Developer waives its right to protest the resolution of necessity for the improvements for which such resolutions are required pursuant to North Dakota Century Code section 40-22-17, and specifically consents to the construction of the improvements and to the assessment of all costs thereof to the Development Property. Developer further waives its right to protest the amount, benefit or any other assessment attribute related to such work completed by City. Project costs, which may be assessed against the Development Property, include all costs of completing such work, including engineering, fiscal agent’s and attorney fees, and all other costs authorized by law.

7. The Owner shall use due care when working around any public or private infrastructure and/or other public improvements located upon, within, overlying, or underlying the PROW and will design and construct their Encroachment Elements in a manner that will not impact the continued use thereof. The Owner will give the City notice when performing any such work.

8. If Owner damages any public or private utilities and/or other public improvements any time during the construction of the Encroachment Elements, City will make the necessary repairs to same and Owner agrees to be financially responsible for such repairs.

9. Owner understands and agrees that City construction upon, within, overlying, or underlying the PROW, including but not limited to repair of any public utilities and/or other public improvements in the PROW, may damage or impact the Encroachment Elements. City

shall have no responsibility for any damage to, nor shall City be responsible to restore or reconstruct, the Encroachment Elements. Owner shall be responsible for all repairs and replacement of the Encroachment Elements unless City fails to use due and proper care resulting in damage to the Encroachment Elements.

10. To the extent Owner no longer occupies the Encroachment Area, or if this Agreement is terminated, City shall determine if the Owner must remove or may appropriately abandon in place all Encroachment Elements and restore and replace all public property thereby affected to its pre-encroachment condition. The City must approve the construction methods if the Encroachment Elements are left in place. It is understood and agreed that Owner, its successors and assigns, are responsible for the repair or replacement of any public property, at Owner's cost and expense.

11. Except as expressly provided otherwise in this Agreement, Owner, its successors and assigns, agrees to defend and hold the City harmless against any and all expenses, demands, claims or losses of any kind that may be sustained by or asserted against City, its officers, agents and employees, its property, streets, sidewalks, or any other municipal improvements by reason of the Owner's use of the PROW pursuant to this Agreement. Owner agrees to provide to the City a certificate of insurance indicating acceptance by its insurer of its obligation to defend and hold the City harmless as hereinabove stated.

12. It is specifically understood and agreed that the City retains authority to operate and maintain existing above ground and underground municipal facilities in the PROW. The intent of this Agreement is to allow the Encroachment Elements to remain in place for so long as the Development remains on the Development Property. In the event that City determines there is a public need for some or all of that portion of the PROW occupied by the Encroachment Elements while the Development remains in place, including but not limited to the provision of public services such as street widening, storm and sanitary sewer repair and installation and/or water main repair and installation, and the continued presence of some or all of the Encroachment Elements is no longer practicable, as determined by City, under the circumstances, City may, as determined by the City Commission, terminate Owner's rights, in whole or in part, under this Agreement and then provide written notice to Owner. Upon notice of such termination by the City Commission, Owner's rights shall be terminated and Owner shall have 360 days to remove and/or appropriately abandon in place all Encroachment Elements that are the subject of such notice.

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

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

15. The failure or delay of City to insist on the performance of any of the terms

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

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

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

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

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

20. Owner agrees to pay City a \$500 processing fee.

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



Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

City of Fargo, a North Dakota  
Municipal Corporation

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

ATTEST:

\_\_\_\_\_  
Steve Sprague, City Auditor

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

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, a notary public in and for said county and state, personally appeared Timothy J. Mahoney, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

\_\_\_\_\_  
Notary Public  
Cass County, ND  
My Commission expires:

(SEAL)

**EXHIBIT A**  
Encroachment Element Locations

Provided by Kilbourne





PART OF NORTHERN PACIFICE AVE. & 10TH ST. N.  
ADJACENT TO 1001 NP ADDITION  
CITY OF FARGO, CASS COUNTY  
STATE OF NORTH DAKOTA

Description - Encroachment Easement:

The North 2.00 feet of Northern Pacific Avenue right-of-way adjacent to Lot 1,  
Block 1, 1001 NP Addition to the City of Fargo, Cass County, North Dakota.

Said tract contains 585 square feet, more or less.



# ENCROACHMENT EASEMENT

H:\BIN\7800\7862\7862\_0013\CAD\Easements\7862-0013 Encroachment Easement.dwg

PROJECT NO.  
7862-0013

PART OF NORTHERN PACIFICE AVE. & 10TH ST. N.  
NEAR 1001 NP ADDITION, CITY OF FARGO, CASS CO., ND

SHEET  
2 OF 2

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

14

Type: Boulevard Parking (Update)

Location: 1001 8<sup>th</sup> Street South

Date of Hearing: 5/22/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>7/24/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Tom Knakmuhs</u>

The Committee reviewed a communication from Assistant City Engineer, Tom Knakmuhs, regarding an update to the boulevard parking issue discussed at the previous PWPEC meeting.

Engineering met with the homeowners of 1001 8<sup>th</sup> Street South and feel the driveway approach should remain. We propose the use of an Encroachment Agreement with the following conditions:

- Hold harmless statement
- List the City as an additional insured
- Encroachment Agreement would no longer be valid if the historic carriage house were to be removed and a garage, or other parking, be installed in its place
- Encroachment Agreement would not waive any of the requirements of Article 8-1020 of the Fargo Municipal:
  - Parked vehicles shall not extend into the street or block any portion of the public sidewalk

On a motion by Steve Sprague, seconded by Ryan Erickson, the Committee voted to recommend approval of an Encroachment Agreement for the owners at 1001 8<sup>th</sup> Street South and waive the application fee and the annual fee.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Encroachment Agreement for the owners at 1001 8<sup>th</sup> Street South and waive the application fee and the annual fee.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>        </u>
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Mark Williams</u>
Michael Redlinger, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Ryan Erickson</u>
Ben Dow, Director of Operations	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Bruce Grubb</u>
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>        </u>
Brenda Derrig, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>        </u>
Vacant, Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>        </u>

ATTEST:

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

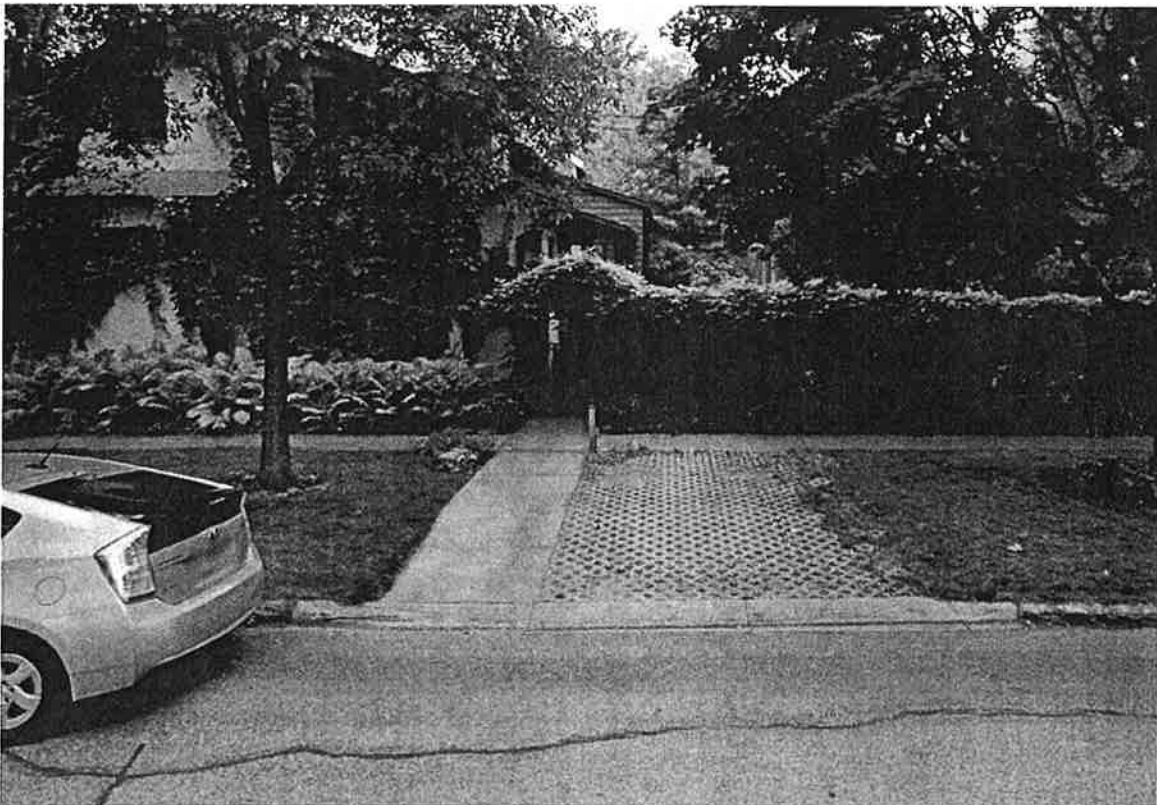
# Memorandum

**To:** Members of PWPEC  
**From:** Tom Knakmuhs, Assistant City Engineer  
**Date:** May 18, 2023  
**Re:** Boulevard Parking Update

---

**Background:**

I would like to provide the Committee with an update to the boulevard parking issue that we discussed at the previous meeting. I met with the homeowners at the property shown below (1001 8<sup>th</sup> Street South) and feel there are a number of reasons why this driveway approach should be allowed to remain.



We have met with the City Attorney's office and in the event that PWPEC concurs with Engineering's recommendation, we believe that an Encroachment Agreement would be the right tool to document and allow the driveway approach to remain.

PWPEC – 5/18/2023  
Boulevard Parking Update  
Page 2

Here are a few conditions that we would propose to be included in the Encroachment Agreement:

- Hold harmless statement
- List the City as an additional insured
- Encroachment Agreement would no longer be valid if the historic carriage house were to be removed and a garage, or other parking, be installed in its place
- Encroachment Agreement would not waive any of the requirements of Article 8-1020 of the Fargo Municipal:
  - Parked vehicles shall not extend into the street or block any portion of the public sidewalk

Since this encroachment exists today and because there is just reasoning in allowing it to remain, I recommend that both the initial fee and the annual fee be waived.

**Recommended Motion:**

Direct the City Attorney to draft an Encroachment Agreement for the owners at 1001 8<sup>th</sup> Street South and waive both the initial \$500 fee and the annual \$500 fee.

TAK/klb  
Attachments

Dear Mr. Knakmus,

We want to thank both you and Brian Skanson for taking the time to visit with us regarding the dilemma we are facing in connection with the current project to repave portions of 8th Street and 10th Avenue in our historic part of town.

As we discussed with each of you, for over a decade or more we have been parking one of our two cars (a Prius and a Honda Accord), on a small portion of the boulevard adjoining 10th Avenue near the back entrance to our home. Like most families in Fargo, we need a second parking space because we have two cars, and in our case we have only a small one car garage (formerly a carriage house) that was built back in 1910 and matches the heavy stucco on our home, which was built at the same time.

For most of the 53 years that we have lived in our current home, we were able with some difficulty to deal with the parking issues. About a decade ago, however, as we got older and our parents and older friends were having difficulties getting to our home, we made arrangements to have a small parking spot installed on the boulevard close to our back entrance. Ene is surprised to learn that there is no written record of being granted permission to install at our expense a small parking spot on the boulevard to park one of our cars after she called the city to discuss the proposed project and was granted permission to go ahead by the person in charge. We certainly would never have gone ahead with the project if we had not been given permission.

The additional nearby parking on the boulevard has made life easier for us and our friends and parents, and since we have used it only to park our small Honda Accord, it has not created any sort of an eyesore for the neighbors. We have no intention of ever using the space to park pickups or other larger vehicles.

Shortly after we installed the parking space, the need for it on the boulevard became particularly acute because the City decided to eliminate any possibility of parking on our side of the street and our side of the avenue for nearly half the year when it initiated a no parking policy on one side of each avenue and each street in our part of town. The policy is in effect for five and a half months of each year. When there is no snow issue in November or early April, the policy is merely silly (particularly since it is not even required across the entire city). In the real winter, however, it is difficult and can be dangerous for people like us and most of our friends, who are also in or near their 80s, to access our home. After we park our cars on the far side of the avenue or street, we have to try to squeeze out of the passenger side of the car because of the large built up snow piles pushed up by the plows block the passenger side doors, then as we step out of the car we have to deal with the slippery areas of ice and packed snow that often collect on the edges of the streets after a warm spell, and then we have to cross an icy street or avenue, sometimes with canes or walkers.

We recently found out that as part of this summer's 8th Street and 10th Avenue projects, the City plans to eliminate our parking spot on the north boulevard. Such action will make our lives, as senior citizens, very difficult and inconvenient, particularly during the five and a half month period when we cannot park on the street and avenue next to our home.

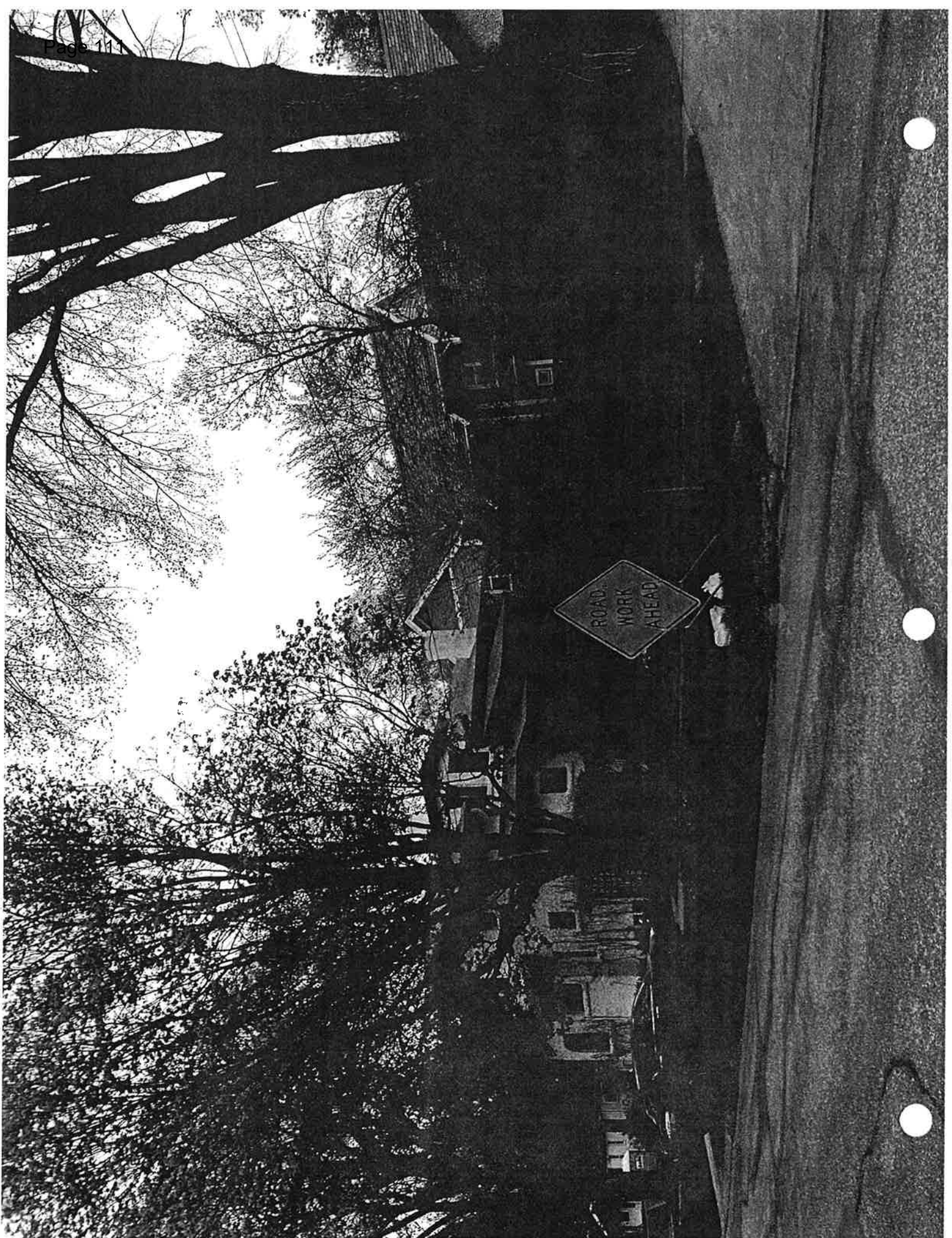
This summer we were planning to replace the current boulevard parking spot, which is starting to deteriorate, but we put off any action when we found out about the repaving projects and its potential effects on our parking spot. We certainly expect to pay for any revision of the current spot that the City might suggest so long as we retain our ability to park one of our cars on the boulevard as we have been doing for the past ten plus years.

We truly believe that there can be some way to accommodate our need for this critical parking spot that will make our lives as senior citizens more manageable and allow us to remain in this house longer. We invite you to come to our home to see why close access is so important. Attached are a few photos that show the parking spot and our use of it.

Thank you for considering our request.

Nick and Ene Vogel

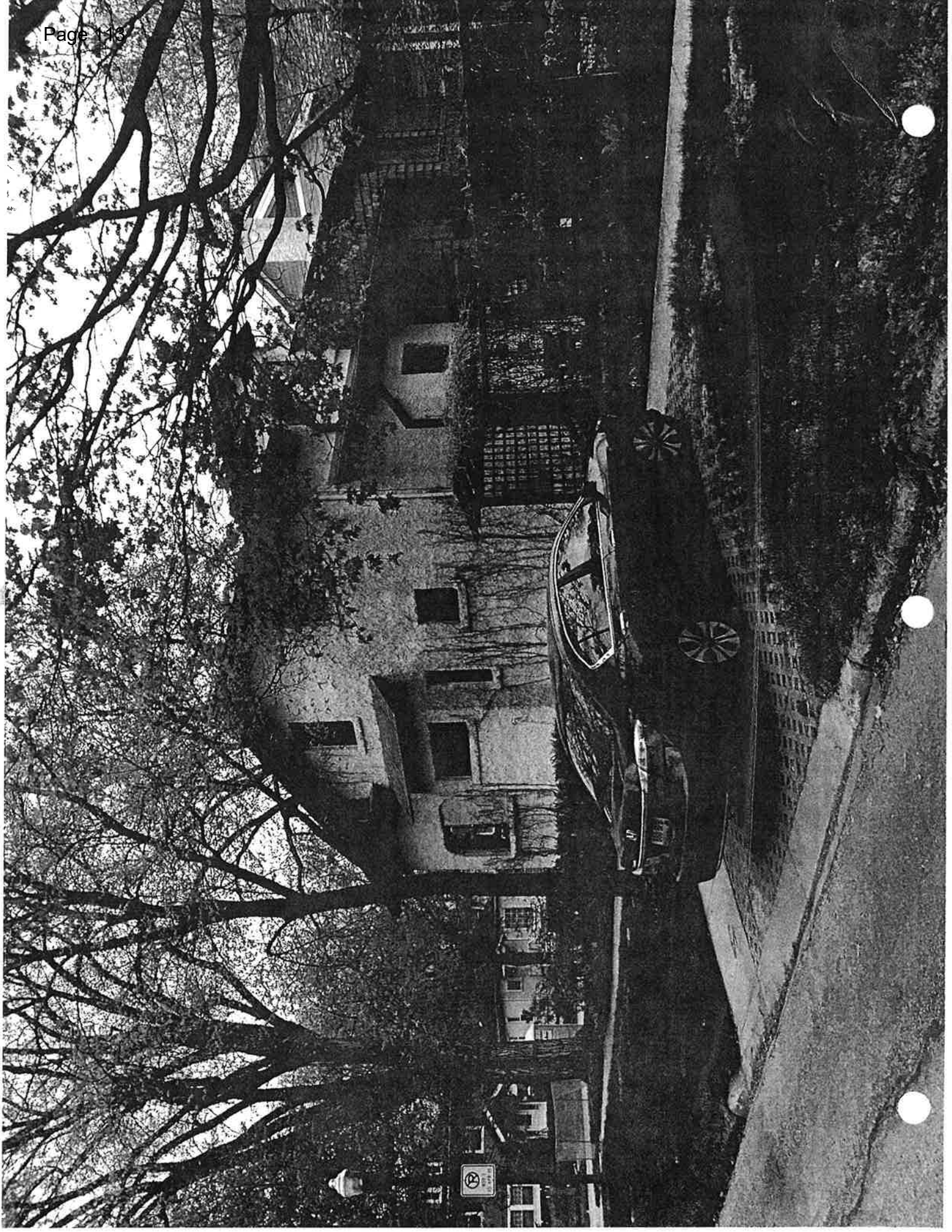
701-235-5258  
1001 - 8th Street South  
Fargo, ND 58103











**ENCROACHMENT AGREEMENT**

This ENCROACHMENT AGREEMENT (“Agreement”) is made and entered into by and between **C. Nicholas Vogel and Ene K. Vogel** (“Owner”), 1001 8th Street South, Fargo, ND 58103, and the **CITY OF FARGO**, a North Dakota municipal corporation (hereinafter referred to as “City”).

**WITNESSETH:**

**WHEREAS**, Owner is the owner of property located at 1001 8th Street South, Fargo, ND 58013;

**WHEREAS**, Owner currently has a parking surface located upon the boulevard/public right-of-way of 10th Avenue South, which does not provide access to a garage or other parking space located upon the Owner’s property;

**WHEREAS**, during the winter months parking along 8th Street South and 10th Avenue South adjacent to the Owner’s property is restricted to allow for snow removal;

**WHEREAS**, Owner desires to encroach upon the portion of the boulevard/public right-of-way to continue use of and maintain the parking surface;

**WHEREAS**, the City is in favor of allowing the Owner's encroachment due to the present circumstances;

**WHEREAS**, Owner has agreed to execute this Agreement required by City to permit the private encroachment by Owner; and

**WHEREAS**, the purpose of this Agreement is to detail the parties' responsibilities with respect to the parking surface upon the boulevard/public right-of-way.

**NOW, THEREFORE**, for good and valuable consideration hereby acknowledged, it is hereby agreed by and between the parties hereto as follows:

1. Owner owns all right title and interest in the property legally described as follows:

Lots Twelve (12) and Thirteen (13) in Block "Aa" in Erskine's Addition to the City of Fargo, Cass County, North Dakota.

(hereafter the "Property"). The Property is also known as 1001 8th Street South, Fargo, ND 58103.

2. Owner will be permitted to leave in place the existing parking surface on a portion of the boulevard/public right-of-way adjacent to the Property, which is depicted in Exhibit A (the "Encroachment Area").

3. Owner shall be solely responsible for the maintenance, upkeep, repairs, or replacements of the parking surface located upon the Encroachment Area. Owner must maintain the parking surface as a hard surface and the use of gravel, dirt, or other loose aggregate is prohibited for the parking surface. Owner shall also be solely responsible for the costs and expenses of any repairs to the boulevard/public right-of-way occasioned by Owner's use of the Encroachment Area. Owner is also responsible for any snow removal and Owner shall not place snow on the sidewalk or in the street.

4. In the event Owner fails to maintain the Encroachment Area to City's satisfaction, City agrees to notify Owner of the deficiencies. Except in the event of an emergency, as determined by City, Owner shall have 10 days in which to undertake the necessary repairs to the parking surface in the Encroachment Area. Failure to complete the repairs in a timely manner shall result in City undertaking the work. The parties understand and agree that City shall assess the costs directly to the Property following the Infrastructure Funding Policy in effect at the time of repairs. City will levy special assessments against the Property to recover all costs of the Project, in accordance with North Dakota Century Code Chapter 40-22. Owner waives its right to protest the resolution of necessity for the improvements for which such resolutions are required pursuant to N.D.C.C. § 40-22-17, and specifically consents to the construction of the improvements and to the assessment of all costs thereof to the Property. Owner further waives the right to protest the amount, benefit, or any other assessment attribute related to the work completed by City. Project costs, which may be assessed against the Owner's Property, include all costs of completing the project, including engineering, fiscal agent's and attorney fees, and all other costs authorized by law.

5. In the event that the Owner removes, replaces, improves, or renovates the carriage house/garage structure currently located on the Property in such a way as to allow parking upon the Property, then this Agreement will terminate and the Owner shall have 30 days to remove the parking surface located upon the Encroachment Area, at Owner's sole cost and expense.

6. To the fullest extent permitted by law, Owner agrees to indemnify and hold the City harmless against any and all expenses, demands, claims or suits for damages or injury of any kind that may be brought against the City, its officers, agents and employees, arising from Owner's use of or occupation of the Encroachment Area. Owner agrees to pay any and all costs the City incurs to enforce this indemnity provision, including attorney's fees. Owner also agrees to secure

insurance naming the City as an additional insured in an amount not less than \$500,000 per occurrence and shall present the certificate of insurance to the City indicating acceptance by its insurer of its obligation to defend and hold the City harmless.

7. This Agreement is personal to Owner and shall terminate upon the sale, transfer, or assignment of the Property. Subsequent owners may request permission to continue the encroachment, and enter into a separate agreement with City, which shall not be unreasonably withheld by City. The non-transferability of this Agreement is partly intended to assure the existence of the necessary insurance to defend and hold the City harmless by the responsible party.

8. It is specifically understood and agreed that in the event City needs to perform any maintenance, construction, reconstruction, removal, or utility/infrastructure work of or within the public right-of-way which requires City to remove or disturb the parking surface within the Encroachment Area, then the City shall be permitted to do so and shall not be responsible for the repair or replacement of the parking surface upon completion of its work. City shall neither repair nor replace the parking surface nor be responsible for any costs occasioned by the City's work in the vicinity of the Encroachment Area.

9. It is further understood and agreed that by allowing this encroachment the City is not waiving Owner's compliance with the requirements of Fargo Municipal Ordinance 8-1020 to avoid parking in such a way as to obstruct the sidewalk or allowing a vehicle to extend into the street. Owners hereby agree that their use of the Encroachment Area will not impede or block the public sidewalk.

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

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

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

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

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

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

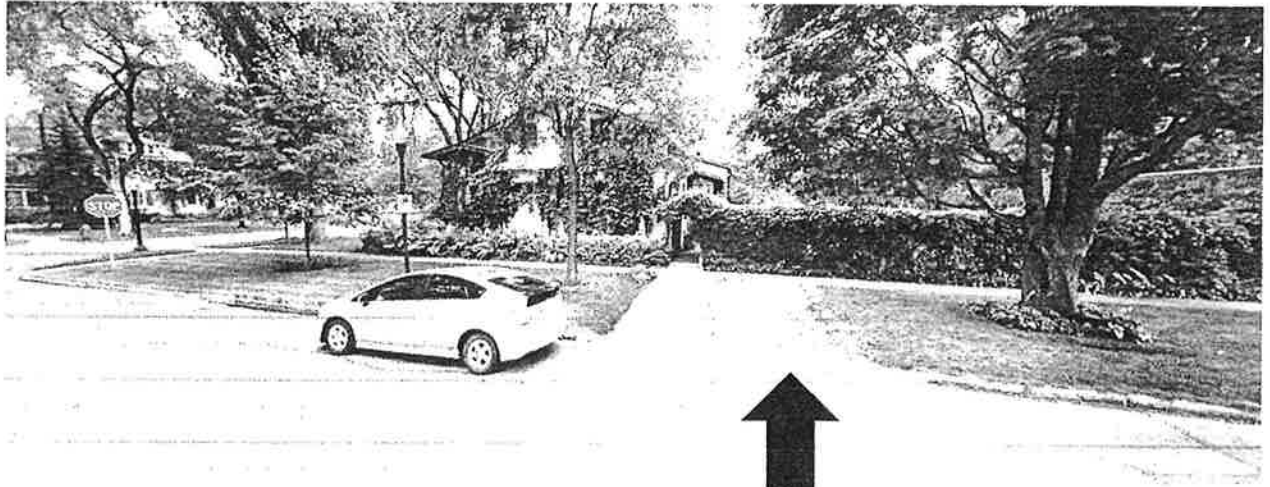
16. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.







EXHIBIT A



15

July 7, 2023

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

**Re: Memorandum of Offer to Landowner  
Temporary Easement - Project #FM-19-C**

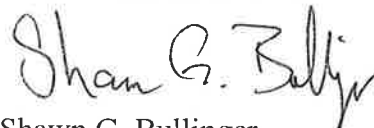
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a Temporary Easement in association with Project #FM-19-C. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a temporary easement from **Mark E. and Barbara B. McCourt** in association with Project #FM-19-C and that the Mayor is instructed to execute the Memorandum of Offer to Landowner and Temporary Easement on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Nancy J. Morris  
Nathan Boerboom

Project FM-19-C	County Cass	Parcel(s) 01-4060-00620-000
Landowner Mark E & Barbara B McCourt		
Mailing Address 167 South Woodcrest Drive N Fargo, ND 58102		

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

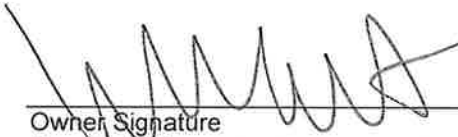
See enclosed easement(s).

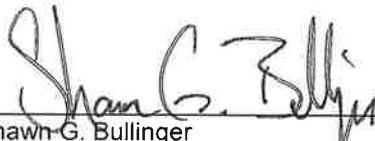
I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 1,058.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:


Land	\$	<u>                    </u>
Easement and Access Control	\$	<u>1,058.00</u>
Improvements on Right of Way*	\$	<u>                    </u>
Damages to Remainder	\$	<u>                    </u>
Total Offer	\$	<u>1,058.00</u>

\*Description of Damages to Remainder are as follows:

---

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

  
 Shawn G. Bullinger  
 Land Acquisition Specialist, City of Fargo

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

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

**Timothy J. Mahoney**  
 \_\_\_\_\_  
 MAYOR  
 \_\_\_\_\_  
 SIGNATURE  
 \_\_\_\_\_  
 DATE

**EASEMENT**  
**(Temporary Construction Easement)**

**KNOW ALL MEN BY THESE PRESENTS** that **MARK E. MCCOURT AND BARBARA B. MCCOURT**, whether one or more, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to him in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of levee and storm sewer construction and activities appurtenant thereto, said land being more fully described, to-wit:

That part of Lot 15, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the most northerly corner of said Lot 15; thence South 42°03'45" West, along the northwesterly line of said Lot 15, for a distance of 94.39 feet to the true point of beginning; thence South 27°46'35" East for a distance of 40.49 feet; thence South 66°01'50" East for a distance of 51.20 feet to a point of intersection with the southeasterly line of said Lot 15; thence South 42°47'14" West, along the southeasterly line of said Lot 15, for a distance of 21.25 feet; thence South 82°34'04" West for a distance of 96.33 feet to a point of intersection with the westerly line of said Lot 15; thence North 00°20'13" West, along the westerly line of said Lot 15, for a distance of 35.36 feet; thence North 42°03'45" East, along the northwesterly line of said Lot 15, for a distance of 66.44 feet to the true point of beginning.

Said tract contains 4,840 square feet, more or less.

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

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

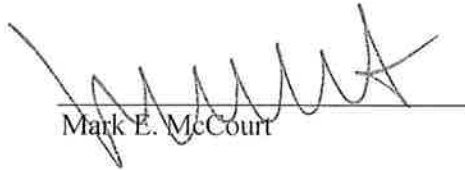
Grantor, his successors and assigns, further agrees they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.

This easement shall terminate on October 31, 2023.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor set her hand and caused this instrument to be executed this 7<sup>TH</sup> day of July, 2023.

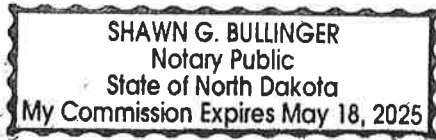
GRANTORS:

  
Mark E. McCourt

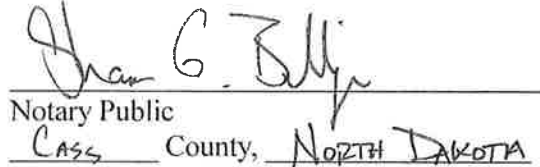
  
Barbara B. McCourt

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

On this 7<sup>TH</sup> day of July, 2023, before me, a notary public in and for said county and state, personally appeared Mark E. McCourt and Barbara B. McCourt to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same.



(SEAL)

  
Notary Public  
CASS County, NORTH DAKOTA

IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_, 2023.

GRANTEE:

City of Fargo, a North Dakota municipal corporation

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

ATTEST

\_\_\_\_\_  
Steve Sprague, City Auditor

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

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

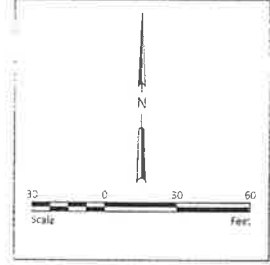
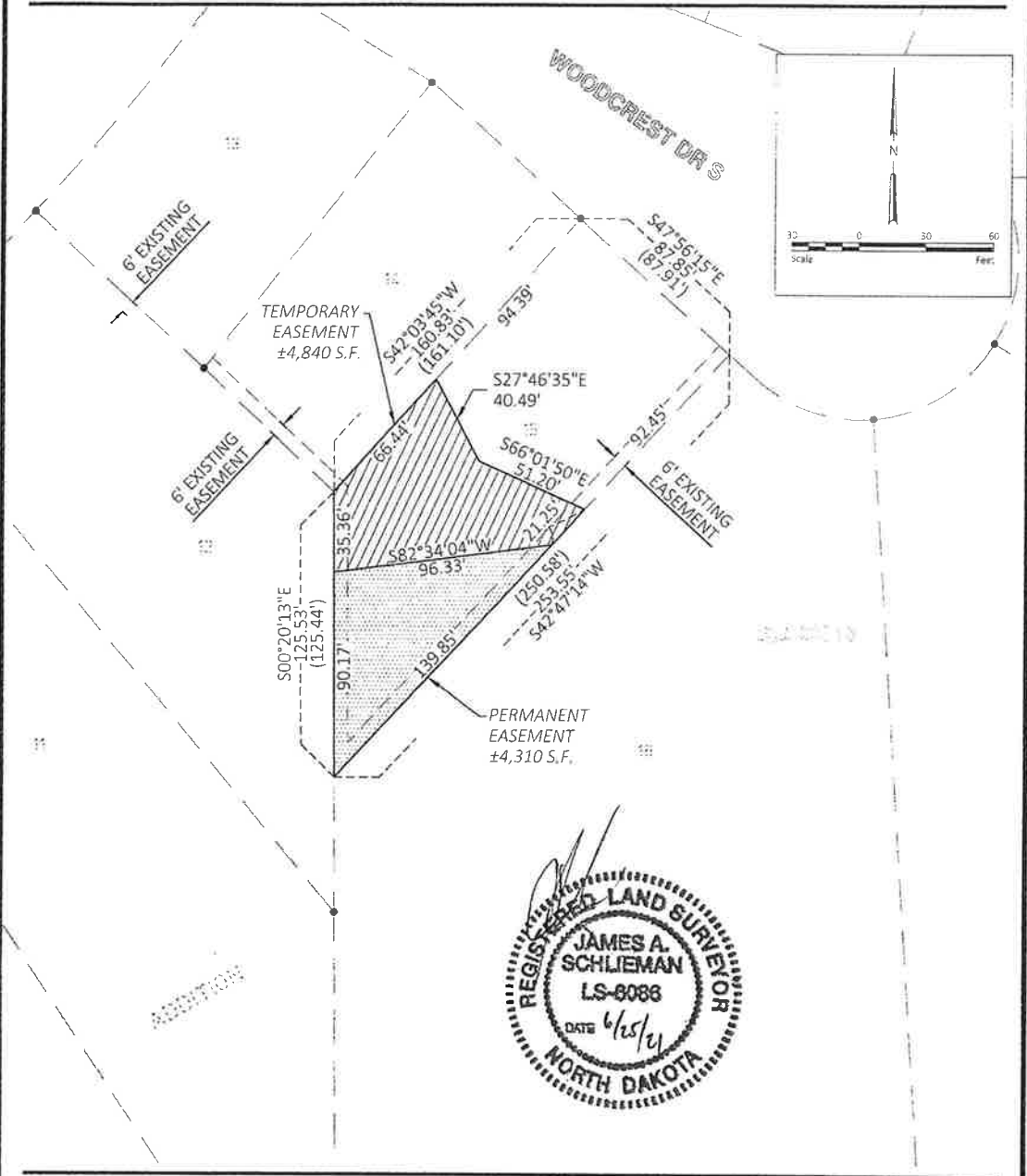
\_\_\_\_\_  
Notary Public  
Cass County, ND  
My Commission expires:

(SEAL)

The legal description was prepared by:  
James A. Schlieman  
Registered Land Surveyor  
LS-6086  
Houston Engineering Inc.  
1401 21st Ave. N.  
Fargo, ND 58102  
(701) 237-5065

This document was prepared by:  
Nancy J. Morris  
Assistant City Attorney  
Erik R. Johnson & Associates, Ltd.  
505 Broadway N., Ste. 206  
Fargo, ND 58102  
(701) 280-1901  
[nmorris@lawfargo.com](mailto:nmorris@lawfargo.com)

PART OF LOT 15, BLOCK 16  
 WOODCREST THIRD ADDITION  
 CITY OF FARGO, CASS COUNTY  
 STATE OF NORTH DAKOTA



H:\UBIN\6000\6059\6059\_0165\CAD\Easements\Lot 15 McCourt Easement Exhibit.dwg-Sheet 1-6/25/2021 7:52 AM - (tkarel)

IRON MONUMENT FOUND	●
MEASURED BEARING	S59°27'46\"E
MEASURED DISTANCE	105.00'
PLAT BEARING	(N57°00'00\"W)
PLAT DISTANCE	(105.00')
PERMANENT EASEMENT	
TEMPORARY EASEMENT	

NOTE: ALL BEARINGS GIVEN ARE  
 BASED ON THE CITY OF  
 FARGO GIS COORDINATE  
 SYSTEM.



## EASEMENT EXHIBIT

PROJECT NO. 6059-0165	WOODCREST AREA FLOOD RISK MGMT PROJECT CITY OF FARGO, CASS CO., ND	SHEET 1 OF 2
--------------------------	---	-----------------



PART OF LOT 15, BLOCK 16  
WOODCREST THIRD ADDITION  
CITY OF FARGO, CASS COUNTY  
STATE OF NORTH DAKOTA

Description - Permanent Easement:

That part of Lot 15, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the most easterly corner of said Lot 15; thence South 42°47'14" West, along the southeasterly line of said Lot 15, for a distance of 113.70 feet to the true point of beginning; thence South 82°34'04" West for a distance of 96.33 feet to a point of intersection with the westerly line of said Lot 15; thence South 00°20'13" East, along the westerly line of said Lot 15, for a distance of 90.17 feet to the most southerly corner of said Lot 15; thence North 42°47'14" East, along the southeasterly line of said Lot 15, for a distance of 139.85 feet to the true point of beginning.

Said tract contains 4,310 square feet, more or less.

Description - Temporary Easement:

That part of Lot 15, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the most northerly corner of said Lot 15; thence South 42°03'45" West, along the northwesterly line of said Lot 15, for a distance of 94.39 feet to the true point of beginning; thence South 27°46'35" East for a distance of 40.49 feet; thence South 66°01'50" East for a distance of 51.20 feet to a point of intersection with the southeasterly line of said Lot 15; thence South 42°47'14" West, along the southeasterly line of said Lot 15, for a distance of 21.25 feet; thence South 82°34'04" West for a distance of 96.33 feet to a point of intersection with the westerly line of said Lot 15; thence North 00°20'13" West, along the westerly line of said Lot 15, for a distance of 35.36 feet; thence North 42°03'45" East, along the northwesterly line of said Lot 15, for a distance of 66.44 feet to the true point of beginning.

Said tract contains 4,840 square feet, more or less.



**EASEMENT EXHIBIT**

PROJECT NO.  
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT  
CITY OF FARGO, CASS CO., ND

SHEET  
2 OF 2

H:\JUN\6000\6059\6059\_0165\CAD\Easements\Lot 15\_McCourt\_Easement Exhibit.dwg-Sheet 2 of 25/2021 7:52 AM-(kkarel)



July 19, 2023

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

**Re: Memorandum of Offer to Landowner  
Temporary Easement - Project #FM-19-C**

Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a Temporary Easement in association with Project #FM-19-C. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a Temporary Easement from **Jessica L. and Darrell R. Johnson** in association with Project #FM-19-C and that the Mayor is instructed to execute the Memorandum of Offer to Landowner and Temporary Easement on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,

Shawn G. Bullinger  
Land Acquisition Specialist

C: Nancy J. Morris  
Nathan Boerboom

Project FM-19-C	County Cass	Parcel(s) 01-4060-00540-000
Landowner Jessica L & Darrell R Johnson		
Mailing Address 119 South Woodcrest Drive N Fargo, ND 58102		

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

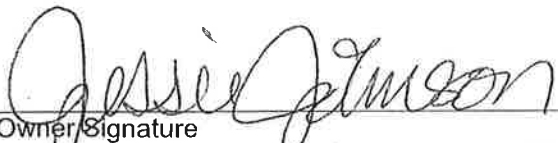
See enclosed easement(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 300.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	_____
Easement and Access Control	\$	<u>300.00</u>
Improvements on Right of Way*	\$	_____
Damages to Remainder	\$	_____
Total Offer	\$	<u>300.00</u>

\*Description of Damages to Remainder are as follows:

\_\_\_\_\_

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

  
 Shawn G. Bullinger  
 Land Acquisition Specialist, City of Fargo

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

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

Timothy J. Mahoney  
 MAYOR

\_\_\_\_\_  
 SIGNATURE

\_\_\_\_\_  
 DATE

**EASEMENT**  
**(Temporary Construction Easement)**

**KNOW ALL MEN BY THESE PRESENTS** that **DARRELL R. JOHNSON AND JESSICA L. JOHNSON**, whether one or more, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to him in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of levee and storm sewer construction and activities appurtenant thereto, said land being more fully described, to-wit:

That part of Lot 7, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 104.75 feet to the true point of beginning; thence South 59°48'47" West for a distance of 99.17 feet to a point of intersection with the westerly line of said Lot 7; thence North 54°39'32" East for a distance of 49.99 feet; thence North 61°38'12" East for a distance of 49.25 feet to a point of intersection with the easterly line of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 2.93 feet to the true point of beginning.

Said tract contains 295 square feet, more or less.

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

Grantor, his successors and assigns, hereby covenants to and with Grantee that Grantee's

officers, contractors, agents and employees may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, his successors and assigns, further agrees they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.

This easement shall terminate on October 31, 2023.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor set her hand and caused this instrument to be executed this 19 day of JULY, 2023.

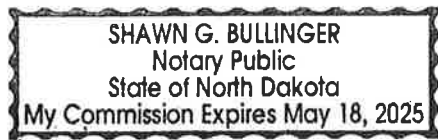
GRANTORS:

*Darrell R. Johnson*  
Darrell R. Johnson

*Jessica L. Johnson*  
Jessica L. Johnson

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

On this 19 day of JULY, 2023, before me, a notary public in and for said county and state, personally appeared Darrell R. Johnson and Jessica L. Johnson to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same.

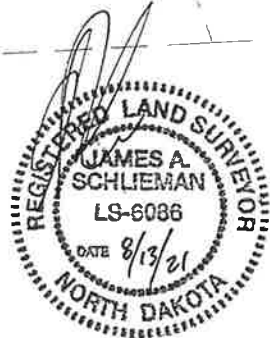
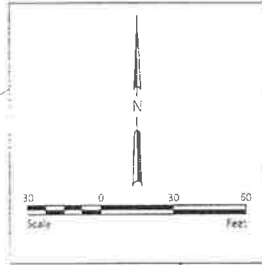
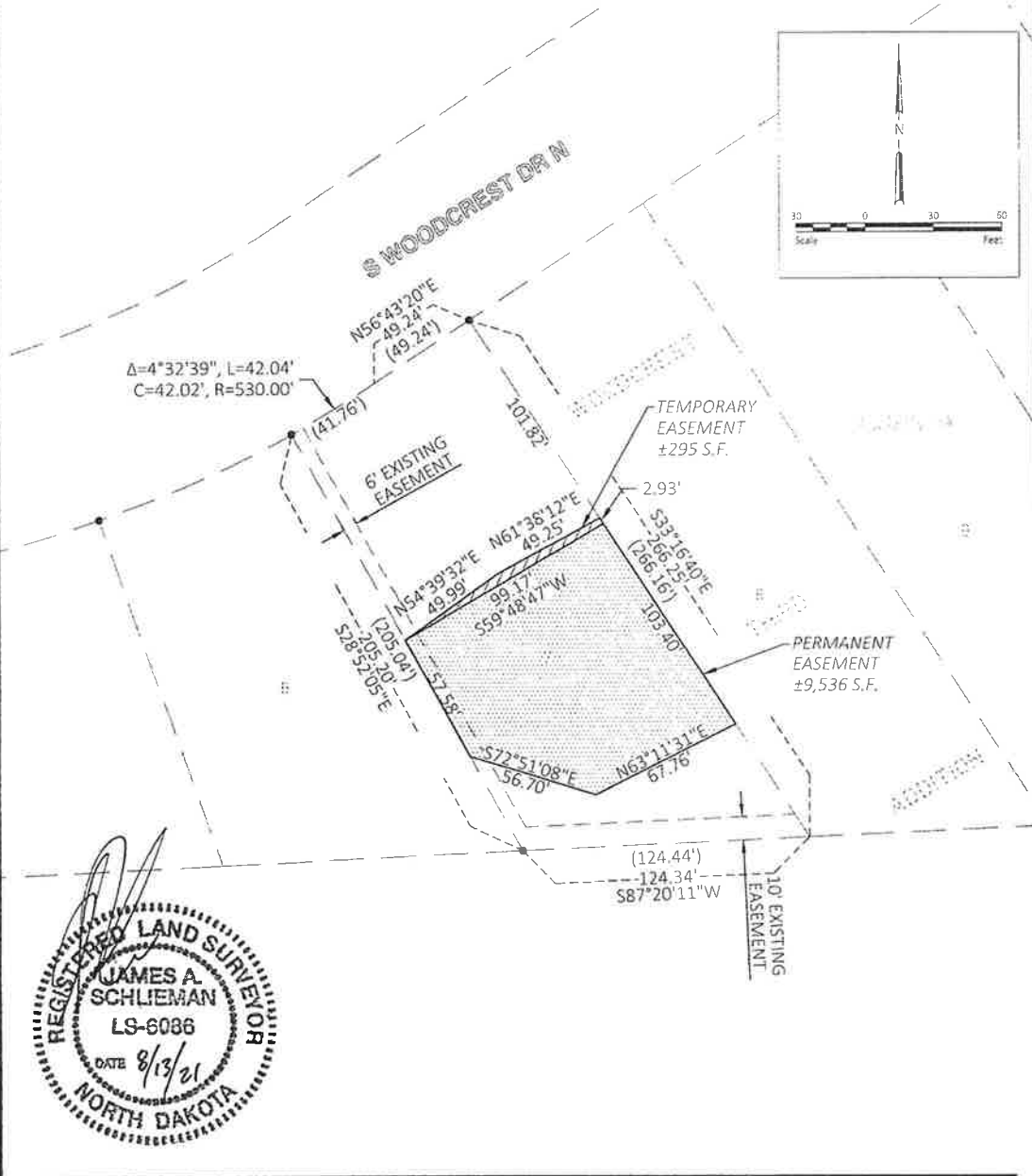


(SEAL)

*Shawn G. Bullinger*  
Notary Public  
CASS County, NORTH DAKOTA



PART OF LOT 7, BLOCK 16  
 WOODCREST THIRD ADDITION  
 CITY OF FARGO, CASS COUNTY  
 STATE OF NORTH DAKOTA



IRON MONUMENT FOUND	•
MEASURED BEARING	S59°27'46\"E
MEASURED DISTANCE	105.00'
PLAT BEARING	(N57°00'00\"W)
PLAT DISTANCE	(105.00')
PERMANENT EASEMENT	
TEMPORARY EASEMENT	

NOTE: ALL BEARINGS GIVEN ARE BASED ON THE CITY OF FARGO GIS COORDINATE SYSTEM.



# EASEMENT EXHIBIT

H:\A\B\6000\6059\6059\_0165\CAD\Easements\Lot 7 Johnson Easement Exhibit.dwg, Sheet 1-8/13/2021 8:11 AM, (tkare)



PART OF LOT 7, BLOCK 16  
WOODCREST THIRD ADDITION  
CITY OF FARGO, CASS COUNTY  
STATE OF NORTH DAKOTA

Description - Permanent Easement:

That part of Lot 7, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 104.75 feet to the true point of beginning; thence South 59°48'47" West for a distance of 99.17 feet to a point of intersection with the westerly line of said Lot 7; thence South 28°52'05" East, along the westerly line of said Lot 7, for a distance of 57.58 feet; thence South 72°51'08" East for a distance of 56.70 feet; thence North 63°11'31" East for a distance of 67.76 feet to a point of intersection with the easterly line of said Lot 7; thence North 33°16'40" West, along the easterly line of said Lot 7, for a distance of 103.40 feet to the true point of beginning,

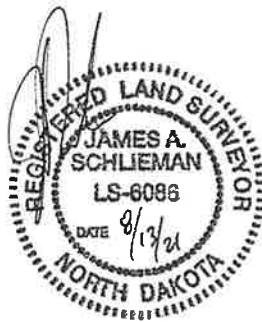
Said tract contains 9,536 square feet, more or less.

Description - Temporary Easement:

That part of Lot 7, Block 16, Woodcrest Third Addition to the City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the northeast corner of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 104.75 feet to the true point of beginning; thence South 59°48'47" West for a distance of 99.17 feet to a point of intersection with the westerly line of said Lot 7; thence North 54°39'32" East for a distance of 49.99 feet; thence North 61°38'12" East for a distance of 49.25 feet to a point of intersection with the easterly line of said Lot 7; thence South 33°16'40" East, along the easterly line of said Lot 7, for a distance of 2.93 feet to the true point of beginning.

Said tract contains 295 square feet, more or less.



# EASEMENT EXHIBIT

PROJECT NO.  
6059-0165

WOODCREST AREA FLOOD RISK MGMT PROJECT  
CITY OF FARGO, CASS CO., ND

SHEET  
2 OF 2

H:\08\6059\6059\6059\_0165\CAD\Easements\Lot 7 Johnson Easement Exhibit.dwg Sheet 2 of 13/2021 8:11 AM:tkaref

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

19

Improvement District No. BN-21-H1

Type: Final Balancing Change Order #8

Location: 24<sup>th</sup> Ave S, east of 45<sup>th</sup> St

Date of Hearing: 7/17/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>7/24/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Matthew Jennings</u>

The Committee reviewed the accompanying correspondence from Project Manager, Matthew Jennings, related to Final Balancing Change Order #8 in the amount of \$2,805.68, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Final Balancing Change Order #8 in the amount of \$2,805.68, bringing the total contract amount to \$2,441,030.40.

On a motion by Steve Sprague, seconded by Bruce Grubb, the Committee voted to recommend approval of Final Balancing Change Order #8 to Dakota Underground.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Final Balancing Change Order #8 in the amount of \$2,805.68, bringing the total contract amount to \$2,441,030.40 to Dakota Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Infrastructure Funds & Special Assessments

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>  <input checked="" type="checkbox"/>  </u>
Tim Mahoney, Mayor	<u>  <input type="checkbox"/>  </u>	<u>  <input type="checkbox"/>  </u>	<u>  <input type="checkbox"/>  </u>	
Nicole Crutchfield, Director of Planning	<u>  <input checked="" type="checkbox"/>  </u>	<u>  <input checked="" type="checkbox"/>  </u>	<u>  <input type="checkbox"/>  </u>	<u>Mark Williams</u>
Steve Dirksen, Fire Chief	<u>  <input checked="" type="checkbox"/>  </u>	<u>  <input checked="" type="checkbox"/>  </u>	<u>  <input type="checkbox"/>  </u>	<u>Dawn Stollenwerk</u>
Michael Redlinger, City Administrator	<u>  <input checked="" type="checkbox"/>  </u>	<u>  <input checked="" type="checkbox"/>  </u>	<u>  <input type="checkbox"/>  </u>	<u>Bruce Grubb</u>
Ben Dow, Director of Operations	<u>  <input type="checkbox"/>  </u>	<u>  <input type="checkbox"/>  </u>	<u>  <input type="checkbox"/>  </u>	
Steve Sprague, City Auditor	<u>  <input checked="" type="checkbox"/>  </u>	<u>  <input checked="" type="checkbox"/>  </u>	<u>  <input type="checkbox"/>  </u>	
Tom Knakmuhs, City Engineer	<u>  <input checked="" type="checkbox"/>  </u>	<u>  <input checked="" type="checkbox"/>  </u>	<u>  <input type="checkbox"/>  </u>	
Susan Thompson, Interim Finance Director	<u>  <input type="checkbox"/>  </u>	<u>  <input type="checkbox"/>  </u>	<u>  <input type="checkbox"/>  </u>	

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs, P.E.  
 City Engineer

# Memorandum

**To:** Members of PWPEC  
**From:** Matthew Jennings, Project Manager  
**Date:** July 13, 2023  
**Re:** Improvement District No. BN-21-H1 – Final Balancing Change Order No. 8

---

**Background:**

Improvement District No. BN-21-H1 is on 24th Avenue South, east of 45th Street.

Dakota Underground is the Prime Contractor on this project.

Attached is Final Balancing Change Order #8 in the amount of \$2,805.68. The Contractor met the requirements of the contract and it has been accepted by the City. This FBCO #8 reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Original Contract:	\$ 2,288,225.99
Change Order #1	\$ 11,360.44
Change Order #2	\$ 13,268.23
Change Order #3	\$ 39,512.07
Change Order #4	\$ 18,275.54
Change Order #5	\$ 4,198.20
Change Order #6	\$ 8,104.25
Change Order #7	\$ 55,280.00
Change Order #8 (FBCO)	\$ <u>2,805.68</u>
Total Contract:	\$ 2,441,030.40

**Recommendation Motion:**

Approve Final Balancing Change Order #8 in the amount of \$2,805.68 for Improvement District No. BN-21-H1.

MCJ/klb

Attachment



**CHANGE ORDER REPORT**  
**NEW PAVING AND UTILITY CONSTRUCTION**  
**IMPROVEMENT DISTRICT NO. BN-21-H1**  
**ON 24TH AVENUE SOUTH AND ON 26TH AVENUE SOUTH, EAST OF 45TH STREET**  
**SOUTH.**

Final Balancing  
Change Order

Change Order No 8 Change Order Date 7/12/2023  
 Contractor Dakota Underground Co Inc

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

**EXPLANATION OF CHANGE** Change Order # 8  
 Final balancing change order, all work is completed and checked.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Sanitary Sewer	4	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	200		200	-150	50	\$0.01	-\$1.50
	5	F&I Pipe SDR 26 - 8" Dia PVC	LF	52		52	1	53	\$43.00	\$43.00
	6	F&I Pipe SDR 35 - 12" Dia PVC	LF	985		985	-116	869	\$55.00	-\$6,380.00
Water Main	10	F&I Fittings C153 Ductile Iron	LB	3258		3258	-6	3252	\$7.00	-\$42.00
	15	F&I Gate Valve 8" Dia	EA	3		3	1	4	\$2,200.00	\$2,200.00
	16	F&I Gate Valve 12" Dia	EA	2		2	-1	1	\$4,000.00	-\$4,000.00
	17	F&I Insulation 2" Thick	SY	20		20	-13	7	\$20.00	-\$260.00
	18	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	200		200	-125	75	\$0.01	-\$1.25
	19	F&I Pipe C900 DR 18 - 4" Dia PVC	LF	285		285	-2.5	282.5	\$55.00	-\$137.50
<b>Sanitary Sewer Sub Total</b>									<b>-\$6,338.50</b>	

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
	20	F&I Pipe C900 DR 18 - 6" Dia PVC	LF	310		310	7.5	317.5	\$72.00	\$540.00
	21	F&I Pipe C900 DR 18 - 8" Dia PVC	LF	370		370	-4.5	365.5	\$82.00	-\$369.00
	22	F&I Pipe C900 DR 18 - 10" Dia PVC	LF	5		5	4	9	\$64.00	\$256.00
	23	F&I Pipe C900 DR 18 - 12" Dia PVC	LF	858		858	-3	855	\$69.00	-\$207.00
Storm Sewer	32	F&I Pipe 12" Dia Reinf Conc	LF	337		337	-51.5	285.5	\$45.00	-\$2,317.50
	33	F&I Pipe 21" Dia	LF	306		306	-236.5	69.5	\$61.00	-\$14,426.50
	39	F&I Pipe 15" Dia Reinf Conc	LF	74		74	-22.5	51.5	\$53.00	-\$1,192.50
	40	F&I Pipe 24" Dia Reinf Conc	LF	40		40	-0.5	39.5	\$66.00	-\$33.00
	41	F&I Pipe 42" Dia Reinf Conc	LF	861		861	305	1166	\$160.00	\$48,800.00
								<b>Water Main Sub Total</b>		<b>-\$2,020.75</b>
								<b>Storm Sewer Sub Total</b>		<b>\$30,830.50</b>
Paving	42	Remove Pavement All Thicknesses All Types	SY	1050		1050	96	1146	\$20.00	\$1,920.00
	43	Remove Curb & Gutter	LF	1300		1300	219	1519	\$5.00	\$1,095.00
	46	Remove Tree	EA	38		38	1	39	\$185.00	\$185.00
	52	F&I Edge Drain 4" Dia PVC	LF	2800		2800	-749	2051	\$9.75	-\$7,302.75
	54	F&I Pavement 9" Thick Doweled Conc	SY	4675		4675	-379	4296	\$86.00	-\$32,594.00
	55	F&I Pavement 10" Thick Doweled Conc	SY	1035		1340	35	1375	\$120.00	\$4,200.00
	58	F&I Shared Use Path 5" Thick Reinf Conc	SY	1100		1100	3	1103	\$50.00	\$150.00
	59	F&I Impressioned 4" Thick Reinf Conc	SY	230		230	0.9	230.9	\$110.00	\$99.00

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
	64	Casting to Grade - w/Conc	EA	22		22	1	23	\$500.00	\$500.00
	69	Seeding Type C	SY	2800		2800	9483	12283	\$0.42	\$3,982.86
	70	Mulching Type 1 Hydro	SY	2800		2800	9483	12283	\$0.42	\$3,982.86
	71	Silt Fence - Standard	LF	3800		3800	-225	3575	\$2.35	-\$528.75
	74	Temp Construction Entrance	EA	1		1	-1	0	\$0.01	-\$0.01
								<b>Paving Sub Total</b>		<b>-\$24,310.79</b>
Pavement Marking	78	F&I Grooved Plastic Film 16" Wide	LF	136		136	14	150	\$33.60	\$470.40
	79	F&I Grooved Plastic Film 24" Wide	LF	438		438	48	486	\$38.85	\$1,864.80
	80	F&I Grooved Contrast Film 7" Wide	LF	2224		2224	-33	2191	\$13.65	-\$450.45
	81	F&I Grooved Contrast Film 11" Wide	LF	90		90	-8	82	\$23.10	-\$184.80
								<b>Pavement Marking Sub Total</b>		<b>\$1,699.95</b>
Landscaping	87	F&I Bare Root Decid Tree 1.5" Dia	EA	20		20	-1	19	\$420.00	-\$420.00
								<b>Landscaping Sub Total</b>		<b>-\$420.00</b>
Street Lights	91	F&I Innerduct 1.5" Dia	LF	2175		2175	-100	2075	\$12.60	-\$1,260.00
	92	F&I Conductor #6 USE Cu	LF	6828		6828	-300	6528	\$2.10	-\$630.00
								<b>Street Lights Sub Total</b>		<b>-\$1,890.00</b>
Traffic Signal-Communications	101	Install Traffic Signal Interim System	LS	1		1	-1	0	\$525.00	-\$525.00
	106	Remove Foundation Type IV/Combo	EA	4		4	-1	3	\$2,625.00	-\$2,625.00
	109	Salvage Signal Cable	LS	1		1	-0.5	0.5	\$840.00	-\$420.00
	111	F&I Pull Box	EA	6		6	1	7	\$1,050.00	\$1,050.00
	121	F&I Ped Push Button Post	EA	4		4	3	7	\$840.00	\$2,520.00

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
	122	F&I Ped Push Button & Sign	EA	4		4	4	8	\$1,260.00	\$5,040.00
Change Order 1	142	F&I Pipe w/GB SDR 26 - 8" Dia PVC	LF	5.5	0	385	5.5	390.5	\$39.14	\$215.27
<b>Traffic Signal-Communications Sub Total</b>										<b>\$5,040.00</b>
<b>Change Order 1 Sub Total</b>										<b>\$215.27</b>

Summary.

Source Of Funding

General Infrastructure Funds (TIF-401) & Special Assessments

Net Amount Change Order # 8 (\$)

\$2,805.68

Previous Change Orders (\$)

\$149,998.73

Original Contract Amount (\$)

\$2,288,225.99

Total Contract Amount (\$)

\$2,441,030.40

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

APPROVED

7/12/23

Bob Johnson  
Project Manager

For Contractor

Title

APPROVED DATE

Department Head

Mayor

Attest

T-1000



REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

20

Improvement District No. BN-22-C1

Type: Change Order #2

Location: 28th, 30th & 32nd Ave. N.,  
42nd St. & 43rd St.

Date of Hearing: 7/17/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>7/24/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Leonard</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, regarding Change Order #2 in the amount of \$69,240.00 for additional work.

Staff is recommending approval of Change Order #2 in the amount of \$69,240.00, bringing the total contract amount to \$18,732,958.59.

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

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Change Order #2 in the amount of \$69,240.00, bringing the total contract amount to \$18,732,958.59 to Dakota Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: WW & Special Assessments

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

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

COMMITTEE

Tim Mahoney, Mayor  
 Nicole Crutchfield, Director of Planning  
 Steve Dirksen, Fire Chief  
 Michael Redlinger, City Administrator  
 Ben Dow, Director of Operations  
 Steve Sprague, City Auditor  
 Tom Knakmuhs, City Engineer  
 Susan Thompson, Interim Finance Director

<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dawn Stollenwerk
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs, P.E.  
 City Engineer

# Memorandum

**To:** Members of PWPEC  
**From:** Jason Leonard, Project Engineer  
**Date:** July 13, 2023  
**Re:** Improvement District No. BN-22-C1 – Change Order #2

---

**Background:**

Improvement District No. BN-22-C1 is for Sanitary Sewer, Water Main, Storm Sewer, Paving & Incidentals on 28<sup>th</sup> Avenue North, 30<sup>th</sup> Avenue North, 32<sup>nd</sup> Avenue North, 42<sup>nd</sup> Street North and 43<sup>rd</sup> Street North in the Laverne's 2<sup>nd</sup> Addition.

In this development, we have ABF Freight constructing their facility on the adjacent lots to the intersection of 43<sup>rd</sup> Street North and 30<sup>th</sup> Avenue North. They requested, and the COF's Contractor agreed, to install the 930 linear feet of 4.5' sidewalk within the COF ROW at a cost of \$27,900. In addition, E.W. Wylie requested, and the COF's Contractor agreed, to install the south 620 linear feet of 10' sidewalk along 28<sup>th</sup> Avenue South at a cost of \$43,340.

All cost associated with Change Order #2 will be special assessed directly to the benefiting properties.

**Recommended Motion:**

Approve Change Order #2 in the amount of \$69,240.00.

JTL/klb  
Attachment



**CHANGE ORDER REPORT**  
**NEW PAVING AND UTILITY CONSTRUCTION**  
**IMPROVEMENT DISTRICT NO. BN-22-C1**

28TH AVE N BETWEEN 41ST ST N & 45TH ST N, 30TH AVE N BETWEEN 41ST ST N &  
 43RD ST N, 32ND AVE N BETWEEN 41ST ST N & 42NS ST N, 42ND ST N BETWEEN  
 28TH AVE N & 32TH AVE N, 43RD ST N BETWEEN 28TH AVE N & 32ND AVE N

Change Order No 2 Change Order Date 7/13/2023  
 Contractor Dakota Underground Co Inc

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

**EXPLANATION OF CHANGE** Change Order # 2

In this development we have ABF Freight constructing their facility on the adjacent lots at the intersection of 43rd Street N and 30th Avenue N. They requested and the COF's contractor agreed install the 930 linear feet of 4.5' sidewalk within the COF ROW at a cost of \$27,900. In addition, E.W. Wylie requested, and the COF's contractor agreed to install the south 620 linear feet of 10' sidewalk along 28th Avenue S at a cost of \$43,340.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Paving	126	F&I Sidewalk 4" Thick Reinf Conc	SY	385	385	385	1154	1539	\$60.00	\$69,240.00
<b>Paving Sub Total</b>										<b>\$69,240.00</b>

Summary.

Source Of Funding  
 Net Amount Change Order # 2 (\$)   
 Previous Change Orders (\$)   
 Original Contract Amount (\$)   
 Total Contract Amount (\$)

Special Assessment  
 \$69,240.00  
 \$85,174.00  
 \$18,578,544.59  
 \$18,732,958.59

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

APPROVED

For Contractor

Title

*Jared Heller, PE*

Dakota Underground Company

Project Manager

APPROVED DATE

Department Head

Mayor

Attest



(21)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. PN-23-C1 Type: Final Balancing Change Order #2

Location: 52nd Ave S, between 45th & 47th St S Date of Hearing: 7/17/2023

<u>Routing</u>	<u>Date</u>
City Commission	7/24/2023
PWPEC File	X
Project File	Matthew Jennings

The Committee reviewed the accompanying correspondence from Project Manager, Matthew Jennings, related to Final Balancing Change Order #2 in the amount of \$1,971.00, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Final Balancing Change Order #2 in the amount of \$1,971.00, bringing the total contract amount to \$180,077.50.

On a motion by Steve Sprague, seconded by Bruce Grubb, the Committee voted to recommend approval of Final Balancing Change Order #2 to Opp Construction.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Final Balancing Change Order #2 in the amount of \$1,971.00, bringing the total contract amount to \$180,077.50 to Opp Construction.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessments


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

COMMITTEE

	Present	Yes	No	Unanimous
				<input checked="" type="checkbox"/>
Tim Mahoney, Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dawn Stollenwerk
Michael Redlinger, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bruce Grubb
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Tom Knakmuhs, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Susan Thompson, Interim Finance Director	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
Tom Knakmuhs, P.E.  
City Engineer

# Memorandum

**To:** Members of PWPEC  
**From:** Matthew Jennings, Project Manager  
**Date:** July 11, 2023  
**Re:** Improvement District No. PN-23-C1 – Final Balancing Change Order No. 2

---

**Background:**

Improvement District No. PN-23-C1 is for the new construction of concrete pavement and incidentals on 52nd Avenue South between 45th Street South & 47th Street South.

Opp Construction LLC is the Prime Contractor on this project.

Attached is the Final Balancing Change Order in the amount of \$1,971.00. The Contractor met the requirements of the contract and it has been accepted by the City. This FBCO #2 reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Original Contract:	\$	177,820.50
Change Order #1	\$	286.00
Change Order #2 (FBCO)	\$	<u>1,971.00</u>
Total Contract:	\$	180,077.50

**Recommendation Motion:**

Approve Final Balancing Change Order #2 in the amount of \$1,971.00 for Improvement District PN-23-C1.

MCJ/klb

Attachment



**CHANGE ORDER REPORT  
NEW PAVING CONSTRUCTION  
IMPROVEMENT DISTRICT NO. PN-23-C1**

Final Balancing  
Change Order

**ALONG 52ND AVE S WEST BOUND BETWEEN 45TH ST S & 47TH ST S**

Change Order No 2      Change Order Date 6/23/2023  
Contractor Opp Construction LLC

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

**EXPLANATION OF CHANGE**      Change Order # 2  
Final balancing change order, all work has been completed and tested.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Paving	4	Subcut	CY	84		84	-84	0	\$20.00	-\$1,680.00
	8	F&I Edge Drain 4" Dia PVC	LF	329		329	-106	223	\$18.00	-\$1,908.00
	9	F&I Curb & Gutter Standard (Type II)	LF	329		329	10	339	\$47.50	\$475.00
	11	F&I Sidewalk 5" Thick Reinf Conc	SY	86		86	6	92	\$89.00	\$534.00
	14	Mulching Type 1 Hydro	SY	505		505	622	1127	\$4.00	\$2,488.00
	15	Seeding Type C	SY	505		505	622	1127	\$3.00	\$1,866.00
								<b>Paving Sub Total</b>		<b>\$1,775.00</b>
Miscellaneous	24	Remove Shared Use Path 5" Thick Conc	SY	84		84	8	92	\$21.00	\$168.00
	27	Sediment Control Log 6" to 8" Dia	LF	50		50	7	57	\$4.00	\$28.00
								<b>Miscellaneous Sub Total</b>		<b>\$196.00</b>

Summary.

Source Of Funding  
 Net Amount Change Order # 2 (\$)  
 Previous Change Orders (\$)  
 Original Contract Amount (\$)  
 Total Contract Amount (\$)

Special Assessments  
 \$1,971.00  
 \$286.00  
 \$177,820.50  
 \$180,077.50

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

APPROVED

For Contractor

Title

*Lance Strum*  
 P.M. / P.O.A.

APPROVED DATE

Department Head

Mayor

Attest

*T. Cole*





22

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

July 19, 2023

Honorable Board of City  
Commissioners  
City of Fargo  
Fargo, ND

Re: Improvement District No. BN-23-C1

Dear Commissioners:

Bids were opened at 11:45 am on Wednesday, July 19th, 2023, for New Paving and Utility Construction, Improvement District No. BN-23-C1, located on 26th St S between 67th Ave S & 69th Ave S & Fulton Loop S, west of 25th St S along 26th St S.

The bids were as follows:

Dakota Underground Co Inc	\$1,666,648.81
Ryan Contracting	\$1,699,089.67
Key Contracting Inc	\$2,189,101.95
R L Larson Excavating Inc	\$2,482,358.35
Engineers Estimate	\$1,671,973.35

Private financial security is not needed.

No protests have been received.

This office recommends award of the contract to Dakota Underground Co Inc. in the amount of \$1,666,648.81 as the lowest and best bid.

Sincerely,

Thomas Knakmuhs, PE  
City Engineer



**Engineer's Statement Of Cost**  
**Improvement District # BN-23-C1**  
**New Paving And Utility Construction**

On 26th St S between 67th Ave S & 69th Ave S & Fulton loop S,  
west of 25th St S along 26th St S.

WHEREAS, bids have been opened and filed for the above described Improvement District for City of Fargo, North Dakota; and WHEREAS, an estimate of the cost of work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Thomas Knakmuhs, do hereby certify as follows:

That I am the City Engineer for the City of Fargo, North Dakota;

That the following is detailed statement of the estimated cost of the job described as:

New Paving and Utility Construction Improvement District # BN-23-C1 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
<b>Paving</b>					
1	Topsoil - Strip	CY	10,192.00	3.00	30,576.00
2	Excavation	CY	2,176.00	3.00	6,528.00
3	Subcut	CY	469.00	7.00	3,283.00
4	Subgrade Preparation	SY	5,622.00	1.50	8,433.00
5	F&I Woven Geotextile	SY	5,622.00	2.00	11,244.00
6	F&I Class 5 Agg - 8" Thick	SY	5,622.00	13.00	73,086.00
7	F&I Edge Drain 4" Dia PVC	LF	3,172.00	11.00	34,892.00
8	F&I Curb & Gutter Mountable (Type I)	LF	3,172.00	27.00	85,644.00
9	Remove Curb & Gutter	LF	10.00	15.00	150.00
10	F&I Sidewalk 4" Thick Reinf Conc	SY	365.00	65.00	23,725.00
11	F&I Sidewalk 6" Thick Reinf Conc	SY	15.00	70.00	1,050.00
12	Remove Sidewalk 4" Thick Conc	SY	5.00	15.00	75.00
13	F&I Det Warn Panels Cast Iron	SF	36.00	55.00	1,980.00
14	F&I Asphalt Pavement FAA 43 w/ PG58H-34	Ton	1,538.00	97.00	149,186.00
15	Casting to Grade - Blvd	EA	17.00	500.00	8,500.00
16	Casting to Grade - no Conc	EA	6.00	1,000.00	6,000.00
17	GV Box to Grade - Blvd	EA	2.00	500.00	1,000.00
18	GV Box to Grade - no Conc	EA	6.00	1,000.00	6,000.00
19	Curb Stop Box to Grade	EA	51.00	200.00	10,200.00
20	Mulching Type 1 Hydro	SY	3,655.00	0.55	2,010.25

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
21	Seeding Type C	SY	25,480.00	0.33	8,408.40
Paving Total					<b>471,970.65</b>
<b>Sanitary Sewer</b>					
22	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	600.00	0.01	6.00
23	F&I Manhole GB	EA	6.00	4,000.00	24,000.00
24	F&I Manhole 4' Dia Reinf Conc	EA	6.00	10,000.00	60,000.00
25	Connect Pipe to Exist Pipe	EA	2.00	2,500.00	5,000.00
26	F&I Pipe SDR 26 - 6" Dia PVC	LF	2,410.00	34.00	81,940.00
27	F&I Pipe SDR 26 - 8" Dia PVC	LF	1,614.00	60.00	96,840.00
28	Connect Sewer Service	EA	51.00	400.00	20,400.00
Sanitary Sewer Total					<b>288,186.00</b>
<b>Storm Sewer</b>					
29	F&I Manhole 4' Dia Reinf Conc	EA	3.00	5,700.00	17,100.00
30	F&I Manhole 5' Dia Reinf Conc	EA	4.00	6,850.00	27,400.00
31	F&I Inlet - Single Box (SBI) Reinf Conc	EA	6.00	3,470.00	20,820.00
32	F&I Inlet - Round (RDI) Reinf Conc	EA	8.00	2,360.00	18,880.00
33	Remove Inlet	EA	1.00	1,000.00	1,000.00
34	Connect Pipe to Exist Pipe	EA	4.00	1,000.00	4,000.00
35	F&I Pipe 12" Dia	LF	802.00	38.50	30,877.00
36	F&I Pipe 15" Dia	LF	370.00	45.00	16,650.00
37	F&I Pipe 18" Dia	LF	517.00	79.00	40,843.00
38	F&I Pipe 24" Dia	LF	101.00	108.00	10,908.00
39	F&I Pipe 12" Dia Reinf Conc	LF	34.00	66.00	2,244.00
40	F&I Pipe 15" Dia Reinf Conc	LF	26.00	73.00	1,898.00
41	F&I Pipe 18" Dia Reinf Conc	LF	118.00	79.00	9,322.00
42	F&I Pipe 24" Dia Reinf Conc	LF	8.00	108.00	864.00
43	F&I Pipe w/GB 15" Dia Reinf Conc	LF	82.00	95.00	7,790.00
44	F&I Pipe w/GB 18" Dia Reinf Conc	LF	45.00	100.00	4,500.00
45	F&I Pipe w/GB 24" Dia Reinf Conc	LF	48.00	145.00	6,960.00
Storm Sewer Total					<b>222,056.00</b>
<b>Cass Rural Water</b>					
46	F&I Fittings C153 Ductile Iron	LB	788.00	10.50	8,274.00
47	F&I Hydrant	EA	2.00	6,900.00	13,800.00
48	Connect Pipe to Exist Pipe	EA	2.00	2,000.00	4,000.00
49	F&I Pipe C900 DR 18 - 6" Dia PVC	LF	17.00	45.00	765.00

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
50	F&I Pipe C900 DR 18 - 8" Dia PVC	LF	1,125.00	55.00	61,875.00
51	F&I Pipe C900 DR 18 - 12" Dia PVC	LF	570.00	88.00	50,160.00
52	F&I Gate Valve 6" Dia	EA	2.00	2,000.00	4,000.00
53	F&I Gate Valve 8" Dia	EA	3.00	2,800.00	8,400.00
54	F&I Gate Valve 12" Dia	EA	3.00	5,000.00	15,000.00
55	F&I Pipe 1" Dia Water Service	LF	2,134.00	23.00	49,082.00
56	F&I CS & Box 1" Dia	EA	51.00	545.00	27,795.00
57	Connect Water Service	EA	51.00	470.00	23,970.00
<b>Cass Rural Water Total</b>					<b>267,121.00</b>

**Miscellaneous**

58	F&I Mailbox Pad	EA	4.00	350.00	1,400.00
59	Topsoil - Spread	CY	10,192.00	5.00	50,960.00
60	Site Grading	LS	1.00	20,000.00	20,000.00
61	Mulching Type 2 Straw	SY	27,621.00	0.23	6,352.83
62	Stormwater Management	LS	1.00	10,000.00	10,000.00
63	Temp Construction Entrance	EA	2.00	0.01	0.02
64	Sediment Control Log 6" to 8" Dia	LF	50.00	3.00	150.00
65	Inlet Protection - New Inlet	EA	14.00	250.00	3,500.00
66	Inlet Protection - Existing Inlet	EA	11.00	200.00	2,200.00
<b>Miscellaneous Total</b>					<b>94,562.85</b>

**Signing**

67	F&I Sign Assembly	EA	9.00	84.00	756.00
68	F&I Sign Assembly & Anchor	EA	9.00	95.00	855.00
69	F&I Diamond Grade Cubed	SF	34.70	26.00	902.20
70	F&I High Intensity Prismatic	SF	23.30	23.00	535.90
<b>Signing Total</b>					<b>3,049.10</b>

**Street Lights**

71	F&I Base 5' Deep Reinf Conc	EA	11.00	1,000.00	11,000.00
72	F&I Conductor #6 USE Cu	LF	4,191.00	2.63	11,022.33
73	F&I Innerduct 1.5" Dia	LF	1,541.00	8.67	13,360.47
74	F&I Luminaire Type A	EA	11.00	483.00	5,313.00
75	F&I Pull Box	EA	1.00	2,258.00	2,258.00
76	F&I Light Standard Type A	EA	11.00	2,993.00	32,923.00
<b>Street Lights Total</b>					<b>75,876.80</b>

**Paving - Shared Use Path**

Line	Description	Unit	Quantity	Unit Price (\$)	Amount (\$)	
77	Modify Manhole	EA	2.00	2,000.00	4,000.00	
78	F&I Hydrant Ext. 18" High	EA	1.00	2,400.00	2,400.00	
79	Topsoil - Strip & Spread	LS	1.00	20,000.00	20,000.00	
80	Excavation	CY	3,238.00	10.00	32,380.00	
81	F&I Curb & Gutter Standard (Type II)	LF	65.00	35.00	2,275.00	
82	Remove Curb & Gutter	LF	65.00	15.00	975.00	
83	F&I Sidewalk 4" Thick Reinf Conc	SY	99.00	65.00	6,435.00	
84	F&I Sidewalk 5" Thick Reinf Conc	SY	1,908.00	65.00	124,020.00	
85	F&I Sidewalk 6" Thick Reinf Conc	SY	45.00	70.00	3,150.00	
86	Remove Sidewalk All Thicknesses All Types	SY	25.00	20.00	500.00	
87	F&I Det Warn Panels Cast Iron	SF	64.00	60.00	3,840.00	
88	Casting to Grade - Blvd	EA	3.00	700.00	2,100.00	
89	GV Box to Grade - Blvd	EA	3.00	700.00	2,100.00	
90	Mulching Type 1 Hydro	SY	10,163.00	0.55	5,589.65	
91	Seeding Type B	SY	10,163.00	0.44	4,471.72	
92	Temp Construction Entrance	EA	4.00	0.01	0.04	
93	Sediment Control Log 6" to 8" Dia	LF	2,400.00	3.00	7,200.00	
94	Inlet Protection - Existing Inlet	EA	9.00	200.00	1,800.00	
95	Paint Epoxy Message	SF	27.00	110.00	2,970.00	
96	Traffic Control - Type 2	LS	1.00	17,500.00	17,500.00	
97	Relocate Sign Assembly	EA	1.00	120.00	120.00	
Paving - Shared Use Path Total					<b>243,826.41</b>	
<b>Total Construction in \$</b>					<b>1,666,648.81</b>	
				Engineering	10.00%	166,664.88
				Admin	4.00%	66,665.96
				Legal	3.00%	49,999.46
				Interest	4.00%	66,665.96
				Contingency	5.00%	83,332.44
<b>Total Estimated Costs</b>					<b>2,099,977.51</b>	
					Special Assessments	1,456,183.77
					Cass Rural WUD Funds	336,572.46
					Sales Tax Funds - Infrastructure - 420	307,221.28
<b>Unfunded Costs</b>					<b>0.00</b>	

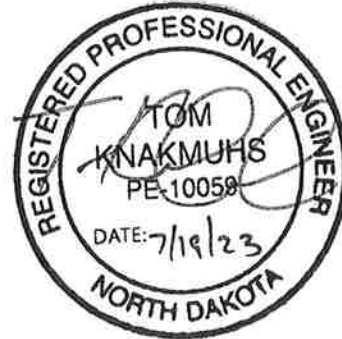
IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 07/19/2023



Thomas Knakmuhs

City Engineer





24

**Facilities Department**  
225 4<sup>th</sup> Street North  
Fargo, ND 58102  
Phone: 701.298.6966  
Email [Facilities@fargoND.gov](mailto:Facilities@fargoND.gov)  
[www.FargoND.gov](http://www.FargoND.gov)

## Memorandum

**To:** Board of City Commissioners  
**From:** Bekki Majerus, Director of Facilities Management  
**Date:** June 24, 2023  
**Re:** 2023 Amendment to Carlson Library-Senior Center Ground Lease

---

The 2006 ground lease agreement between the City of Fargo and the Fargo Park District regarding the Carlson Library and the Senior Center was missing language to indemnify the Park District from any and all claims for damages. The 2023 amendment remedies this by including the appropriate language.

There is a statement within the agreement regarding the insurance the City must agree to carry and keep in force. The City Attorney's office has done the due diligence and verified that the City of Fargo is already carrying the appropriate coverage. The new amendment does not impose any additional obligation upon the City that is not already being met.

**Recommended Action:**

Motion to approve the 2023 Amendment to the Agreement between the City of Fargo and Fargo Park District regarding the Carlson Library and Senior Center Ground Lease.

(d)

APPROVED BY THE BOARD  
OF COMMISSIONERS  
12-19-05

**GROUND LEASE  
(including shared use)**

**BY AND BETWEEN**

**THE PARK DISTRICT OF THE CITY OF FARGO**

**AND**

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

**SOUTHSIDE LIBRARY FACILITY**



**Table of Contents**

1.	Leased Premises and Term .....	1
2.	Rental Obligations.....	2
3.	Use of Premises.....	2
4.	Ownership of Building and Removal.....	3
5.	Building Plan – Shared Facilities.....	3
6.	Assignment or Subletting.....	4
7.	City's Obligation for Utilities, Taxes and Special Assessments.....	4
8.	Quiet Enjoyment .....	4
9.	Law Governing.....	4
10.	Insurance, Liability, Indemnity and Waiver of Subrogation .....	4
11.	Personnel and Invitees.....	5
12.	Condition of Premises - Acceptance and Vacation .....	5
13.	Grounds, Parking Lot Maintenance and Snow Cleaning .....	6
14.	Business Records - Public Records .....	6
15.	Basketball Courts .....	6
16.	Short Form of Lease.....	6
17.	Miscellaneous.....	6
18.	Dispute Resolution.....	7

**GROUND LEASE**

**THIS LEASE**, made this \_\_\_\_ day of \_\_\_\_\_, 2005 ("Lease"), by and between **THE PARK DISTRICT OF THE CITY OF FARGO**, a park district under the laws of the State of North Dakota, party of the first part, herein after called the "Park District" and **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, 200 North Third Street, Fargo, North Dakota, party of the second part, hereinafter called the "City",

**WITNESSETH:**

**WHEREAS**, Park District owns land including an existing parking lot; and,

**WHEREAS**, City is desirous of leasing property on which to construct a new southside library facility; and,

**WHEREAS**, the precise location of the facility has not been determined and the parties wish to determine that location by mutual consent during the design phase of the facility; and,

**WHEREAS**, Park District is agreeable to leasing the ground necessary for said construction, as well as allowing designated parking for the library; and,

**WHEREAS**, Park District desires to construct a connected, adjoining facility to provide space for its senior citizen administrative offices and function as a senior citizen center; and,

**WHEREAS**, Park District and City wish to enter into a ground lease for the construction of City's facility, as well as to provide therein provisions for the joint use of the vestibule or entry area which will include restrooms and will be hereinafter referred to as the "Lobby Entrance".

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained herein, including the ground rent, the sufficiency of which is acknowledged by all parties, the parties hereby agree as follows:

1. Leased Premises and Term.

- A. Description and Initial Term. The Park District, for and in consideration of the covenants and agreements hereinafter to be kept and performed by the City, hereby leases to the City for and during the term of twenty-nine (29) years from and after the date hereof, a tract of property within Park District's property located on 32<sup>nd</sup> Avenue South in the City of Fargo. During the facility design phase, the parties will mutually agree on a precise location which location will be legally described and pictorially designated on an exhibit to be developed and denominated Exhibit "A". Said exhibit will be attached to a short form of lease as required by paragraph 16 hereinafter. It is the intent of this provision that attempting to designate the precise location and the legal description at this time may limit the parties' design options. Parking for the said facility shall be on the existing parking lot, as well as specific spaces designated for use of City's building which

will again all be shown on Exhibit "A" after the parties have mutually agreed on the same. The precise location after determination as set forth above will be known as the "Leased Premises". For purposes of this ground lease, there is attached as Attachment "1" a pictorial representation of the general area of Park District's property which will be the subject of design and mutual agreement as aforesaid.

- B. Subsequent Term. Following the initial 29-year term, this lease shall automatically renew for up to seven (7) additional periods of ten (10) years each unless City shall give Park District notice six (6) months in advance of the end of any 10-year term signifying its intent to not renew the Lease.
  
- C. Staging Area for Construction. Park District agrees that City may utilize portions of the existing parking lot during construction to provide a staging area and access for construction of City's building. City agrees to restore the parking lot to its present condition, if necessary, following such construction activities.
  
- D. City's Failure to Commence Construction. Notwithstanding the above, this Lease will terminate and the Park District will return to the City any rent paid under paragraph 2 below if the City has not commenced construction of the library facility on or prior to October 1, 2006. The parties anticipate that construction is expected to commence in the spring of 2006 and agree that the lease commencement date will be renegotiated if the project is stalled for any reason beyond the fall of 2006.

2. Rental Obligations. In consideration thereof City agrees to pay the Park District \$1.00 per year for the ground on which its building is constructed, the receipt whereof is hereby acknowledged.

3. Use of Premises. The City hereby covenants and agrees that the City shall use and occupy the Leased Premises for the purpose of constructing and operating the Southside Library facility owned by the City of Fargo. In addition, the building may be devoted to other uses provided, however, that the City must notify Park District of any change in use. It is the intent of this provision that this Lease is only for a library facility and for no other City purpose. If the City desires to use the Leased Premises for another purpose, it must secure the written consent of the Park District before such use, which consent shall not be unreasonably withheld. It is specifically understood and agreed that the concrete or asphalt areas located in proximity to the Leased Premises may be used by City for automobile parking purposes, it being the intent of this Lease that the City shall have the non-exclusive right during the term of this lease to use such areas for parking purposes. The parties agree to assign a minimum number of designated stalls that are for the exclusive use of the library facility and/or the senior citizen's facility during the hours the facilities are open. Designation of such stalls will be made during the design phase and covered in the joint use agreement.

4. Ownership of Building and Removal. The City shall retain ownership of any building placed on the Leased Premises provided it is removed from the premises within one hundred twenty (120) days after the expiration or termination in any manner of this Lease and

further provided that the Leased Premises are restored to the original condition, or in a condition acceptable to the Park District. If any building is not so removed as herein provided, ownership shall pass to the Park District provided, however, that the parties may otherwise agree at that time.

5. Building Plan – Shared Facilities. The general plans and specifications for the library space to be constructed by City on the Leased Premises shall not require approval of Park District but Park District shall have a right to review and comment on any of such plans. Such plans shall include appropriate and required landscaping at the cost of the City. However, the parties agree that Park District will be constructing an approximate 7,654 square foot connected, adjoining facility to accommodate its senior citizens program. The Park District intends to engage the services of the City-selected architect to coordinate the exterior design of the building to be constructed by the City, the proposed way the library facility will be connected to the senior citizens facility, including what may be contained in the Lobby Entrance ( including restrooms) and the senior citizens facility. Such designs shall be subject to the approval of the Park District, which approval shall not be unreasonably withheld. The parties will use their best efforts to coordinate an exterior building design that is compatible with the site and the neighborhood. Additional terms and conditions regarding shared use of a portion of the facility to be constructed by City, including the Lobby Entrance, or entry (including restrooms), will be included in a joint use agreement between the parties. Except as may otherwise be stated in this Lease or the joint use agreement, the parties acknowledge an intention to share such expenses on the ratio of the square footages of their respective facilities but will coordinate who best may be capable of providing specific services.

The parties agree that Lobby Entrance or entry area will be included as a part of City's construction. This entry area will be a joint use area and will provide the entry for Park District's senior citizen facility, as well as the library facility to be constructed. The entry area will be owned by City but utilized by the Park District. City agrees to pay the cost of maintenance, cleaning, and providing all utilities for the entry area.

City shall be solely responsible for bringing/extending utilities to the building site, sufficient to accommodate both facilities. To the extent possible, utilities will be separately metered between the library and the senior citizens facilities.

Notwithstanding the above, the parties acknowledge that they will use their best efforts to coordinate the design and construction of the City's library facility, the connecting Lobby Entrance and the Park District's senior citizens facility with the City coordinating the entire project. The parties acknowledge that the City has already extended requests for proposals for architectural services and the Park District will provide such information to the architect as the architect deems necessary and appropriate to assist the architect in including in the overall plan the design for the senior citizen facility and the opportunity to coordinate the later construction of both facilities to insure continuity of design, energy efficiency, and an expected overall savings in construction costs. The Park District and the City, through their respective employees or committees, will use their best efforts to coordinate such efforts and to allocate the costs in the appropriate manner.

6. Assignment or Subletting. This lease shall not be assigned by the City and the Leased Premises nor any part thereof may be sublet or re-rented except with the written permission of the Park District, which permission shall not be delayed or unreasonably withheld,

provided the use of the facility and the Leased Premises is consistent with the terms and conditions of paragraph 3 above.

7. City's Obligation for Utilities, Taxes and Special Assessments. It is expressly understood that Park District is under no obligation, nor will at any time be under any obligation whatever, to furnish any labor, materials, work, heat, electricity, water, gas or services, utility, or otherwise, to City. Other provisions relating to utility services and hydrants for fire protection shall be dealt with in a joint use agreement. In addition, City shall be responsible for and shall pay any and all taxes imposed on the leasehold interest pursuant to City or County ordinances and North Dakota law. Any special assessments attributable to the library facility and related improvements on the Leased Premises shall be City's responsibility. Any special assessments benefiting both the library and senior citizen facilities shall be shared equally between the parties. The parties acknowledge, however, that some allocations or determination of benefits may be better deferred or refined as the design is established and such allocations will be addressed in the joint use agreement. Upon agreeing on a definitive Exhibit "A" after design and location matters are determined, the parties will cooperate in replatting the property so that the Leased Premises is a separate and distinct tax parcel. The parties will share equally in the cost associated with the replat.

8. Quiet Enjoyment. The Park District covenants with the City that upon performing the obligations herein provided on its part to be performed, the City shall quietly enjoy the Leased Premises during the term of this lease or any extension thereof.

9. Law Governing. All provisions hereof, and words and phrases used herein, shall be governed and construed under the laws of the state of North Dakota, except insofar as the provisions of such laws or the benefits accruing therefrom are specially waived.

10. Insurance, Liability, Indemnity and Waiver of Subrogation.

A. City agrees to indemnify and save forever harmless Park District from any and all claims for damages of any kind or nature which may hereafter be made against Park District on account of any personal injuries or property damage arising out of or resulting from City's construction of the library facility and its subsequent use of the Leased Premises. For this purpose, City hereby agrees to carry and keep in force Worker's Compensation coverage as required by the laws of North Dakota and public liability and property damage insurance, all policies to be acceptable to Park District, who shall be named as an additional insured and furnished a copy of each policy or policies, as follows:

- i. Each party agrees to assume its 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.
- ii. Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages covering the governments for any and all claims of any nature which may in any manner arise out of or result from

this agreement:

- (a) Commercial general liability and automobile liability insurance - minimum limits of liability required of the governmental entity are \$250,000 per person and \$500,000 per occurrence.
  - (b) City shall maintain its own property damage coverage in such amounts as City deems necessary.
- B. Park District agrees to indemnify and save forever harmless City from any and all claims for damages of any kind or nature which may hereinafter be made against City on the account of any personal injuries or property damage arising out of or resulting from Park District's construction of the connected facility and its subsequent use of the same. For this purpose, Park District hereby agrees to carry and keep in force similar insurance coverages or self-insurance as set forth in the preceding subparagraph.
- C. The parties agree to consider and possibly add a medical reimbursement provision which will be discussed during the design phase and included in the joint use agreement.
- D. For and in consideration of the execution hereof, the parties hereto, on behalf of themselves and their respective insurers, do each herein and hereby release and relieve the other and waive their entire claim of recovery for loss or damage to property arising out of or incident to fire, lightning and other perils included in the All Risk property insurance coverage endorsement to the extent that said claims, actions, damages liability and expense are covered by insurance of either party, whether due to negligence of the parties, their agents, or employees or otherwise so coverable by insurance. The parties agree to cause such release and to endorse such provisions in insurance policies issued for the respective properties or parties, which are the subject of this Agreement.

11. Personnel and Invitees. It is expressly understood that the operations of each party, its officers, personnel and invitees shall be conducted in an orderly and proper manner and so as not to annoy or be offensive to others utilizing the library facility, the Park District's facility, or the common area of the joint facilities, and each party shall have the right to complain to the other as to the demeanor, conduct and appearance of each parties personnel and those persons doing business with it, whereupon each party will take all steps necessary to remove the cause of the complaint.

12. Condition of Premises - Acceptance and Vacation. The Leased Premises is accepted in its "AS IS" condition. The City will not do or permit anything to be done which would deface, damage or deteriorate the value of the Leased Premises. City agrees that it will leave the Leased Premises in a condition satisfactory to Park District if and when it vacates the Leased Premises.

13. Grounds, Parking Lot Maintenance and Snow Cleaning. Park District shall not be required during the term of this Lease to make any alterations or repairs to the Leased Premises

including the City's library building to be built thereon. Following construction, Park District shall maintain the parking lot surrounding the City's facility and under its control in reasonably good order and repair throughout the term of this Lease. Park District shall be responsible to remove snow/ice from the parking lot servicing the Leased Premises. The Park District shall also be responsible for all mowing/landscaping maintenance/lighting/sweeping and overall maintenance of the area immediately surrounding the facility. The cost of providing such services and City reimbursement will be included in a later joint use agreement based on the square footage of the respective facilities, not to include the Lobby Entrance.

Notwithstanding the above, the parties acknowledge that capital improvement to the parking lot (such as resurfacing and restriping) will be required. The parties will share equally in such costs and expenses.

14. Business Records - Public Records. It specifically understood and agreed in this regard that Park District and City are public bodies under North Dakota law and thus is subject to the open records and open meeting laws.

15. Basketball Courts. The parties understand and agree that Park District intends to construct an approximate 7,654 square foot facility adjoining and connected to City's library building which is estimated to be approximately 15,000 square feet. The parties acknowledge that the City will be removing four lighted basketball courts currently located on the Leased Premises and will reinstall two lighted basketball courts at such location directed by the Park District after the location and design of the building(s) are determined. The City acknowledges that the Park District intends to construct two additional lighted basketball courts to replace the two lost in this construction. The City agrees that it will pay to the Park District an amount equal to the actual cost incurred by the City in reconstructing the two lighted basketball courts. This figure will be determined and agreed upon during the design phase, but will be subject to adjustment when final cost are tallied. The payment will be due within thirty (30) days following the Park District invoicing the City but in no event earlier than thirty (30) days following the reconstruction of the two lighted basketball courts by the City.

16. Short Form of Lease. The parties hereby agree to execute a short form of lease referring to this lease and suitable for recording.

17. Miscellaneous.

A. Notices. All payments, demands and notices required herein shall be deemed to be properly served if sent by regular, certified or registered mail, postage prepaid, to the last address previously furnished by the parties hereto. Until hereafter changed by either party, in writing, notice shall be addressed as follows:

LESSOR: The Park District of the City of Fargo  
Attn: Executive Director  
701 Main Avenue  
Fargo, ND 58102

LESSEE: The City of Fargo, North Dakota  
Attn: City Auditor  
200 North Third Street  
Fargo, ND 58102

The date of service of such notice shall be three (3) days after the date such notice is deposited in a post office of the U.S. Post Office Department.

Any substitute address will be the address furnished by each party to the other.

- B. Paragraph Headings. Paragraph headings contained herein are for convenience in reference only, and are not intended to define or limit the scope of any provisions of this Agreement.
- C. Approval or Consent by Park District. Where consent is required (except where the context indicates otherwise) consent from the Park District shall not be unreasonably requested by City nor shall such consent, approval or direction be unreasonably withheld by the Park District.

18. Dispute Resolution. All disputes between the parties under this Agreement shall be submitted to binding arbitration, conducted locally and not involving the American Arbitration Association. Each party shall bear one-third (1/3) of the cost of the arbitration. The nonprevailing party shall bear the remaining one-third (1/3) unless the arbitrator determines otherwise. Judgment upon the award rendered may be entered in any court of competent jurisdiction.

The procedure for arbitration shall be that each party shall select one arbitrator, and the two selected arbitrators shall choose a third arbitrator. The parties will use their best efforts to select arbitrators that are familiar with the subject matter in dispute. The arbitrators need not be attorneys. The arbitrators may retain legal counsel to advise on procedural matters only. If either party fails to select an arbitrator within twenty (20) days after arbitration is sought, the matter will be heard by the one arbitrator selected. Notwithstanding the above, upon mutual agreement of the parties, they may agree upon one arbitrator to hear and render a decision on the dispute. The arbitrators shall render their decision within ninety (90) days following the last appointment/selection.



IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

THE PARK DISTRICT OF THE CITY OF FARGO

a park district under the laws of the State of North Dakota

By Tom Barnhart President

ATTEST:

Christopher M. Kennelly  
Christopher M. Kennelly, Clerk

THE CITY OF FARGO, NORTH DAKOTA a municipal corporation

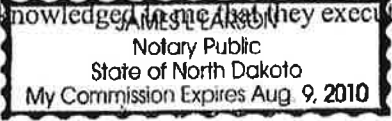
By Bruce W. Furness  
Bruce W. Furness, Mayor

ATTEST:

Steven Sprague  
Steven Sprague, City Auditor

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

On this 10<sup>th</sup> day of January, 2008, before me, a notary public within and for said county and state, personally appeared Tom Barnhart and CHRISTOPHER M. KENNELLY, to me known to be the President and Clerk, respectively, of THE PARK DISTRICT OF THE CITY OF FARGO, the entity described in and that executed the foregoing instrument, and acknowledged in me that they executed the same on behalf of the said entity.



(S E A L)

James L. Larson  
Notary Public

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

On this <sup>2006</sup> 4<sup>th</sup> day of January, 2005, before me, a notary public in and for said county and state, personally appeared BRUCE W. FURNESS and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, a municipal corporation, described in and that executed the within and foregoing instrument, and acknowledged that said municipal corporation executed the same.



*Kristin Sylskar* \_\_\_\_\_  
Notary Public

(SEAL)

**SUPPLEMENT NO. 2 TO GROUND LEASE**

**THIS SUPPLEMENT NO. 2 TO GROUND LEASE** ("Supplement No. 2") is made and entered into by and between **THE PARK DISTRICT OF THE CITY OF FARGO**, a park district under the laws of the State of North Dakota ("Park District") and **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation ("City").

WHEREAS, the Park District and the City entered into a Ground Lease dated December 15th, 2005, a true and correct copy of which is attached hereto and incorporated by reference herein, for the construction of a southside Library managed by the City and a southside Senior Center managed by the Park District; and

WHEREAS, the Park District and the City amended the Ground Lease pursuant to the terms of Supplement No. 1 to Ground Lease following the completion of the construction of the building located on the Property and identifying both the Park District's and City's relative functions located within the structure; and

WHEREAS, the parties, along with the Fargo School District (District Number 1), have entered into a series of agreements related to the School constructing an elementary school on Park District property (the "School") known as Ed Clapp Park; and

WHEREAS, the proposed development of the School contemplates the use of some of the property subject to the Ground Lease between the Park District and the City, requiring the City and the Park District to establish an additional parking area to the north of the Library/Senior Center, all in accordance with the proposed Site Plan attached hereto as Exhibit "A".

NOW, THEREFORE, in consideration of the Ground Lease, the continued relationship between the parties to provide services to the citizens of Fargo, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Park District and the City agree to supplement the Ground Lease, as amended pursuant to Supplement No. 1, by this Supplement No. 2, as follows:

1. All terms and conditions of the Ground Lease, as amended pursuant to Supplement No. 1, shall remain in full force and effect except as otherwise amended, qualified or explained in this Supplement No. 2. Any inconsistency between the Supplement No. 2 and the initial Ground Lease and Supplement No. 1 shall be construed in favor of this Supplement No. 2.

2. Paragraph 1 of the Ground Lease is amended in part to redefine the Leased Premises. The Leased Premises is pictorially designated on Exhibit "A" attached hereto, the Site Plan contemplated by the Park District, the City and the School, to be attached hereto as Exhibit "B" will be the legal description of the Leased Premises which will be established by survey following the completion of the construction of the School and improvements, to include the parking lot area to the north of the current Library/Senior Center, which parking lot will be included in the Leased Premises. The Park District and the City acknowledge that attempting to designate the precise

location of the boundary lines of the Leased Premises by legal description at this time may limit site development plans that will benefit all parties.

3. The addition to the Leased Premises is intended to be a new parking lot constructed by and at the sole cost and expense of the School. It is specifically understood and agreed by and between the Park District and the City that the new parking lot may be used by both the Library staff and the Senior Center staff for automobile parking purposes only. General patron parking of the Library and the Senior Center shall continue to be to the south and east of the facility. If the Park District and the City at some time in the future desire to assign a minimum number of designated stalls for the exclusive use of the Library staff and/or the Senior Center staff, such designations will be made pursuant to a separate Joint Use Agreement, which Joint Use Agreement may contemplate costs associated with applicable signage.


4. To the extent there are any costs and expenses associated with the parking lot construction that are not covered by the School in separate agreements with the School, the City and the Park District agree to share equally in such costs and expenses.

5. Maintenance and snow removal of the added parking lot shall be subject to the terms and conditions of the initial Ground Lease and Supplement No. 1.

6. This Supplement No. 2 shall in all things be effective upon final approval to the School for the development of the new elementary school and the commencement of the construction of the new parking lot to be included in the added leased premises to the north of the current Library/Senior Center.

THE PARK DISTRICT OF THE CITY  
OF FARGO

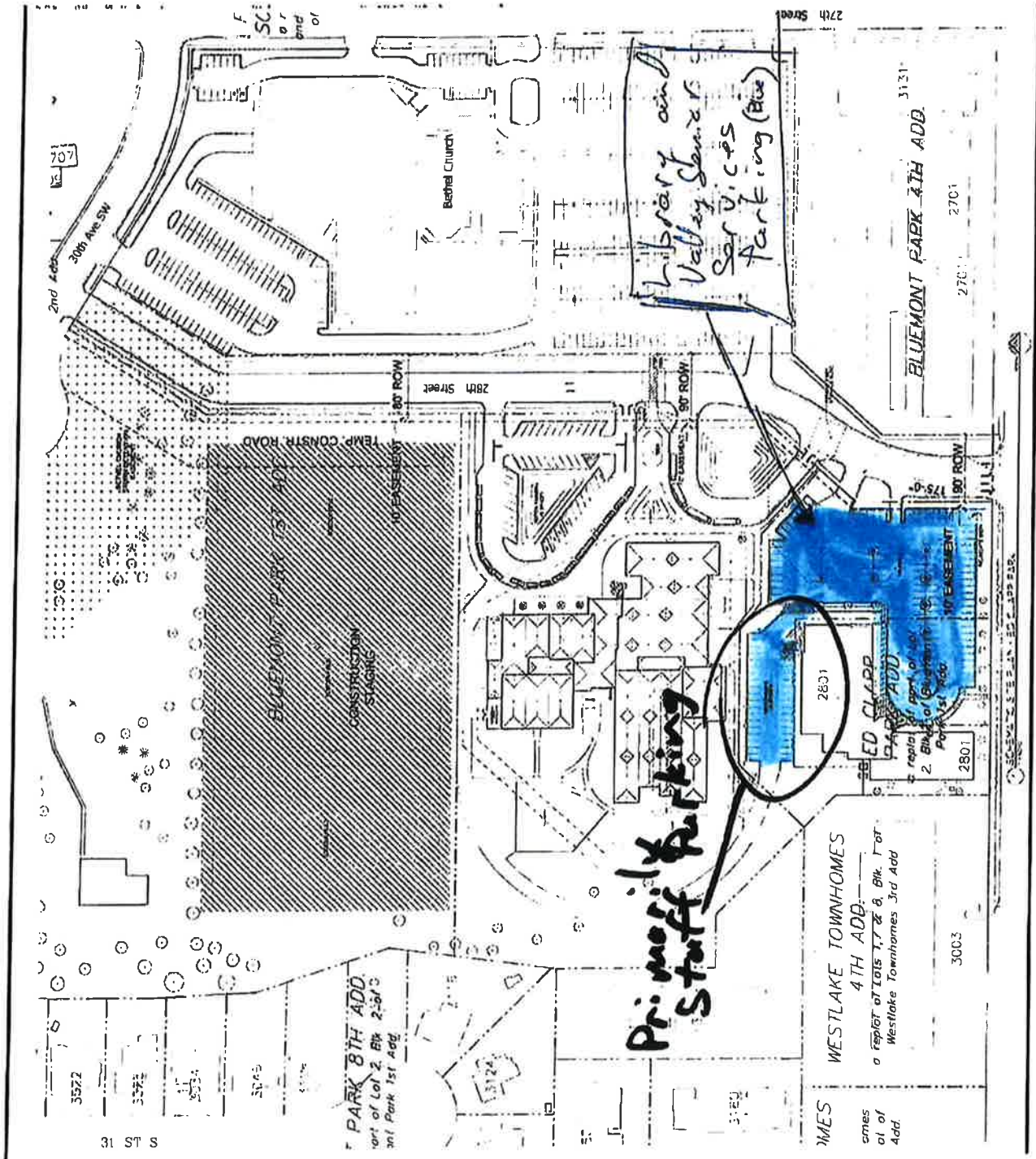
By:   
Its: President

By:   
Its: Clerk

THE CITY OF FARGO, NORTH DAKOTA

By:   
Dennis Walaker, Mayor

Attest:   
Steven Sprague, City Auditor



Primary and Staff Parking

Library and Valley Services Parking (Blue)

WESTLAKE TOWNHOMES 4TH ADD: a replica of Lots 1, 7 & 8, Blk. 1 of Westlake Townhomes 3rd Add

WESTLAKE TOWNHOMES 3RD ADD

PARK 8TH ADD: part of Lot 2, Blk 2-8th 3rd Park 1st Add

BLUEMONT PARK 1ST ADD

31 ST S

①

APPROVED BY THE BOARD  
OF COMMISSIONERS  
18-19-05

**GROUND LEASE  
(including shared use)**

**BY AND BETWEEN**

**THE PARK DISTRICT OF THE CITY OF FARGO**

**AND**

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

**SOUTHSIDE LIBRARY FACILITY**

**Table of Contents**

1.	Leased Premises and Term .....	1
2.	Rental Obligations.....	2
3.	Use of Premises.....	2
4.	Ownership of Building and Removal .....	3
5.	Building Plan – Shared Facilities.....	3
6.	Assignment or Subletting.....	4
7.	City's Obligation for Utilities, Taxes and Special Assessments.....	4
8.	Quiet Enjoyment .....	4
9.	Law Governing.....	4
10.	Insurance, Liability, Indemnity and Waiver of Subrogation .....	4
11.	Personnel and Invitees.....	5
12.	Condition of Premises - Acceptance and Vacation .....	5
13.	Grounds, Parking Lot Maintenance and Snow Cleaning .....	6
14.	Business Records - Public Records .....	6
15.	Basketball Courts .....	6
16.	Short Form of Lease.....	6
17.	Miscellaneous.....	6
18.	Dispute Resolution .....	7



**GROUND LEASE**

**THIS LEASE**, made this 15 day of December 2005 ("Lease"), by and between **THE PARK DISTRICT OF THE CITY OF FARGO**, a park district under the laws of the State of North Dakota, party of the first part, herein after called the "Park District" and **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, 200 North Third Street, Fargo, North Dakota, party of the second part, hereinafter called the "City",

**WITNESSETH:**

**WHEREAS**, Park District owns land including an existing parking lot; and,

**WHEREAS**, City is desirous of leasing property on which to construct a new southside library facility; and,

**WHEREAS**, the precise location of the facility has not been determined and the parties wish to determine that location by mutual consent during the design phase of the facility; and,

**WHEREAS**, Park District is agreeable to leasing the ground necessary for said construction, as well as allowing designated parking for the library; and,

**WHEREAS**, Park District desires to construct a connected, adjoining facility to provide space for its senior citizen administrative offices and function as a senior citizen center; and,

**WHEREAS**, Park District and City wish to enter into a ground lease for the construction of City's facility, as well as to provide therein provisions for the joint use of the vestibule or entry area which will include restrooms and will be hereinafter referred to as the "Lobby Entrance".

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained herein, including the ground rent, the sufficiency of which is acknowledged by all parties, the parties hereby agree as follows:

I. Leased Premises and Term.

- A. Description and Initial Term. The Park District, for and in consideration of the covenants and agreements hereinafter to be kept and performed by the City, hereby leases to the City for and during the term of twenty-nine (29) years from and after the date hereof, a tract of property within Park District's property located on 32<sup>nd</sup> Avenue South in the City of Fargo. During the facility design phase, the parties will mutually agree on a precise location which location will be legally described and pictorially designated on an exhibit to be developed and denominated Exhibit "A". Said exhibit will be attached to a short form of lease as required by paragraph 16 hereinafter. It is the intent of this provision that attempting to designate the precise location and the legal description at this time may limit the parties' design options. Parking for the said facility shall be on the existing parking lot, as well as specific spaces designated for use of City's building which



will again all be shown on Exhibit "A" after the parties have mutually agreed on the same. The precise location after determination as set forth above will be known as the "Leased Premises". For purposes of this ground lease, there is attached as Attachment "1" a pictorial representation of the general area of Park District's property which will be the subject of design and mutual agreement as aforesaid.

- B. Subsequent Term. Following the initial 29-year term, this lease shall automatically renew for up to seven (7) additional periods of ten (10) years each unless City shall give Park District notice six (6) months in advance of the end of any 10-year term signifying its intent to not renew the Lease.
- C. Staging Area for Construction. Park District agrees that City may utilize portions of the existing parking lot during construction to provide a staging area and access for construction of City's building. City agrees to restore the parking lot to its present condition, if necessary, following such construction activities.
- D. City's Failure to Commence Construction. Notwithstanding the above, this Lease will terminate and the Park District will return to the City any rent paid under paragraph 2 below if the City has not commenced construction of the library facility on or prior to October 1, 2006. The parties anticipate that construction is expected to commence in the spring of 2006 and agree that the lease commencement date will be renegotiated if the project is stalled for any reason beyond the fall of 2006.

2. Rental Obligations. In consideration thereof City agrees to pay the Park District \$1.00 per year for the ground on which its building is constructed, the receipt whereof is hereby acknowledged.

3. Use of Premises. The City hereby covenants and agrees that the City shall use and occupy the Leased Premises for the purpose of constructing and operating the Southside Library facility owned by the City of Fargo. In addition, the building may be devoted to other uses provided, however, that the City must notify Park District of any change in use. It is the intent of this provision that this Lease is only for a library facility and for no other City purpose. If the City desires to use the Leased Premises for another purpose, it must secure the written consent of the Park District before such use, which consent shall not be unreasonably withheld. It is specifically understood and agreed that the concrete or asphalt areas located in proximity to the Leased Premises may be used by City for automobile parking purposes, it being the intent of this Lease that the City shall have the non-exclusive right during the term of this lease to use such areas for parking purposes. The parties agree to assign a minimum number of designated stalls that are for the exclusive use of the library facility and/or the senior citizen's facility during the hours the facilities are open. Designation of such stalls will be made during the design phase and covered in the joint use agreement.

4. Ownership of Building and Removal. The City shall retain ownership of any building placed on the Leased Premises provided it is removed from the premises within one hundred twenty (120) days after the expiration or termination in any manner of this Lease and

further provided that the Leased Premises are restored to the original condition, or in a condition acceptable to the Park District. If any building is not so removed as herein provided, ownership shall pass to the Park District provided, however, that the parties may otherwise agree at that time.

5. Building Plan – Shared Facilities. The general plans and specifications for the library space to be constructed by City on the Leased Premises shall not require approval of Park District but Park District shall have a right to review and comment on any of such plans. Such plans shall include appropriate and required landscaping at the cost of the City. However, the parties agree that Park District will be constructing an approximate 7,654 square foot connected, adjoining facility to accommodate its senior citizens program. The Park District intends to engage the services of the City-selected architect to coordinate the exterior design of the building to be constructed by the City, the proposed way the library facility will be connected to the senior citizens facility, including what may be contained in the Lobby Entrance ( including restrooms) and the senior citizens facility. Such designs shall be subject to the approval of the Park District, which approval shall not be unreasonably withheld. The parties will use their best efforts to coordinate an exterior building design that is compatible with the site and the neighborhood. Additional terms and conditions regarding shared use of a portion of the facility to be constructed by City, including the Lobby Entrance, or entry (including restrooms), will be included in a joint use agreement between the parties. Except as may otherwise be stated in this Lease or the joint use agreement, the parties acknowledge an intention to share such expenses on the ratio of the square footages of their respective facilities but will coordinate who best may be capable of providing specific services.

The parties agree that Lobby Entrance or entry area will be included as a part of City's construction. This entry area will be a joint use area and will provide the entry for Park District's senior citizen facility, as well as the library facility to be constructed. The entry area will be owned by City but utilized by the Park District. City agrees to pay the cost of maintenance, cleaning, and providing all utilities for the entry area.

City shall be solely responsible for bringing/extending utilities to the building site, sufficient to accommodate both facilities. To the extent possible, utilities will be separately metered between the library and the senior citizens facilities.

Notwithstanding the above, the parties acknowledge that they will use their best efforts to coordinate the design and construction of the City's library facility, the connecting Lobby Entrance and the Park District's senior citizens facility with the City coordinating the entire project. The parties acknowledge that the City has already extended requests for proposals for architectural services and the Park District will provide such information to the architect as the architect deems necessary and appropriate to assist the architect in including in the overall plan the design for the senior citizen facility and the opportunity to coordinate the later construction of both facilities to insure continuity of design, energy efficiency, and an expected overall savings in construction costs. The Park District and the City, through their respective employees or committees, will use their best efforts to coordinate such efforts and to allocate the costs in the appropriate manner.

6. Assignment or Subletting. This lease shall not be assigned by the City and the Leased Premises nor any part thereof may be sublet or re-rented except with the written permission of the Park District, which permission shall not be delayed or unreasonably withheld,

provided the use of the facility and the Leased Premises is consistent with the terms and conditions of paragraph 3 above.

7. City's Obligation for Utilities, Taxes and Special Assessments. It is expressly understood that Park District is under no obligation, nor will at any time be under any obligation whatever, to furnish any labor, materials, work, heat, electricity, water, gas or services, utility, or otherwise, to City. Other provisions relating to utility services and hydrants for fire protection shall be dealt with in a joint use agreement. In addition, City shall be responsible for and shall pay any and all taxes imposed on the leasehold interest pursuant to City or County ordinances and North Dakota law. Any special assessments attributable to the library facility and related improvements on the Leased Premises shall be City's responsibility. Any special assessments benefiting both the library and senior citizen facilities shall be shared equally between the parties. The parties acknowledge, however, that some allocations or determination of benefits may be better deferred or refined as the design is established and such allocations will be addressed in the joint use agreement. Upon agreeing on a definitive Exhibit "A" after design and location matters are determined, the parties will cooperate in replating the property so that the Leased Premises is a separate and distinct tax parcel. The parties will share equally in the cost associated with the replat.

8. Quiet Enjoyment. The Park District covenants with the City that upon performing the obligations herein provided on its part to be performed, the City shall quietly enjoy the Leased Premises during the term of this lease or any extension thereof.

9. Law Governing. All provisions hereof, and words and phrases used herein, shall be governed and construed under the laws of the state of North Dakota, except insofar as the provisions of such laws or the benefits accruing therefrom are specially waived.

10. Insurance, Liability, Indemnity and Waiver of Subrogation.

A. City agrees to indemnify and save forever harmless Park District from any and all claims for damages of any kind or nature which may hereafter be made against Park District on account of any personal injuries or property damage arising out of or resulting from City's construction of the library facility and its subsequent use of the Leased Premises. For this purpose, City hereby agrees to carry and keep in force Worker's Compensation coverage as required by the laws of North Dakota and public liability and property damage insurance, all policies to be acceptable to Park District, who shall be named as an additional insured and furnished a copy of each policy or policies, as follows:

- i. Each party agrees to assume its 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.
- ii. Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages covering the governments for any and all claims of any nature which may in any manner arise out of or result from

this agreement:

- (a) Commercial general liability and automobile liability insurance - minimum limits of liability required of the governmental entity are \$250,000 per person and \$500,000 per occurrence.
  - (b) City shall maintain its own property damage coverage in such amounts as City deems necessary.
- B. Park District agrees to indemnify and save forever harmless City from any and all claims for damages of any kind or nature which may hereinafter be made against City on the account of any personal injuries or property damage arising out of or resulting from Park District's construction of the connected facility and its subsequent use of the same. For this purpose, Park District hereby agrees to carry and keep in force similar insurance coverages or self-insurance as set forth in the preceding subparagraph.
- C. The parties agree to consider and possibly add a medical reimbursement provision which will be discussed during the design phase and included in the joint use agreement.
- D. For and in consideration of the execution hereof, the parties hereto, on behalf of themselves and their respective insurers, do each herein and hereby release and relieve the other and waive their entire claim of recovery for loss or damage to property arising out of or incident to fire, lightning and other perils included in the All Risk property insurance coverage endorsement to the extent that said claims, actions, damages liability and expense are covered by insurance of either party, whether due to negligence of the parties, their agents, or employees or otherwise so coverable by insurance. The parties agree to cause such release and to endorse such provisions in insurance policies issued for the respective properties or parties, which are the subject of this Agreement.
11. Personnel and Invitees. It is expressly understood that the operations of each party, its officers, personnel and invitees shall be conducted in an orderly and proper manner and so as not to annoy or be offensive to others utilizing the library facility, the Park District's facility, or the common area of the joint facilities, and each party shall have the right to complain to the other as to the demeanor, conduct and appearance of each parties personnel and those persons doing business with it, whereupon each party will take all steps necessary to remove the cause of the complaint.
12. Condition of Premises - Acceptance and Vacation. The Leased Premises is accepted in its "AS IS" condition. The City will not do or permit anything to be done which would deface, damage or deteriorate the value of the Leased Premises. City agrees that it will leave the Leased Premises in a condition satisfactory to Park District if and when it vacates the Leased Premises.
13. Grounds, Parking Lot Maintenance and Snow Cleaning. Park District shall not be required during the term of this Lease to make any alterations or repairs to the Leased Premises

including the City's library building to be built thereon. Following construction, Park District shall maintain the parking lot surrounding the City's facility and under its control in reasonably good order and repair throughout the term of this Lease. Park District shall be responsible to remove snow/ice from the parking lot servicing the Leased Premises. The Park District shall also be responsible for all mowing/landscaping maintenance/lighting/sweeping and overall maintenance of the area immediately surrounding the facility. The cost of providing such services and City reimbursement will be included in a later joint use agreement based on the square footage of the respective facilities, not to include the Lobby Entrance.

Notwithstanding the above, the parties acknowledge that capital improvement to the parking lot (such as resurfacing and restriping) will be required. The parties will share equally in such costs and expenses.

14. Business Records - Public Records. It specifically understood and agreed in this regard that Park District and City are public bodies under North Dakota law and thus is subject to the open records and open meeting laws.

15. Basketball Courts. The parties understand and agree that Park District intends to construct an approximate 7,654 square foot facility adjoining and connected to City's library building which is estimated to be approximately 15,000 square feet. The parties acknowledge that the City will be removing four lighted basketball courts currently located on the Leased Premises and will reinstall two lighted basketball courts at such location directed by the Park District after the location and design of the building(s) are determined. The City acknowledges that the Park District intends to construct two additional lighted basketball courts to replace the two lost in this construction. The City agrees that it will pay to the Park District an amount equal to the actual cost incurred by the City in reconstructing the two lighted basketball courts. This figure will be determined and agreed upon during the design phase, but will be subject to adjustment when final cost are tallied. The payment will be due within thirty (30) days following the Park District invoicing the City but in no event earlier than thirty (30) days following the reconstruction of the two lighted basketball courts by the City.

16. Short Form of Lease. The parties hereby agree to execute a short form of lease referring to this lease and suitable for recording.

17. Miscellaneous.

A. Notices. All payments, demands and notices required herein shall be deemed to be properly served if sent by regular, certified or registered mail, postage prepaid, to the last address previously furnished by the parties hereto. Until hereafter changed by either party, in writing, notice shall be addressed as follows:

LESSOR: The Park District of the City of Fargo  
Attn: Executive Director  
701 Main Avenue  
Fargo, ND 58102

LESSEE: The City of Fargo, North Dakota  
Attn: City Auditor  
200 North Third Street  
Fargo, ND 58102

The date of service of such notice shall be three (3) days after the date such notice is deposited in a post office of the U.S. Post Office Department.

Any substitute address will be the address furnished by each party to the other.

B. Paragraph Headings. Paragraph headings contained herein are for convenience in reference only, and are not intended to define or limit the scope of any provisions of this Agreement.

C. Approval or Consent by Park District. Where consent is required (except where the context indicates otherwise) consent from the Park District shall not be unreasonably requested by City nor shall such consent, approval or direction be unreasonably withheld by the Park District.

18. Dispute Resolution. All disputes between the parties under this Agreement shall be submitted to binding arbitration, conducted locally and not involving the American Arbitration Association. Each party shall bear one-third (1/3) of the cost of the arbitration. The nonprevailing party shall bear the remaining one-third (1/3) unless the arbitrator determines otherwise. Judgment upon the award rendered may be entered in any court of competent jurisdiction.

The procedure for arbitration shall be that each party shall select one arbitrator, and the two selected arbitrators shall choose a third arbitrator. The parties will use their best efforts to select arbitrators that are familiar with the subject matter in dispute. The arbitrators need not be attorneys. The arbitrators may retain legal counsel to advise on procedural matters only. If either party fails to select an arbitrator within twenty (20) days after arbitration is sought, the matter will be heard by the one arbitrator selected. Notwithstanding the above, upon mutual agreement of the parties, they may agree upon one arbitrator to hear and render a decision on the dispute. The arbitrators shall render their decision within ninety (90) days following the last appointment/selection.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

THE PARK DISTRICT OF THE CITY OF FARGO  
a park district under the laws of the State of North Dakota

By Tom Barnhart  
President

ATTEST:

Christopher M. Kennelly  
Christopher M. Kennelly, Clerk

THE CITY OF FARGO, NORTH DAKOTA  
a municipal corporation

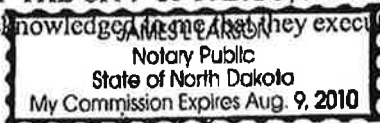
By Bruce W. Furness  
Bruce W. Furness, Mayor

ATTEST:

Steven Sprague  
Steven Sprague, City Auditor

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

On this 10<sup>th</sup> day of January, 2008, before me, a notary public within and for said county and state, personally appeared Tom Barnhart and CHRISTOPHER M. KENNELLY, to me known to be the President and Clerk, respectively, of THE PARK DISTRICT OF THE CITY OF FARGO, the entity described in and that executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the said entity.



(S E A L)

James F. Jara  
Notary Public

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

On this 4<sup>th</sup> day of January, <sup>2006</sup>~~2005~~, before me, a notary public in and for said county and state, personally appeared BRUCE W. FURNESS and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, a municipal corporation, described in and that executed the within and foregoing instrument, and acknowledged that said municipal corporation executed the same.



*Kristin Sylskar*

\_\_\_\_\_  
Notary Public

(SEAL)



**SUPPLEMENT NO. 3 TO GROUND LEASE**

This Supplement No. 3 to Ground Lease (“Supplement No. 3”) is made this 11 day of July, 2023 (the “Effective Date”) between **Park District of the City of Fargo** (“Park District”), a park district under the laws of the State of North Dakota, and **The City of Fargo, North Dakota**, a municipal corporation (“City”).

**RECITALS**

**WHEREAS**, The Park District and the City entered into a Ground Lease dated December 15, 2005, a true and correct copy of which is incorporated by reference here, for the construction of a southside Library managed by the City and a southside Senior Center managed by the Park District.

**WHEREAS**, the Park District and the City amended the Ground Lease pursuant to the terms of Supplement No. 1 to the Ground Lease.

**WHEREAS**, the Park District and the City amended the Ground Lease pursuant to the terms of Supplement No. 2 to the Ground Lease.

**WHEREAS**, the Park District and City desire to modify the terms of the Ground Lease as further detailed in this Supplement No. 3.


**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Section 10.A. shall be deleted and replaced as follows:
  - A. City agrees to indemnify and save forever harmless Park District from any and all claims for damages of any kind or nature which may hereafter be made against Park District on account of any personal injuries or property damage arising out of or resulting from City’s use of the Leased Premises. For this purpose, City hereby agrees to carry and keep in force Worker’s Compensation coverage as required by the laws of North Dakota and public liability for property damage arising out of their occupancy of the premises along with All Risk property insurance coverage on the structure itself at a minimum of full replacement cost, all policies to be acceptable to Park District, who shall be named as an additional insured and furnished a copy of each policy or policies as follows:

The remainder of Section 10, including but not limited to Sections 10.A.i. and 10.A.ii. shall remain in full force and effect as written in the Ground Lease.

2. All terms and conditions of the Ground Lease, as amended pursuant to Supplement No. 1 and Supplement No. 2, shall remain in full force and effect except as herein amended this Supplement No. 3. Any inconsistency between Supplement No 3 and the initial Ground Lease, Supplement No. 1 and Supplement No. 2 shall be construed in favor of this Supplement No. 3.

**Park District of the City of Fargo**

  
\_\_\_\_\_  
By:  
Its: President

  
\_\_\_\_\_  
By:  
Its: Clerk

**The City of Fargo, North Dakota**

\_\_\_\_\_  
By: Timothy Mahoney  
Its: Mayor

\_\_\_\_\_  
By: Steven Sprague  
Its: City Auditor



25

July 18, 2023

Fargo City Commission  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

RE: Sole Source Procurement for Agreement between FARGODOME and HVS Convention/  
Sports & Entertainment (HVS) to provide Updated Expansion Projections for possible  
FARGODOME updates and conference center addition – SSP23145

Commissioners:

The Fargo Dome Authority requests your approval of the sole-source procurement of the agreement between FARGODOME and HVS Convention, Sports & Entertainment (HVS) to provide Updated Expansion Projections for the FARGODOME Remodel and Conference Center Addition.

As the Fargo Dome Authority continues to gather information for a possible remodel and conference center addition at FARGODOME, they feel it is important to re-visit any past financial analysis work previously performed to make sure it is accurate for current conditions, and/or updated based on any changes in demand or building design programming. HVS performed the original Market and Feasibility Analysis regarding a proposed Fargo Convention Center back in March 2014. HVS was again retained in May 2017 to update the Demand and Financial Analysis of their original report, based on any changing demand and programming conditions. Because of the past work and knowledge, the Fargo Dome Authority feels it would be most efficient, both in terms of completion time and cost, to engage HVS to complete this work.

The expense for this work will be funded through the FARGODOME Permanent Fund, which is used to fund FARGODOME Capital expenditures.

This item was reviewed and approved by the Fargo Dome Authority Finance & Building Committees at their meeting on Wednesday, July 19, 2023, as well by the City of Fargo Finance Committee at their meeting on July 24, 2023.

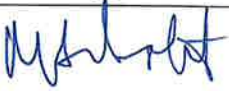
Requested Motion: To approve the Sole Source Procurement request from the Fargo Dome Authority for the agreement between FARGODOME and HVS, in the amount of \$25,600, plus reasonable reimbursable expenses, with no travel anticipated to be necessary, for Updated Expansion Projections for the FARGODOME remodel & conference center addition. Funding for this will come from the FARGODOME Permanent Fund.

Thank you for your consideration of this matter.

Sincerely,

Rob Sobolik  
General Manager, FARGODOME

## SOLE SOURCE REQUEST FORM (SSP)

Requested by:	Rob Sobolik	Department:	Fargodome
Date of Request:	July 7, 2023	Phone Number:	701-298-2658
E-mail:	rsobolik@fargodome.com		
Dept Head Signature:		Estimated Amount of Purchase:	\$25,600

### Sole Source Purchase Requirement:

A contract less than \$50,000 may be awarded without competition when the purchasing manager determines in writing, after conducting a good-faith review of available sources, that there is only one source for the required supply, service, or material. Any sole source procurement greater than \$50,000 must also be approved by the Board of City Commissioners prior to a vendor award using this method.

Product or Service description of the features or capabilities unique to the vendor or brand being requested:

HVS Convention, Sports & Entertainment (HVS) performed the initial study of the addition of a conference facility to Fargodome, titled Fargo Convention Center Market and Feasibility Analysis, back in 2014. HVS, along with their industry colleague, Trahan Architects, was again retained in 2017 to provide an update to the 2014 study relating to building programming and potential operating pro forma given various scenarios. As information is gathered now for a possible Fargodome Remodel and Conference Center Addition, it would be most time efficient, and cost effective, to contract with HVS to again review the plans for Fargodome and convention center addition programming and provide any necessary updates to the overall operating pro forma as a result of this work.

<b>Vendor Name:</b> HVS Convention Sports & Entertainment - Facilities Consulting			
<b>Address:</b> 1035 Keystone Avenue			
<b>City:</b> River Forest	<b>State:</b> Illinois	<b>Zip Code:</b> 60305	
<b>Contact Person:</b> Tom Hazinski		<b>Title:</b> Managing Director	
<b>Telephone:</b> 312-587-9900		<b>Email:</b> thazinski@hvs.com	
<b>Purchasing Manager Approval:</b>			
<b>Sole Source (SSP) Number:</b>			



---

1035 Keystone Ave.  
River Forest, IL 60305  
+1 312-587-9900  
+1 312-488-3631 FAX  
[www.hvs.com](http://www.hvs.com)

July 5, 2023

Rob Sobolik  
City of Fargo, Fargodome  
1800 North University Drive  
Fargo, North Dakota 58102  
701-241-9100  
rsobolik@fargodome.com

Re: Updated Expansion Projections

Dear Rob,

HVS Convention, Sports & Entertainment Facilities Consulting ("HVS") is pleased to present this proposal to provide Updated Expansion Projections for the expanded FARGODOME in Fargo, North Dakota.

If you wish to engage us for this work, please sign the attached confirmation page to authorize these services and send it along with the retainer payment.

On behalf of our team, we are excited about this important project, and we look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink that reads "Thomas Hazinski". The signature is written in a cursive style.

Thomas Hazinski, Managing Director  
HVS Convention, Sports & Entertainment Facilities Consulting  
thazinski@hvs.com

## PROPOSED SCOPE OF WORK

---

The City of Fargo asked HVS to provide this proposal for an update of our 2017 FARGODOME analysis *Fargo Convention Center, Demand and Financial Update, Fargo, ND*, dated May 3, 2017. This analysis will only provide the updated projections on the FARGODOME site, not on the three additional sites analyzed in our 2017 study.

The Fargo City Council plans to put a 0.25% sales tax and a 3% additional hotel tax on the ballot on November 7, 2023, to fund a remodeling and expansion of the FARGODOME. The \$140 million expansion and redevelopment plan would add more seating, restrooms, and points of sale, in addition to a 45,000 square foot X-hall. Perkins & Will, along with a local architect, provided the concepts and building program plans.

We designed our scope of services to meet your goals and allow us to provide our findings according to schedule. HVS will conduct the following tasks:

- Hold an online kick-off call with client representatives to establish a schedule to perform the analysis and discuss venue and market performance since our last study, including impacts of the Covid 19 pandemic.
- Update key market data and economic indicators for the Fargo market.
- Gather and analyze historical operating data for FARGODOME since our last analysis (2016-present), including:
  - Historical event schedules and demand/attendance by event type, space utilization, attendance, origin of attendees, length of stay, and historical growth
  - Historical financial operating data
  - History of room night generation
  - Future booking data (from the FARGODOME and Visit Fargo-Moorhead)
  - Lost business reports
  - Changes to booking policies and relationships since our last study
- Interview FARGODOME operations staff, representatives from Visit Fargo-Moorhead, and others as identified.
- Update regionally competitive/comparable venue research, including any expansions or improvements to supply since our last study, and if available, levels of event demand by event type and financial operations.

- Hold conference calls with project architects to review the expansion and redevelopment plans.
- Revise demand projections reflecting changes to the building program and market conditions since previous study.
- Update operating pro forma with new demand projections and changes to dates of the open and stabilization.

### Reporting

Upon completion of updated analysis, we will submit our draft findings report in a tables-only format. After you have had the opportunity to review it, we will convene a conference call to discuss our findings. After our conference call, we will incorporate any agreed-upon changes and issue a final tables-only report. Reports will be provided electronically in PDF format.

### SCHEDULE

We propose a 6-week schedule, beginning from the date of receipt of the signed authorization and retainer payment.

### FEES AND COSTS

We propose to perform the scope of services presented in the proposal for a fee of \$25,600. A retainer of \$13,000 will be due upon authorization to proceed.

In addition to the fees presented above, you agree to reimburse us for reasonable out-of-pocket expenses incurred on your behalf. We do not anticipate any travel to complete the analysis. We will bill data expenses at cost, including data from third-party data sources including Esri, Placer.ai, PollStar, and the production of presentation materials and reports.

To engage our services, please return an executed agreement. Upon authorization to proceed, a retainer is due in the amount of \$13,000. After this initial payment, the remainder of the fees will be due upon delivery of the draft report. All outstanding invoices must be paid in full before delivery of report products.

### Restrictions on Use of Draft Reports

Until the time that all professional fees and other charges have been paid in full, the draft report, which is provided to you as a professional courtesy, remains the intellectual property of HVS and shall not be utilized in attempting:

- a) to obtain financial capital (whether debt or equity).
- b) to further any litigation, mediation, or arbitration processes.
- c) to assist the client in any cause, action, or endeavor.





If HVS has not been paid in full for its outstanding professional fees and other charges, and the draft report is used in violation of this agreement, HVS will be entitled to seek injunctive relief, monetary damages, and the cost of attorney fees and collection expenses.

**Rates**

The following are our hourly rates for HVS staff for services requested outside our scope of services:

**HVS HOURLY RATES**

<b>Position</b>	<b>Hourly Rate</b>
Managing Director	\$400
Senior Director	\$350
Director	\$250
Project Manager	\$200
Associate	\$150
Staff	\$90





**AUTHORIZATION**

**Client:** Rob Sobolik, City of Fargo, Fargodome  
**Date:** July 5, 2023

Your signature beneath the words "Agreed to and Accepted" signifies your agreement to employ HVS for the services described in the accompanying proposal titled "Updated Expansion Projections."

To schedule our assignments and perform your study in accordance with our proposed schedule, we ask that you return an executed copy of this agreement as authorization to proceed with the proposed scope of work. This proposal will remain effective for 30 days from of the date at the top of this page.

Payment must be made in U.S. dollars, using either a check drawn on a U.S. bank or a wire transfer of funds to the account of HVS Convention, Sports & Entertainment Facilities Consulting. If after completing the fieldwork phase of this assignment it becomes necessary to alter the parameters of the study, HVS will be entitled to charge an additional fee based on our current per diem rates and the time required to incorporate the necessary changes into our analysis and reports. Material changes to the scope may include changes to the property description, financing conditions, management or ownership structure, or other factors that could change the final projections. In addition to adjusting our fees, we will adjust the project schedule to reflect the time required to complete the revised scope of services.

Notwithstanding the proposed fee payment schedule, if, at any time while performing this assignment, it becomes necessary to suspend work for a period of 30 days or more, then HVS will be entitled to bill for the portion of the assignment completed up to the suspension (less any retainer paid) at its current per diem rates.

It is agreed that the liability of HVS, its employees and anyone else associated with this assignment is limited to the amount of the fee paid as liquidated damages. You acknowledge that any opinions, recommendations, and conclusions expressed during this assignment will be rendered by the staff of HVS acting solely as employees and not as individuals. Any responsibility of HVS is limited to the client, and use of our product by third parties shall be solely at the risk of the client and/or third parties. The study described in this proposal will be made subject to certain assumptions and limiting conditions. A copy of our normal assumptions and limiting conditions will be provided upon request.

President  
HVS Convention, Sports & Entertainment Facilities Consulting

**AGREED TO AND ACCEPTED:** Rob Sobolik, City of Fargo, Fargodome

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



26

**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: JUNE 17, 2023**

**RE: AGREEMENT FOR SERVICES WITH FOLKWAYS FOR  
COMMUNITY BASED RESEARCH FOR 2 EVENTS.  
FUNDS: \$9,700  
EXPIRES: 09/18/2023**

The following agreement for services with Folkways is for community-based research for a minimum of two events, one being in partnership with Red River Market. This is conjunction with FM Wellness Coalition.

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

**Suggested Motion:**

Move to approve the agreement for services with Folkways.

DF/lls  
Attachment

**THIS AGREEMENT**, effective the 24<sup>th</sup> day of July 2023, by and between FM Wellness Coalition/Fargo Cass Public Health ("FCPH"); and Folkways.

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

- A. Term of Agreement:** The parties entered into a written agreement for the period of July 25, 2023, through September 18, 2023.
- B. Services to be provided by independent contractor:** Community-based research for at least two events with one being in partnership with the Red River Market prior to end of term agreement. Services will be targeted in a neighborhood identified by the FM Wellness Coalition and/or with community residents with demographic similarities. Objectives include:
  - Development and preparation of research methodologies.
  - On-site research (staff time and expertise) to gather information to drive the future work of the Coalition.
  - Data analysis from on-site events with the potential inclusion of data from other Coalition events.
  - Providing a summary of findings to the Coalition; the Coalition maintains ownership of data.
- C. Reimbursement:** The independent contractor shall be reimbursed up to \$9,700.00 for services and submit an invoice.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish, or communicate any individually identifiable health information or other confidential information to any person, firm, or corporation without consent unless that disclosure is authorized under North Dakota law.

**Special Considerations:**

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

**In Witness** thereof, this purchase of service agreement has been executed between the Independent Contractor and FM Wellness Coalition/ Fargo Cass Public Health on the date-executed below.

**FARGO CASS PUBLIC HEALTH**

**CONTRACTOR**

By Desi Fleming  
Desi Fleming, Director of Public Health

By \_\_\_\_\_  
Joseph Burgum, Folkways

Date 07/20/2023

Date \_\_\_\_\_

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


Date \_\_\_\_\_



27

**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: JUNE 17, 2023**

**RE: PURCHASE OF SERVICE AGREEMENT WITH CASS COUNTY  
HUMAN SERVICE ZONE BOARD FOR IN HOME SERVICES  
PROVIDED BY FCPH  
FUNDS: UNIT RATE \$6.73/HOMEMAKER \$7.48/PERSONAL  
CARE  
EXPIRES: 12/31/2023**

The following purchase of service agreement is with Cass County Service Zone Board for Fargo Cass Public Health to provide in home services (\$6.71 a unit for homemaker services and \$7.46 a unit for personal care services) to residents that qualify for the services.

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

**Suggested Motion:**

Move to approve the purchase of service agreement with Cass County Human Service Board with FCPH.

DF/lls  
Attachment

## PURCHASE OF SERVICE AGREEMENT

WHEREAS, the Cass County Human Service Zone (CCHSZ) 1010 2<sup>nd</sup> Ave. S, Fargo, ND 58103 has determined the services referred to in the paragraph entitled "Scope of Service" should be purchased: and

WHEREAS Fargo Cass Public Health  
1240 25<sup>th</sup> Street South  
Fargo, ND 58103

(Provider), proposes to provide those services.

NOW, THEREFORE, the CCHSZ and Provider enter into the following:

### AGREEMENT

#### I. TERM OF THE AGREEMENT:

The term of this agreement shall be from January 1, 2023 through December 31, 2023.

#### II. SCOPE OF SERVICE:

The Provider agrees to render in-home services to eligible individuals (Recipients) in Cass County, North Dakota. The Provider understands and agrees that eligibility will be determined solely by CCHSZ. The Provider agrees that the specific services to be provided Recipients, the definitions of those services, and related manual chapters are those set forth in Addendum B. In rendering services, the Provider agrees to abide by the provisions of the North Dakota Department of Human Services Manual Chapter Policies and Procedures.

The Provider understands and agrees that the CCHSZ will inform the Provider of the name of the Recipients of services under the terms of this Agreement. The Provider further agrees to designate an individual to negotiate with a similarly designated individual from the CCHSZ for the specific services to be provided Recipients, the number of units of service to be provided Recipients, and the compensation for Recipients as set forth in paragraph III herein.

#### III. COMPENSATION:

- A. Compensation under the terms of this agreement shall not exceed the maximum amount allowed for the service provided under the terms of this contract. The maximum amount allowed for the service is set forth in Addendum B.
- B. The Provider understands and agrees that:
  - 1. Travel time will not be billed nor paid.
  - 2. The contracted rates are the maximum allowable and will cover all costs to provide a unit of service, as defined by this contract. CCHSZ makes no guarantee of the number of hours that will be referred for service.
  - 3. No release time or cancel time will be billed.
  - 4. Supervisory time, charting time, training, client reassessment, and all other activities relating to program management are built into the rate.

incorporate this agreement, together with its attachments. The Provider agrees to be solely responsible for the performance of any subcontractor.

#### VIII. TERMINATION:

This contract may be terminated by mutual consent of both parties, or by either party upon 30 day's notice, in writing, and delivered by certified mail or in person.

The CCHSZ may terminate this contract effective upon delivery of written notice to the Provider, or at such later date as may be established by the CCHSZ, under any of the following conditions:

- A. If CCHSZ funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services, the contract may be modified to accommodate a reduction in funds.
- B. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- C. If any license or certificate required by law or regulations to be held by the Provider to provide the services required by this contract is for any reason denied, revoked, or not renewed.
- D. If the Qualified Service Provider (QSP) rate is increased by the State in July, discussions will occur which may result in modifications to accommodate for a potential increased rate.

Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

The CCHSZ by written notice of default, including breach of contract, to the Provider may terminate the whole or any part of this agreement:

- A. If the Provider fails to provide services provided under the terms of this contract within the time specified herein or any extension thereof; or
- B. If the Provider fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from the CCHSZ, fails to correct such failures within 10 days or such longer period as the CCHSZ may authorize. The rights and remedies of the CCHSZ provided in the above clause related to defaults, including breach of contract, by the Provider shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

#### IX. ACCESS TO RECORDS:

The CCHSZ, ND Department of Human Services, Office of Attorney General of the State of North Dakota, the Federal Government, the Cass County States Attorney's Office and others at its direction, and their duly authorized representatives, shall have access to the books, documents, paper and records of the Provider which are pertinent, as reasonably determined by the CCHSZ, to this contract for the purpose of making audit, examination, excerpts, and transcripts.

against the other party, each party will pay for half the combined attorney's fees and legal defense costs incurred on or before the date, or the amount of such fees and costs covered by the CCHSZ's liability coverage or self-retention fund, whichever is less. After that date, the remaining party will be responsible for its own attorney's fees and legal defense costs. The CCHSZ shall provide such reimbursement in accordance with the Special Assistant Attorney General Billing policy within thirty (30) days after the total amount of reimbursement can be determined.

Provider shall secure and keep in force during the term of this Agreement, from a company or pool authorized to provide the coverage in this County, general liability and errors and omissions coverage with minimum liability limits of \$250,000 per person and at least \$5000,000 per occurrence covering its officers, employees, and agents for any and all claims of any nature which may in any manner result from or arise out of this Agreement. Provider shall furnish a certificate of insurance or memorandum of coverage and any endorsements required under this agreement to the undersigned County representative prior to commencement of this agreement and shall also provide at least thirty (30) days' notice before such coverage of endorsements are canceled or modified.

Provider shall also secure from its insurance company or government self-insurance pool a limited endorsement stating that the company or pool will provide a legal defense to Cass County and the CCHSZ, its officers, employees or agents, including attorney's fees, costs, disbursements, and other expenses associated with such defense under this agreement, for any and all claims of any nature brought by third parties against the County, its officers, employees or agents, including attorney's fees, costs, disbursements, and other expenses associated with such defense under this agreement, for any and all claims of any nature brought by third parties against Cass County and the CCHSZ, its officers, employees or agents which in any manner result from or arise out of this agreement. Such legal defense is not required if Cass County and the CCHSZ refuses to waive a potential conflict of interest that can be waived under the North Dakota Rules of Professional conduct. Said endorsement shall also provide that any attorney representing Cass County and the CCHSZ, its officers, employees or agents under this clause must first qualify and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under NDCC. Section 54-12-08 and agree to follow the Special Assistant Attorney General Billing Policy.

XX. SEVERABILITY:

The parties agree that if any term of provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

XXI. WAIVER:

The failure by either party to enforce any provisions of this contract shall not constitute a waiver by the party of that or any other provision.

XXII. MERGER CLAUSE:

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

**Addendum A****PROVIDER ASSURANCES**

- A. All licensing or other standards required by Federal and State Law and regulations and by ordinance of the city and county in which the services purchased hereunder are provided will be complied with in full for the duration of this contract.
- B. No qualified person (s) shall be denied services purchased hereunder, or be subjected to discrimination, because of race, religion, color, national origin, sex, age, or handicap.
- C. The Provider will abide by the provisions of Title VII of the Civil Rights Act of 1964 (42 USC 2000C) which prohibits discrimination against any employee or applicant for employment because of race, religion, color, national origin, sex, age or handicap. In addition, the Provider agrees to abide by Executive Order No. 11246, as amended by Executive Order No. 11375, which prohibits discrimination because of sex.
- D. The Provider will comply with Section 504 of the Rehabilitation Act of 1973, as amended, and all requirements imposed by and pursuant to regulations promulgated thereunder to the end that no otherwise qualified handicapped individual shall, solely by reason of their handicap, be excluded from participation in, be denied benefits of or be subjected to discrimination under any program in the provision of services under this agreement.
- E. The Provider will not, except upon the written consent of the affected individual or their responsible parent, guardian or custodian, use or cause to be used, any information concerning such individual for any purpose not directly connected with the county or the Provider's responsibilities with respect to services purchased hereunder.
- F. Unless otherwise authorized by federal law, the charges to be made by the Provider do not include costs financed by federal monies other than those generated by this agreement.
- G. The Provider shall not assign this agreement.
- H. Provider assures that the sources from which it purchases goods and services used for the provision of the services described in the agreement will conform to applicable provisions of Executive Order 11346, Equal Opportunity.
- I. The Provider assures they have met the Basic National Standards for Homemaker/Personal Care Aide Services listed as follows:

**STRUCTURE:**

- Standard I. There shall be legal authorization to operate the agency.
- Standard II. There shall be a duly constituted authority and a government structure for assuring responsibility and for requiring accountability for performance.
- Standard III. There shall be compliance with all legislation relating to prohibition of discriminatory practices.
- Standard IV. There shall be responsible fiscal management.



## Addendum B

<b>DEFINITION</b>	<b>DEFINITION OF UNIT</b>	<b>MAXIMUM ALLOWABLE AUTHORIZATION</b>	<b>RATE NEGOTIATED</b>
The provision of non-personal (environmental support) tasks such as light housekeeping, laundry, meal planning and preparation that enables an individual to maintain as much independence and self-reliance as possible to continue living in their home.	\$6.73/15 min.	7 units/visit 26 visits/year	\$26.92/hr of direct client time

<b>DEFINITION</b>	<b>DEFINITION OF UNIT</b>	<b>MAXIMUM ALLOWABLE AUTHORIZATION</b>	<b>RATE NEGOTIATED</b>
The intermittent or occasional provision of personal support care tasks/activities that enables an individual to maintain as much independent and self-reliance as possible to continue living in their home.	\$7.48/15 min.	\$30,000/year	\$29.92/hr of direct client time



**PLANNING &  
DEVELOPMENT**

**FARGO CITY HALL**  
225 4th Street North  
Fargo, ND 58102  
Office: 701.241.1474 | Fax: 701.241.1526  
Email: [Planning@FargoND.gov](mailto:Planning@FargoND.gov)  
[FargoND.gov](http://FargoND.gov)

28

MEMORANDUM

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: JULY 19, 2023**

**RE: 2023 COMMUNITY DEVELOPMENT BLOCK GRANT & HOME INVESTMENT PARTNERSHIPS GRANT AGREEMENTS**

The City of Fargo has received its annual Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) grant agreements from the U.S. Department of Housing and Urban Development. The following awarded funds are allocated in the City's approved 2023 HUD Action Plan:

- \$840,957 in CDBG (CFDA #14.218 – grant number B-23-MC-38-0001)
- \$549,768 in HOME (CFDA #14.239 – grant number M-23-MC-38-0220)

**RECOMMENDED MOTION:** Accept and receive the 2023 Community Development Block Grant and HOME Investment Partnerships allocations to the City of Fargo from the U.S. Department of Housing and Urban Development.

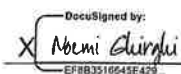


**Funding Approval/Agreement**  
 Title I of the Housing and Community Development Act (Public Law 930383)  
 HI-00515R of 20515R

**U.S. Department of Housing and Urban Development**  
 Office of Community Planning and Development  
 Community Development Block Grant Program  
 OMB Approval No. 2506-0193  
 exp 1/31/2025

1. Name of Grantee (as shown in item 5 of Standard Form 424) City of Fargo	3a. Grantee's 9-digit Tax ID Number 456002069	3b. Grantee's 9-digit DUNS Number K2QJQZVH5PM6 (UEI)
2. Grantee's Complete Address (as shown in item 5 of Standard Form 424) 200 North 3rd Street Fargo, ND 58102	4. Date use of funds may begin 05/01/2023	
	5a. Project/Grant No. 1 B-23-MC-38-0001	6a. Amount Approved \$840,957.00 (by this action)
	5b. Project/Grant No. 2	6b. Amount Approved

**Grant Agreement:** This Grant Agreement between the Department of Housing and Urban Development (HUD) and the above named Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.). The Grantee's submissions for Title I assistance, the HUD regulations at 24 CFR Part 570 (as now in effect and as may be amended from time to time), and this Funding Approval, including any special conditions, constitute part of the Agreement. Subject to the provisions of this Grant Agreement, HUD will make the funding assistance specified here available to the Grantee upon execution of the Agreement by the parties. The funding assistance specified in the Funding Approval may be used to pay costs incurred after the date specified in item 4 above provided the activities to which such costs are related are carried out in compliance with all applicable requirements. Pre-agreement costs may not be paid with funding assistance specified here unless they are authorized in HUD regulations or approved by waiver and listed in the special conditions to the Funding Approval. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to Section 104(g) of Title I and published in 24 CFR Part 58. The Grantee further acknowledges its responsibility for adherence to the Agreement by sub-recipient entities to which it makes funding assistance hereunder available.

U.S. Department of Housing and Urban Development (By Name) Noemi Ghirghi	Grantee Name (Contractual Organization) City of Fargo, C/O City Audit
Title CPD Director	Title Mayor
Signature 	Signature X Timothy J Mahoney
Date (mm/dd/yyyy) 7/13/2023	Date (mm/dd/yyyy)

7. Category of Title I Assistance for this Funding Action:  Entitlement, Sec 106(b)	8. Special Conditions (check one) <input type="checkbox"/> None <input checked="" type="checkbox"/> Attached	9a. Date HUD Received Submission (mm/dd/yyyy)	10. check one <input checked="" type="checkbox"/> a. Orig. Funding Approval <input type="checkbox"/> b. Amendment Amendment Number
		9b. Date Grantee Notified (mm/dd/yyyy)	
		9c. Date of Start of Program Year 05/01/2023	
11. Amount of Community Development Block Grant			
		FY 2023	
a. Funds Reserved for this Grantee			
b. Funds now being Approved		\$840,957.00	
c. Reservation to be Cancelled (11a minus 11b)			

12a. Amount of Loan Guarantee Commitment now being Approved N/A	12b. Name and complete Address of Public Agency
<b>Loan Guarantee Acceptance Provisions for Designated Agencies:</b> The public agency hereby accepts the Grant Agreement executed by the Department of Housing and Urban Development on the above date with respect to the above grant number(s) as Grantee designated to receive loan guarantee assistance, and agrees to comply with the terms and conditions of the Agreement, applicable regulations, and other requirements of HUD now or hereafter in effect, pertaining to the assistance provided it.	12c. Name of Authorized Official for Designated Public Agency
	Title
	Signature X

**HUD Accounting use Only**

Batch	TAC	Program	Y	A	Reg	Area	Document No.	Project Number	Category	Amount	Effective Date (mm/dd/yyyy)	F
	153											
	176											
			Y					Project Number		Amount		
			Y					Project Number		Amount		
Date Entered PAS (mm/dd/yyyy)	Date Entered LOCCS (mm/dd/yyyy)	Batch Number	Transaction Code	Entered By	Verified By							

8. Special Conditions.

- (a) The period of performance and single budget period for the funding assistance specified in the Funding Approval (“Funding Assistance”) shall each begin on the date specified in item 4 and shall each end on September 1, 2030. The Grantee shall not incur any obligations to be paid with such assistance after September 1, 2030.
- (b) The Recipient shall attach a schedule of its indirect cost rate(s) in the format set forth below to the executed Agreement that is returned to HUD. The Recipient shall provide HUD with a revised schedule when any change is made to the rate(s) described in the schedule. The schedule and any revisions HUD receives from the Recipient shall be incorporated herein and made a part of this Agreement, provided that the rate(s) described comply with 2 CFR part 200, subpart E.

<u>Administering Department/Agency</u>	<u>Indirect cost rate</u>	<u>Direct Cost Base</u>
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____

**Instructions:** The Recipient must identify each agency or department of the Recipient that will carry out activities under the grant, the indirect cost rate applicable to each department/agency (including if the de minimis rate is used per 2 CFR §200.414(f)), and the type of direct cost base to which the rate will be applied (for example, Modified Total Direct Costs (MTDC)). Do not include indirect cost rates for subrecipients.

- (c) In addition to the conditions contained on form HUD 7082, the grantee shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Dun and Bradstreet Data Universal Numbering System (DUNS); the System for Award Management (SAM.gov.); the Federal Funding Accountability and Transparency Act as provided in 2 CFR part 25, Universal Identifier and General Contractor Registration; and 2 CFR part 170, Reporting Subaward and Executive Compensation Information.
- (d) The grantee shall ensure that no CDBG funds are used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For the purposes of this requirement, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water- related and wastewater-related infrastructure), other structures

designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfield as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107-118) shall be considered a public use for purposes of eminent domain.

- (e) The Grantee or unit of general local government that directly or indirectly receives CDBG funds may not sell, trade, or otherwise transfer all or any such portion of such funds to another such entity in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the Act.
- (f) E.O. 12372-Special Contract Condition - Notwithstanding any other provision of this agreement, no funds provided under this agreement may be obligated or expended for the planning or construction of water or sewer facilities until receipt of written notification from HUD of the release of funds on completion of the review procedures required under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 CFR Part 52. The recipient shall also complete the review procedures required under E.O. 12372 and 24 CFR Part 52 and receive written notification from HUD of the release of funds before obligating or expending any funds provided under this agreement for any new or revised activity for the planning or construction of water or sewer facilities not previously reviewed under E.O. 12372 and implementing regulations.
- (g) CDBG funds may not be provided to a for-profit entity pursuant to section 105(a)(17) of the Act unless such activity or project has been evaluated and selected in accordance with Appendix A to 24 CFR 570 - "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements." (Source - P.L. 113-235, Consolidated and Further Continuing Appropriations Act, 2015, Division K, Title II, Community Development Fund).
- (h) The Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

**Funding Approval and HOME Investment Partnerships Agreement**

**U.S. Department of Housing and Urban Development**

Title II of the National Affordable Housing Act

Assistance Listings #14.239 - HOME Investment Partnerships Program

Office of Community Planning and Development

1. Grantee Name (must match the name associated with 3b.) and Address <b>City of Fargo, C/O City Audit 200 North 3rd Street Fargo, ND 58102</b>		2. Grant Number (Federal Award Identification Number (FAIN)) <b>M23MC380220</b>													
		3a. Tax Identification Number <b>456002069</b>	3b. Unique Entity Identifier (formerly DUNS): <b>K2QJQZVH5PM6</b>												
		4. Appropriation Number <b>86 3/6 0205</b>	5. Budget Period Start and End Date <b>FY 2023 through FY 2031</b>												
6. Previous Obligation (Enter "0" for initial FY allocation)			<b>\$0</b>												
a. Formula Funds		\$													
b. Community Housing Development Org. (CHDO) Competitive		\$													
7. Budget Approved by the Federal Awarding Agency/Current Transaction (+ or -)			<b>\$549,768.00</b>												
a. Formula Funds		\$549,768.00													
1. CHDO (For deobligations only)		\$													
2. Non- CHDO (For deobligations only)		\$													
b. CHDO Competitive Reallocation or Deobligation		\$													
8. Revised Obligation			\$												
a. Formula Funds		\$													
b. CHDO Competitive Reallocation		\$													
9. Special Conditions (check applicable box) <input checked="" type="checkbox"/> <b>Not applicable</b> <input type="checkbox"/> Attached			10. Federal Award Date (HUD Official's Signature Date) (mm/dd/yyyy) <b>7/13/2023</b>												
11. Indirect Cost Rate* <u>Administering Agency/Dept.</u> <u>Indirect Cost Rate</u> <u>Direct Cost Base</u>			12. Period of Performance Start and End Date <b>Date in Box #10 - 09/30/2032</b>												
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%; border-bottom: 1px solid black;">—</td> <td style="width:30%; border-bottom: 1px solid black;">— %</td> <td style="width:40%;"></td> </tr> <tr> <td style="border-bottom: 1px solid black;">—</td> <td style="border-bottom: 1px solid black;">— %</td> <td></td> </tr> <tr> <td style="border-bottom: 1px solid black;">—</td> <td style="border-bottom: 1px solid black;">— %</td> <td></td> </tr> <tr> <td style="border-bottom: 1px solid black;">—</td> <td style="border-bottom: 1px solid black;">— %</td> <td></td> </tr> </table>			—	— %		—	— %		—	— %		—	— %		<p>* If funding assistance will be used for payment of indirect costs pursuant to 2 CFR 200, Subpart E-Cost Principles, provide the name of the department/agency, its indirect cost rate (including if the de minimis rate is charged per 2 § CFR 200.414), and the direct cost base to which the rate will be applied. Do not include cost rates for subrecipients.</p>
—	— %														
—	— %														
—	— %														
—	— %														


This Agreement between the Department of Housing and Urban Development (HUD) and the Grantee is made pursuant to the authority of the HOME Investment Partnerships Act (42 U.S.C. 12701 et seq.). The Grantee's approved Consolidated Plan submission/Application, the HUD regulations at 24 CFR Part 92 (as is now in effect and as may be amended from time to time) and this HOME Investment Partnership Agreement, form HUD-40093, including any special conditions, constitute part of this Agreement. Subject to the provisions of this Agreement, HUD will make the funds for the Fiscal Year specified, available to the Grantee upon execution of this Agreement by the parties. All funds for the specified Fiscal Year provided by HUD by formula reallocation are covered by this Agreement upon execution of an amendment by HUD, without the Grantee's execution of the amendment or other consent. HUD's payment of funds under this Agreement is subject to the Grantee's compliance with HUD's electronic funds transfer and information reporting procedures issued pursuant to 24 CFR 92.502. To the extent authorized by HUD regulations at 24 CFR Part 92, HUD may, by its execution of an amendment, deobligate funds previously awarded to the Grantee without the Grantee's execution of the amendment or other consent. The Grantee agrees that funds invested in affordable housing under 24 CFR Part 92 are repayable when the housing no longer qualifies as affordable housing. Repayment shall be made as specified in 24 CFR Part 92. The Grantee agrees to assume all of the responsibility for environmental review, decision making, and actions, as specified and required in regulation at 24 CFR 92.352 and 24 CFR Part 58.

The Grantee must comply with the applicable requirements at 2 CFR part 200 that are incorporated by the program regulations, as may be amended from time to time. Where any previous or future amendments to 2 CFR part 200 replace or renumber sections of part 200 that are cited specifically in the program regulations, activities carried out under the grant after the effective date of the part 200 amendments will be governed by the 2 CFR part 200 requirements as replaced or renumbered by the part 200 amendments.

The Grantee shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Universal Numbering System and System for Award Management (SAM) requirements in Appendix I to 2 CFR part 200, and the Federal Funding Accountability and Transparency Act (FFATA) in Appendix A to 2 CFR part 170.

The Period of Performance for the funding assistance shall begin on the date specified in item 12 and shall end on September 1<sup>st</sup> of the 5<sup>th</sup> fiscal year after the expiration of the period of availability for obligation. Funds remaining in the account will be cancelled and thereafter not available for obligation or expenditure for any purpose. Per 31 U.S.C. 1552. The Grantee shall not incur any obligations to be paid with such assistance after the end of the Period of Performance.

The Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 U.S.C. 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

13. For the U.S. Department of HUD (Name and Title of Authorized Official) <b>Noemi Ghirghi, CPD Director</b>		14. Signature 	15. Date <b>7/13/2023</b>
16. For the Grantee (Name and Title of Authorized Official) <b>Timothy J Mahoney, City of Fargo Mayor</b>		17. Signature	18. Date <b>/ /</b>
19. Check one: <input checked="" type="checkbox"/> <b>Initial Agreement</b> <input type="checkbox"/> Amendment #			

20. Funding Information:

Source Year of Funds	Appropriation Code	PAS Code	Amount
2023	86 3/6 0205	HMF (M)	\$549,767.00
2016	86X0205-16	HMF	\$ 1.00
<b>Total</b>		(D)	<b>\$549,768.00</b>



29

**FARGO POLICE DEPARTMENT**  
CHIEF DAVID B. ZIBOLSKI  
105 25th Street North  
Fargo, ND 58102-4002  
Main Line: 701.235.4493 | Fax: 701.297.7789  
FargoPolice.com

July 12, 2023

Board of City Commissioners  
City Hall  
Fargo, ND 58102

RE: Inter-Local Agreement between the City of Fargo and Cass County relative to the 2023 Edward Byrne Memorial Justice Assistance Grant (JAG) Funding – CFDA # 16.738

Dear Commissioners:

The US Department of Justice has tentatively awarded the Fargo Police Department and Cass County Sheriff's Department \$83,654.00 in grant funding through the 2023 Edward Byrne Memorial Justice Assistance Grant (JAG). In order to receive the funding, both the City of Fargo and Cass County governmental subdivisions must agree on how the funds are allocated between the two entities.

In addition to acting as the fiscal agent and grant manager of the funding, the Cass County Sheriff's Department is agreeable to allocating \$73,654.00 of the available funding to the Fargo Police Department and retaining \$10,000.00 of the funding for their use. I concur with distributing the grant funding in this manner.

Attached for your review and approval is the inter-local agreement that will need to be signed by both governmental subdivisions in order for the funds to be allocated. There is no local match funding required to accept the grant.

**Recommended Motion:**

*I recommend acceptance of the inter-local agreement with Cass County and the allocation of the 2023 Edward Byrne Memorial Justice Assistance Grant (JAG) as described within the agreement.*

Please contact me if you have any questions or concerns relative to this issue.

Sincerely,

David B. Zibolski  
Chief of Police

THE STATE OF NORTH DAKOTA

County of Cass

INTERLOCAL AGREEMENT

BETWEEN THE COUNTY OF CASS AND THE CITY OF FARGO, ND OF CASS COUNTY  
ND

EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE

GRANT (JAG) PROGRAM

This Agreement is made and entered into this by and between the COUNTY of CASS, acting by and through its governing body, the County Commission, hereinafter referred to as COUNTY, and the CITY OF FARGO, acting by and through its governing body, the City Commission, hereinafter referred to as FARGO all of Cass County, State of North Dakota, witnessed:

WHEREAS, this Agreement is made under the authority of NDCC 11-9.1 Home Rule Counties and NDCC 40-05.1 Home Rule in Cities: and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make the performance or those payments from current revenues legally available to that party: and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of each party, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Agreement: and

WHEREAS, CASS agrees to provide FARGO \$ 73,654.00 from the JAG award for the Program: and

WHEREAS, CASS will retain \$10,000.00 from the JAG award for the Program:

WHEREAS, COUNTY, FARGO, believe it is in their best interests to allocate the JAG funds as stipulated and to utilize said funds in a collaborative program benefiting both parties.

WHEREAS, COUNTY, FARGO agrees that COUNTY will serve as the applicant/fiscal agent for the joint funds, paying for the performance of governmental functions hereunder shall make the performance or those payments from current revenues legally available to that party.



WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of each party, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Agreement: and

NOW, THEREFORE, the COUNTY and FARGO, agree as follows:

Section 1.

CASS agrees to transfer to FARGO the sum of \$ 73,654.00 or purchase on their behalf \$ 73,654.00 for the Program on or before 30 September 2026.

CASS will expend the sum of \$10,000.00 for the Program on or before 30 September 2026.

Section 2.

Nothing in the performance of this Agreement shall impose any liability for claims against COUNTY, FARGO other than claims for which liability may be imposed by the North Dakota State Tort Claims Act NDCC 32-12.2.

Section 3.

Each party to this Agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from the furnishing of the service by the other parties.

Section 4.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 5.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein. This Agreement shall not create any rights in any party, not a signatory hereto.

CITY OF FARGO

\_\_\_\_\_

Tim Mahoney, Mayor

ATTEST

\_\_\_\_\_

Witness

APPROVED AS TO FORM

\_\_\_\_\_

Fargo City Attorney

\_\_\_\_\_

CASS COUNTY

Chad Peterson, Chairman

\_\_\_\_\_

Brandy Madrigga, Finance Director

ATTEST:

\_\_\_\_\_ Witness

APPROVED AS TO FORM

\_\_\_\_\_

Cass County State's Attorney

REPORT OF ACTION

(30)

**UTILITY COMMITTEE**

Project No. NA

Type: Site Improvements to Osgood Recycling Drop Site

Location: Solid Waste Division – Recycling

Date of Hearing: 07/12/13

<u>Routing</u>	<u>Date</u>
City Commission	07/24/2023
Project File	Osgood Drop Site

Scott Olson, Solid Waste Utility Director, and Jen Pickett, Solid Waste Recycling Coordinator, presented the attached memo describing proposed site improvements to the Osgood Recycling Drop Site. The drop site was originally constructed in 2010 with perimeter berms and 4' chain link fencing.

The Solid Waste Department currently maintains twenty existing recycling drop site locations. Over the past several years the department has removed the berms and chain link fence at a number of sites due to maintenance and mowing issues and replaced it with a 6' vinyl fence. Solid Waste is requesting to transfer funds from the Landfill Capital Improvements budget line to the Drop Site Improvements to remove the existing berm and chainlink fence and replace with vinyl at the Osgood site. The total project cost and amount to be transferred is estimated at \$37,500.00.

**MOTION:**

On a motion by Troy Hall, seconded by Tom Knaukmuhs, the Utility Committee voted to approve the Solid Waste Department's request to transfer and reallocate funds from the Landfill Capital Improvements budget line to the Recycling Drop Site Improvement budget line to complete improvements as described at the Osgood Recycling Drop site.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Denise Kolpack, City Commissioner	X	X		X
Thomas Knaukmuhs, City Engineer	X	X		
Susan Thompson, Interim City Finance Director				
Bruce Grubb, City Administration	X	X		
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Wastewater Plant Supt.	X	X		
Scott Liudahl, City Forester	X	X		
James Hausauer, Wastewater Util. Director	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director	X	X		
Scott Olson, Solid Waste Utility Director	X	X		
Daniel Portlock, Water Utility Engineer	X	X		

ATTEST:

  
 \_\_\_\_\_  
 Scott Olson, PE  
 Solid Waste Utility Director

C: Tim Mahoney, Mayor  
 Commissioner Preston  
 Commissioner Piepkorn  
 Commissioner Strand

**To:** Utility Committee  
**From:** Scott Olson, Solid Waste Utility Director *SO*  
Jen Pickett, Recycling Supervisor *JP*  
**Date:** June 30, 2023  
**Subject:** Solid Waste Request to Authorize Transfer of Funds to Update  
Osgood Recycling Drop Site

---

The City of Fargo Recycling Drop Site in the Osgood neighborhood, located at 3957 Village Lane was constructed in 2010, with a perimeter berm and 4' chain link fence. The drop site is 15,755 square feet and is located adjacent to the Osgood Fire Station.

The Solid Waste Department currently maintains all twenty of the existing drop site locations. Over the past several years the department has removed berms at a number of sites for the ease of maintenance and mowing as well as replaced the chain link fence with 6' vinyl fencing.

Maintenance, mowing and ongoing weed problems have dramatically improved with the removal of berms. The approximate cost is \$7500.00 to remove the berm and fence and installation of a new vinyl fence is \$30,000, for a total project cost estimate of \$37,500.00.

The Departments goal under the Recycling Division is to improve all drop sites by removing berms and chain link fencing and installing vinyl.

Solid Waste is requesting is to transfer funds from the Landfill Capital Improvements budget line 531.3074.433.73-10 to cover the cost of the project into the Drop Site Improvements budget line 531.3076.432.73-10.

### Recommendation

Approve the Solid Waste Department to transfer funds from the Landfill Capital Improvements budget line to Drop Site Improvements budget line to complete improvements as described at the Osgood Recycling Drop Site.

Attachment





These data are provided on an "AS IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

# Osgood Recycling Drop Site Berm and Removal

1-564

6/30/2023 2:01 PM





31

July 24, 2023

City of Fargo Commissioners  
225 N 4<sup>th</sup> Street  
Fargo, ND 58102

Dear Commissioners:

The City of Fargo Transit Department has determined it would like to coordinate Transit resources and service delivery with the City of Moorhead to enhance efficiency and maximize the communities' investment in Transit. Each City owns equipment and vehicles that are available for use by the other party by transit staff for transit purposes.

We are proposing the attached lease agreement to allow the Cities to coordinate leasing of Transit equipment and vehicles as necessary.

**RECOMMENDED MOTION:** Approve the attached Support Equipment and Vehicles Lease Agreement between the City of Fargo and the City of Moorhead.

Sincerely,



Julie Bommelman  
City of Fargo Transit Director  
476-6737

/enc

**SUPPORT EQUIPMENT AND VEHICLES LEASE AGREEMENT  
CITY OF FARGO - CITY OF MOORHEAD**

THIS AGREEMENT, made and entered into this 24<sup>th</sup> day of July, 2023, by and between THE CITY OF FARGO, NORTH DAKOTA, a municipal corporation of the State of North Dakota, hereinafter referred to as "Fargo" and THE CITY OF MOORHEAD, MINNESOTA, a municipal corporation of the State of Minnesota, hereinafter referred to as "Moorhead".

WHEREAS, Fargo and Moorhead are providing public mass transportation services for the citizens and residents of their respective governmental subdivisions; and

WHEREAS, Fargo and Moorhead recognize the need to coordinate resources and service delivery to enhance efficiency and maximize the communities' investment in transportation; and

WHEREAS, each party owns equipment and vehicles that are available for use by the other party by transit staff for transit purposes;

NOW, THEREFORE, for and in consideration of the mutual covenants and undertaking hereinafter contained, and for other good and valuable consideration, and pursuant to the authority of the laws of the State of North Dakota and State of Minnesota, it is hereby agreed by and between the City of Fargo and the City of Moorhead as follows:

1. Term. This Agreement will be in effect from the date hereof with service to be provided on a month-to-month basis, unless sooner terminated by either party upon written notice to the other party.
2. Advertising Revenue. Revenue received from advertising on the interior or exterior of the vehicles will be retained by the owner of the vehicle.
3. Equipment and Vehicle Lease. The owner of the vehicle and/or equipment will lease the same to the other party for its use for the sum of One Dollar (\$1) per year or part thereof. The equipment and/or vehicle will be inspected by both parties' representatives prior to being placed into service and the leasing party will acknowledge in writing that the equipment and vehicles are in good repair and accepted.

The equipment and vehicles leased are to be used for customary public transportation purposes. Personal usage and/or use for any other purpose is prohibited. At the termination of this Agreement or upon the return of any of the equipment and vehicles, the equipment and vehicles will be returned to the owner in good repair, except for normal wear and tear and subject to the repair provisions set forth below. The equipment and vehicles will be inspected by both

parties' representatives at the end of this Agreement and/or upon the return of any of the equipment and vehicles.

4. Equipment and Vehicle Maintenance, Repair, Licensing, Storage, Record Keeping and Reporting. Equipment and vehicle maintenance and repair, licensing, storage, record keeping and reporting will be governed by the Master Operating Agreement, dated January 31, 2018, between the parties (the "Master Operating Agreement").  
  
Costs for repairs, maintenance, fuel, and insurance will be governed by the Master Operating Agreement.
5. Insurance. Insurance requirements will be governed by the Master Operating Agreement.
6. Amendment. The terms and conditions of this Agreement may be amended by the mutual consent of Fargo and Moorhead.
7. Assignment or Subletting of Agreement. There will be no assignment/transfer of interest or subletting this Agreement or any part thereof or any other delegation of one party's rights, duties, and responsibilities under this Agreement without the prior written consent of the other.
8. Severability. In the event any provision of this Agreement is declared or determined to be unlawful, invalid or unconstitutional, such declaration will not effect, in any manner, the legality of the remaining provisions of this Agreement, and each provision of this Agreement will be and is deemed to be separate and severable from each other provision.
9. Non-Waiver. The failure of a party at any time to insist upon strict performance of any of the terms, conditions and covenants herein will not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.
10. Previous Agreements. Nothing in this Agreement will invalidate any provision of the Master Operating Agreement between the parties. If there is a discrepancy between the provisions of this Agreement and the Master Operating Agreement, the Master Operating Agreement will govern.
11. Counterparts. This Agreement may be executed in counterparts with both parties having a fully-executed counterpart.

(Signatures appear on the following page.)



Date: \_\_\_\_\_

THE CITY OF FARGO, NORTH DAKOTA


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

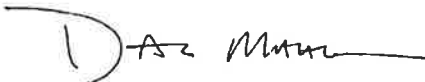
ATTEST:

\_\_\_\_\_  
Steve Sprague  
City Auditor

Date: June 28, 2023

THE CITY OF MOORHEAD, MINNESOTA

  
\_\_\_\_\_  
Shelly Carlson, Mayor

  
\_\_\_\_\_  
Dan Mahli, City Manager

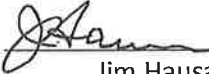


On a motion by Scott Olson, seconded by Dan Portlock, the Utility Committee voted to approve the FEMA Pre-Disaster Mitigation Sub-grant Agreement between the North Dakota Department of Emergency Services and the City of Fargo for Project WW1707 to include:

- A time extension for the Period of Performance to April 1, 2025
- A reduced Scope of Work
- Approval to solicit bids for Project WW1707

<u>COMMITTEE:</u>	Present	Yes	No	Unanimous	X
					<u>X</u>
					<u>Proxy</u>
Denise Kolpack, City Commissioner	X	X			
Susan Thompson, Interim Finance Director					
Brian Ward, Water Plant Superintendent	X	X			
Mark Miller, Water Reclamation Plant Supt.	X	X			
Bruce Grubb, Temp. PT City Administrator	X	X			
Scott Liudahl, City Forester	X	X			
Scott Olson, Solid Waste Utility Director	X	X			
Jim Hausauer, Water Reclamation Utility Dir.	X	X			
Troy Hall, Water Utility Director	X	X			
Ben Dow, Public Works Operations Director	X	X			
Tom Knakmuhs, City Engineer	X	X			
Dan Portlock, Water Utility Engineer	X	X			

ATTEST:

  
 \_\_\_\_\_  
 Jim Hausauer  
 Water Reclamation Utility Director

- C: Mayor Mahoney  
 Commissioner Strand  
 Commissioner Piepkorn  
 Commissioner Preston

**MEMORANDUM**

**July 12<sup>th</sup>, 2023**

---

**To: Utility Committee**  
**From: Jim Hausauer, Water Reclamation Utility Director**  
**Re: FEMA Pre-Disaster Mitigation- Period of Performance Time Extension & Reduced Scope**  
**Project #: PDMC-PL-08-ND-2018-023**  
**Project WW1707 - Water Reclamation Facility Flood Protection Plan**

---

**Background-Pre Disaster Mitigation**

The Fargo Water Reclamation Facility (WRF) currently does not have permanent flood control measures in place to protect the facility during flooding events. The WRF has relied on temporary measures to protect the facility in the event of river flooding. In 2009, a temporary earth levee was constructed through the center of the facility & south access road affecting daily operations for weeks. Installing & removing temporary measures is time consuming and expensive. As a regional provider of wastewater services, the City has a rather large investment in the current WRF and its operations.

The FEMA Pre-Disaster Mitigation (PDM) program makes Federal funds available to State, Local and Tribal Governments to implement and sustain cost effective measures to reduce risk to individuals and property from natural hazards, while reducing reliance on Federal funding from future disasters. The PDM program will provide 75% funding for construction of a 500-year levee to protect infrastructure & eliminate the need for temporary levees for future floods. The cost share provides 75% Federal funding of the eligible costs, with the remaining 25% of eligible costs from non-Federal sources. The revised estimate for the WWTP Levee is \$4.4 million resulting with the Federal share of \$3.3M and a local share of 25%. Note: Funding for the local share has a placeholder in the WRF Infrastructure Sales Tax Fund 455 and in the WRF 20 year CIP.

**Request to Extend the Period of Performance**

The City of Fargo provided a formal request to extend the period of performance (POP) for the WRF Flood Protection Project to April 1, 2025. The main reasons for this extension request included the following items:

- The POP started October 1, 2018, however, the project Preliminary Design Report and Application was applied for in January 2019 and project was not awarded to City until March 2020. The delayed award provided a smaller timeframe to complete the project.
- 99% Plans and specifications for the project have been developed. However, progress on the F-M Area Diversion project since the time of the original application has resulted in the lowering of the 500-year flood protection level. As such, it has been determined that the original scope and cost of the project can be reduced but will require redesign efforts.
- Due to the status of construction on the WRF Expansion, it is prudent to delay bidding & construction of the levee project to avoid conflicts between construction activities resulting in higher construction costs.

The City will proceed with revising the plans and specifications for the project with an estimated bid to occur in Q3 of 2023 with an estimated completion date of Q4 of 2024 or Q1 2025.

**Reduced Scope of Work**

The reduced scope of work for this project will complement the FM Diversion and provide permanent flood protection for the City of Fargo's WRF above the 500 year level of protection. The elevation for the Red River at the WRF (based on the FM Diversion model for 500 year flood protection) is 898' with the majority of the WRF campus below this elevation. The project will use levees, floodwalls, and a road grade raise to provide protection around the facility. The top of the levees will be constructed to 899" to include one foot of freeboard, and floodwalls to 901'. Areas where regrading can achieve protection will simply be regraded to a minimum of 898'. **Once completed the project will provide flood protection to the WRF to a 500 year flood elevation and tie into the emergency measures line of protection for the City of Fargo.**

**Recommended Motion**

Approve the attached Pre Disaster Mitigation Program Sub grant Agreement with the North Dakota Department of Emergency Services and FEMA for:

- A time extension for the Period of Performance to April 1, 2025;
- A reduced scope of work;
- Approval to solicit bids for Project WW1707.

**Hazard Mitigation Grant Program Subgrant Agreement for PDM 2018  
Between The North Dakota Department of Emergency Services  
And  
The City of Fargo**

**Amendment No. 2**

**To Contract Dated: 4 May 2020**

**ATTACHMENT A is replaced in its entirety by the following:**

**ATTACHMENT A**

**Approved Project Data**

CFDA Title and Number: Disaster Grants – Pre-Disaster Mitigation Program, 97.047

Non-Disaster Grant Fiscal Year: 2018

Subrecipient: City of Fargo

Project Number: PDMC-PL-08-ND-2018-023

Project Cost: 100% - \$4,400,947.49

**Federal Funding:** 75% - \$3,300,710.61

**Local Funding:** 25% - \$1,100,236.88

Work Schedule: 4 March 2020 – 1 April 2025

Scope of Work:

The scope of work for this project is to provide permanent flood protection for the City of Fargo's Waste Water Treatment Plant (WWTP) above the 500-year level of protection. The elevation for the Red River at the WWTP based on the Fargo-Moorhead (F-M) Diversion model for Existing Conditions – 500 year is 898 feet (NAVD 88) and the majority of the WWTP campus is below this elevation. The project proposes the use of levees, floodwalls and a road grade raise to provide protection around the facility. The project has integrated standards from the City of Fargo, State and FEMA to develop the design. The top of levees will be constructed to 899 feet to include one (1) foot of freeboard and the top of floodwalls will be constructed to 901 feet to include two (2) feet of freeboard. Areas where minor regrading can achieve protection will simply be regraded to a minimum of 898 feet. Portions of the site to both the south and northeast are elevated above the 500-year floodplain, which the project proposes to tie into. The line of protection and respective scope of work descriptions for each area are as follows

- A sheet pile flood wall will be constructed along the northeast corner of the site due to space limitations between the street right-of-way, existing utilities and existing plant infrastructure.
- A Clay levee will be constructed from the floodwall along the north side of the campus. The levee will turn south to the west of the central generation station and end at the east-west access road located to the north of the drying beds. This road will need to be raised to a minimum of 898 feet at the levee tie-in location.
- The road to the east of the drying beds will be regraded to provide a continuous 898 foot contour. Once south of the drying beds, the road is already at or above 898 feet. The remaining portions on the south side of the campus are above 898 feet. Re-grading of the road may result in the need for additional storm system improvements as it will impact site drainage. While this leaves the drying beds on the wet side of the line of protection, it was determined with WWTP staff that flooding of the drying beds would not result in any significant interruption to operation of the plant.

Once completed, the project will provide flood protection to the Fargo WWTP to a 500-year flood elevation.

Work Schedule:

Environmental Permitting	2 Months
Final Design	8 Months
Bidding	2 Month
Construction	18 Months
Project Closeout	5 Months
Total:	35 Months

Cost Estimate:

Safety Fence	Construction And Project Improvement	3,500.00	Linear Foot	\$ 3.50	\$ 12,250.00
Remove & Replace Chain Link Fence	Construction And Project Improvement	700.00	Linear Foot	\$ 65.00	\$ 45,500.00
F&I Fence Ornamental	Construction And Project Improvement	420.00	Linear Foot	\$ 200.00	\$ 84,000.00
F&I 24' Gate Opening 6' Ornamental Cantiever	Construction And Project Improvement	1.00	Each	\$ 51,000.00	\$ 51,000.00
Remove pipe all sizes and types	Construction And Project Improvement	350.00	Linear Foot	\$ 30.00	\$ 10,500.00
Remove Concrete Pavement	Construction And Project Improvement	500.00	Square Yard	\$ 15.00	\$ 7,500.00
Raising Internal road	Construction And Project Improvement	2,000.00	Square Yard	\$ 16.00	\$ 32,000.00
Remove and F&I Hydrant Assembly	Construction And Project Improvement	1.00	Each	\$ 8,000.00	\$ 8,000.00
F&I Gate Well (10'x4', 5'x4' Box)	Construction And Project Improvement	1.00	Each	\$ 210,000.00	\$ 210,000.00
F&I Sluice Gates 24", 36", 90" Dia SS	Construction And Project Improvement	1.00	Each	\$ 235,500.00	\$ 235,500.00
F&I Valve 8" Dia	Construction And Project Improvement	1.00	Each	\$ 7,500.00	\$ 7,500.00
Vault K Modifications	Construction And Project Improvement	1.00	Unknown	\$ 90,000.00	\$ 90,000.00
F&I 27" Dia Round Inlet RDI	Construction And Project Improvement	1.00	Each	\$ 2,500.00	\$ 2,500.00
Erosion Control	Construction And Project Improvement	1.00	Each	\$ 42,960.00	\$ 42,960.00

F&I Concrete Pavement and Preparation and Geotexti	Construction And Project Improvement	188.89	Square Yard	\$ 105.00	\$ 19,833.45
Top Soil Strip and Haul	Construction And Project Improvement	1,018.52	Cubic Yard	\$ 24.00	\$ 24,444.48
Topsoil (Haul and Spread)	Construction And Project Improvement	1,203.70	Cubic Yard	\$ 36.00	\$ 43,333.20
Seeding	Construction And Project Improvement	11,873.33	Cubic Yard	\$ 1.50	\$ 17,810.00
Topsoil -Strip Stockpile and Spread	Construction And Project Improvement	2,500.00	Cubic Yard	\$ 14.00	\$ 35,000.00
excavation inspect trench and haul	Construction And Project Improvement	3,732.00	Cubic Yard	\$ 44.00	\$ 164,208.00
Remove Tree	Construction And Project Improvement	1.00	Each	\$ 500.00	\$ 500.00
impervious fill import	Construction And Project Improvement	8,232.00	Cubic Yard	\$ 36.00	\$ 296,352.00
embankment levee	Construction And Project Improvement	4,500.00	Cubic Yard	\$ 12.00	\$ 54,000.00
Contingency	Contingencies	1.00	Each	\$ 175,238.52	\$ 175,238.52
Project Management Fees	Other Architectural Engineering Basic Fees	1.00	Each	\$ 175,238.52	\$ 175,238.52
subgrade preparation levee	Construction And Project Improvement	7,222.22	Square Yard	\$ 6.00	\$ 43,333.32
F&I Sheet Pile	Construction And Project Improvement	6,700.00	Square Foot	\$ 175.00	\$ 1,172,500.00
F&I Tank Wall vertical extension	Construction And Project Improvement	125.00	Linear Foot	\$ 370.00	\$ 46,250.00
F&I Fence Modular deco 8'Tall	Construction And Project Improvement	315.00	Linear Foot	\$ 310.00	\$ 97,650.00
F&I ence Modular deco 8' Tall Curved	Construction And Project Improvement	125.00	Linear Foot	\$ 350.00	\$ 43,750.00
F&I Tank tie-in concrete pier, deco, clad to match	Construction And Project Improvement	2.00	Each	\$ 32,000.00	\$ 64,000.00
F&I Cladding Ledger sheet pile	Construction And Project Improvement	333.00	Linear Foot	\$ 72.00	\$ 23,976.00



Engineering and Construction	Architectural Engineering Basic Fees	1.00	Unknown	\$ 452,000.00	\$ 452,000.00
F&I Cladding at sheet pile and curved tank	Construction And Project Improvement	1.00	Unknown	\$ 123,600.00	\$ 123,600.00
F&I sheet Pile Cap steel and stone cap	Construction And Project Improvement	333.00	Linear Foot	\$ 290.00	\$ 96,570.00
Pre-Award Engineering Fees	Preliminary Expense	1.00	Each	\$ 93,700.00	\$ 93,700.00
Mobilization	Construction And Project Improvement	1.00	Unknown	\$ 102,100.00	\$ 102,100.00
Misc Flood Wall components	Construction And Project Improvement	1.00	Unknown	\$ 26,900.00	\$ 26,900.00
Paint dry side sheet pile and rock mulch edge stri	Construction And Project Improvement	1.00	Unknown	\$ 66,650.00	\$ 66,650.00
F&I Sheet Trimming, mobilization and setup	Construction And Project Improvement	1.00	Unknown	\$ 87,800.00	\$ 87,800.00
Traffic Control	Construction And Project Improvement	1.00	Each	\$ 15,000.00	\$ 15,000.00
				Total Cost	\$ 4,400,947.49

Other Conditions:

Environmental requirements, as noted below and in the attached FEMA award letter dated 4 March 2020 must be met and documented. The attached environmental form must be completed and submitted before grant can be closed out:

Source of Condition: Executive Order 11988 – Flood Plains

The current footprint of the wastewater treatment plant does not encroach on a FEMA-identified 1 %-chance floodplain. However, be advised that floodplains (Zone AE) and regulatory flood way are directly adjacent to the facility as it currently exists. Any encroachment on the 1 %-chance floodplain will require a floodplain development permit from the City of Fargo. In addition, development in the regulatory floodway carries additional requirements per NDCC § 61-16.2-14. Before authorizing any development, the community responsible for permitting such use shall request a floodway review from the State Engineer. The application form may be downloaded from our website under "Regulation & Appropriation, Floodplain Management." Please contact Dionne Haynes with any questions regarding this process. The Floodplain Administrator for the City of Fargo is Jody Bertrand (Floodplain Administrator), 701-241-1548, jbertrand@cityoffargo.com. The NFIP map used to make this determination is Panel I/38017C0591G, Date: 1/16/2015.

Source of Condition: Clean Water Act

The City shall consult with the USACE to determine final project requirements. The City is responsible for obtaining any needed permits and verifying and complying with all permit requirements, including wetland mitigation, any permit conditions, pre-construction notification requirements, and regional conditions as provided by the Army Corps of Engineers. The City is responsible for implementing, monitoring, and maintaining all Best Management Practices (BMPs) and Pre- Construction Notification (PCN) conditions of applicable nationwide permits.

Source of Condition: National Historic Preservation Act

All borrow material and/or rip rap must come from a ND SHPO approved source. If the applicant chooses to use a borrow source that is not NDDOT Certified and/or from an existing stockpile, the following must occur prior to digging:

1. State Historical Preservation Office (SHPO) approval including completion and FEMA approval of required archeological surveys.
2. The applicant shall notify the FEMA Regional Environmental Officer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, and shall not begin work until notified by the FEMA Regional Environmental Officer that the requirements of the Endangered Species Act have been satisfied.
3. Applicant is required to coordinate borrow pit locations with the USFWS Wetland District Manager to avoid project impacts to easements or public lands.
4. Applicant is responsible for ensuring that no borrow pit activity occurs in Waters of the United States, wetlands or a river listed on the Nationwide Rivers Inventory (NRI). Borrow pit activity occurring in a floodplain must not affect pre-existing hydrological profiles. If activities occur in prime farmland ground disturbance must be temporary, one time use, and no permanent loss of farmland may occur.

Source of Condition: State Water and Soil Laws

1. Applicant shall comply with proper construction practices and environmental disturbance requirements as outlined in the NDDOH letter dated 8/29/17.
2. Care is to be taken during construction activity near any water of the state to minimize adverse effects on a water body. This includes minimal disturbance of stream beds and banks to prevent excess siltation, and the replacement and revegetation of any disturbed area as soon as possible after work has been completed. Caution must also be taken to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. Guidelines for minimizing degradation to waterways during construction must be followed.
3. Projects disturbing one or more acres are required to have a permit to discharge storm water runoff until the site is stabilized by the re-establishment of vegetation or other permanent cover. Further information on the storm water permit may be obtained from the Department's website or by calling the Division of Water Quality (701-328-5210). Also, cities may impose additional requirements and/or specific best management practices for construction affecting their storm drainage system. Check with the local officials to be sure any local storm water management considerations are addressed.

4. The proposed construction project is located near the West Fargo aquifer. Care should be taken to avoid spills of any materials that may have an adverse effect on groundwater quality. All spills must be immediately reported to this Department and appropriate remedial actions performed.

5. Per the NDSWC, initial review indicates the project does not require a conditional or temporary permit for water appropriation. However, if surface water or groundwater will be diverted for construction of the project, a water permit will be required per North Dakota Century Code (NDCC) § 61-04-02. Please consult with the Water Appropriations Division of the Office of the State Engineer (OSE) at 701-328-2754 or [waterpermits@nd.gov](mailto:waterpermits@nd.gov) if you have questions.

6. A Sovereign Land Permit will be required for any work below the ordinary high water mark of the Red River. Please contact Ashley Persinger, OSE Sovereign Land Specialist, at 701-328-4988 or [apersinger@nd.gov](mailto:apersinger@nd.gov) if you have questions.

7. It is likely that the levee proposed, including both temporary and permanent levees and floodwalls, requires or will require a construction permit from the OSE. The OSE requests more information regarding the temporary and permanent levees, including plans and specifications for the levees and floodwalls. Additional information may be necessary to submit with a construction permit application to ensure the levee and floodwall design can be adequately reviewed. For further information on the OSE's permitting requirements, please visit the Regulation & Appropriation tab on the OSE's website ([swc.nd.gov](http://swc.nd.gov)). Please contact the OSE Engineering and Permitting Section at 701-328-2752 if you have questions.

8. All necessary measures must be taken to minimize fugitive dust emissions created during construction activities. Any complaints that may arise are to be dealt with in an efficient and effective manner.

**Standard Conditions:**

1. Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
2. This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.
3. If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

**FOR THE SUBGRANTEE:**

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**FOR THE GRANTEE:**

DEPARTMENT OF EMERGENCY SERVICES

*Todd Joersz*

\_\_\_\_\_  
Todd Joersz – State Hazard Mitigation Officer

*6/6/23*

\_\_\_\_\_  
Date



MEMORANDUM  
June 2<sup>nd</sup>, 2023

---

**To:** Utility Committee

**From:** Dan Portlock, Water Utility Engineer *DP*

**Re:** AE2S Task Order No. 27 – Fargo Regional Water Distribution Extensions – Construction

---

Attached, please find a proposed task order in the amount of \$203,400 with AE2S for engineering construction services related to the Fargo Regional Water Distribution Extension's project (North and South segment). There are additional final design services included in the task order for the south and north segment because there was more time spent on the following:

North Segment

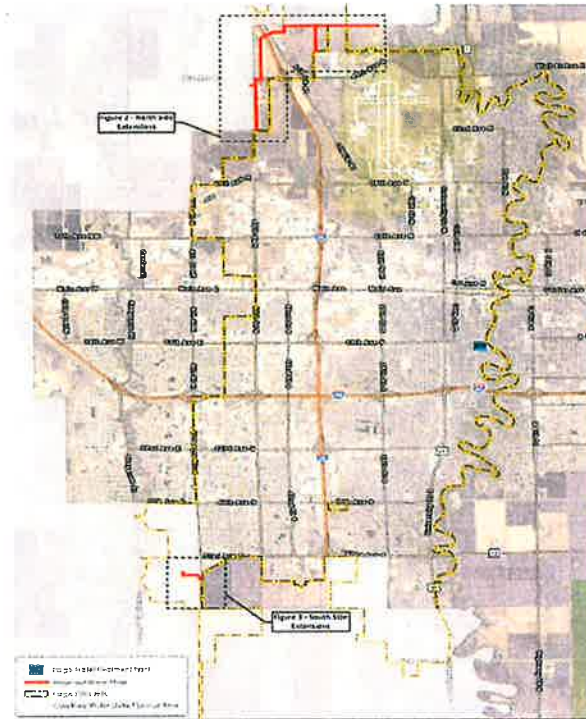
- Additional plan and profile sheets as a result of the pipeline size increasing from 12-16".
- Survey certificate and easement description revisions for pipeline alignments.
- Address NDSU landowner requirements for water service needs, specific land use, grading, and seeding.
- RPR services while potholing Tharaldson's Ethanol Reuse Pipeline and incorporate into drawings.
- Preparing an annexation boundary survey and plat.
- Railroad crossing permit.

South Segment

- Added a large diameter steel cased bore to the Drain 27 crossing.
- Prepare drawings, exhibits, and documents for Southeast Cass Water Resource District.
- Prepare drawings, exhibits, and documents for a private land owner.
- Develop and submit facility plan to fulfil Drinking Water State Revolving Fund loan requirements.

The engineering department will provide the construction administration, RPR inspection, and construction services for the North segment and AE2S will provide services for the South segment.

This project is in the Water Utility 20-year Capital Improvement Plan (CIP) and an eligible project under a low-interest State Revolving Fund (SRF) Loan (South Segment). We received a \$172,000 grant towards design and bidding for this regional project and requested construction grant dollars for the project. This project will tie into the Cass Rural Water District on the North and South side to improve water quality and pressure.



Water Distribution extensions (North and South Segment)

The task order will be billed hourly. The following is the scope, estimated hours, and cost breakdown for this task order.

<i>Phase</i>	<i>Task Number and Task Name</i>	<i>Payment Method</i>	<i>Estimated Hours</i>	<i>Amount</i>
<b>042</b>	<b>Additional Final Design Services</b>	<i>Method A</i>		
01	North Segment		190	\$35,500
02	South Segment		17	\$4,100
<b>060</b>	<b>Construction Administration Services – North Segment</b>	<i>Method B</i>		
01	Construction Administration		44	\$9,700
02	Record Drawings		56	\$8,500
<b>061</b>	<b>Construction Field Services – North Segment</b>	<i>Method B</i>		
01	On-call Construction Field Services		40	\$7,600
<b>062</b>	<b>Construction Administration Services – South Segment</b>	<i>Method A</i>		
01	Project Management		46	\$10,100
02	Construction Administration		208	\$42,700
03	Project Closeout		52	\$9,900
<b>063</b>	<b>Construction Field Services – South Segment</b>	<i>Method B</i>		
01	Construction Field Services		444	\$75,300
<b>Total</b>			<b>1,097</b>	<b>\$203,400</b>

Plan of Financing

We have an application in for 60% grant funding for construction and engineering in the North and South segments. The local portion of the South segment will be covered by an SRF loan and the North segment will be cash funded through fund 450. This project is in the Water Utility Capital Improvement Plan (CIP).

**SUGGESTED MOTION:**

Approve task order #27 with AE2S in the amount of \$203,400 for the Fargo Regional Water Distribution Extension's construction services.

Your consideration in this matter is greatly appreciated.





June 7, 2023

Mr. Dan Portlock  
Water Utility Engineer  
435 14<sup>th</sup> Ave S  
Fargo, ND 58103

**RE: Fargo Regional Water Distribution Extensions  
Additional Final Design and Construction Phase Services  
Task Order No. 27**

Dear Dan

Thank you for the opportunity to submit this letter proposal for professional engineering services for the Fargo Regional Water Distribution Extensions Project. This letter and the attached Task Order No. 27 provide the proposed scope of services for Additional Final Design and Construction Phase Services. The proposed fee for these services, expenses, and reimbursables is \$203,400.

This Project primarily consists of water main extensions within Fargo's regional water system to provide expanded water service to Cass Rural Water District (CRWD) through new regional bulk connections and increased service to an existing bulk service connection. The project also provides increased capacity to serve on-going commercial and industrial growth area in north Fargo, as well as future residential growth in Fargo, West Fargo, Horace, Reile's Acres, Harwood, and rural Cass County. The Project is separated into two (2) separate bid packages: North Segment and South Segment.

The Project has been awarded a preconstruction cost-share grant from the Department of Water Resources (administered through the State Water Commission (SWC)) in the amount of \$172,000. A 60 percent cost-share grant application in the amount of approximately \$4.8 million will be presented at the June 8<sup>th</sup> SWC Meeting for completing construction of the Project. The local share for the South Segment is anticipated to be funded through an existing Drinking Water State Revolving Fund (DWSRF) loan. The local share for the North Segment is anticipated to be funded through a combination of special assessments and Water Utility cash funds.

If you agree with the proposed scope of services and associated professional fees presented in the attached Task Order No. 27, please sign both copies in the spaces provided, retain one fully executed copy for your records, and return the other fully executed copy to AE2S. We are excited to continue assisting the City of Fargo in completing this important project.

Submitted in Service,

A handwritten signature in blue ink, appearing to read "Ryan Grubb".

Ryan Grubb, PE  
Operations Manager

This is Water Consulting Task Order No. 27, consisting of 4 pages.

**Water Consulting Task Order No. 27**

---

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated January 1, 2021 ("Agreement"), Owner and Engineer agree as follows:

**1. Background Data**

- A. Effective Task Order Date: June 7, 2023
- B. Owner: City of Fargo (Water Utility)
- C. Engineer: Advanced Engineering and Environmental Services, LLC (AE2S)
- D. Engineer Project No.: P00803-2022-002
- E. Specific Project (title): Fargo Regional Water Distribution Extensions – Construction
- F. Specific Project (description):

This Project primarily consists of water main extensions within Fargo’s regional water system to provide expanded water service to Cass Rural Water District (CRWD) through new regional bulk connections and increased service to an existing connection. The project also provides for increased capacity to serve on-going commercial and industrial growth area in north Fargo. The Project is separated into two (2) separate bid packages: north segment and south segment. This Task Order provides for Construction Phase Services for the Project.

**2. Services of Engineer**

- A. The specific services to be provided or furnished by Engineer under this Task Order are detailed in Attachment 1 and include the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference
  - Final Design Phase (Exhibit A, Paragraph A1.03)
  - Construction Phase Services (Exhibit A, Paragraph A1.05)
    - including Resident Project Representative (RPR) services (A1.05.A.2)
- B. Resident Project Representative (RPR) Services:

The scope of services for this Task Order includes RPR services and Exhibit D of the Agreement is expressly incorporated in this Task Order by reference.
- C. All of the services included above comprise Basic Services for purposes of Engineer’s compensation under this Task Order.

**3. Owner's Responsibilities**

Owner shall have those responsibilities set forth in Article 2, Exhibit B of the Agreement.

#### 4. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following approximate schedule:

- Task Order approval – June 12, 2023
- Construction– June 2023 through August 2024

#### 5. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

<i>Phase</i>	<i>Task Number and Task Name</i>	<i>Payment Method</i>	<i>Estimated Hours</i>	<i>Amount</i>
<b>042</b>	<b><i>Additional Final Design Services</i></b>	<i>Method A</i>		
	<i>01 North Segment</i>		<i>190</i>	<i>\$35,500</i>
	<i>02 South Segment</i>		<i>17</i>	<i>\$4,100</i>
<b>060</b>	<b><i>Construction Administration Services – North Segment</i></b>	<i>Method B</i>		
	<i>01 Construction Administration</i>		<i>44</i>	<i>\$9,700</i>
	<i>02 Record Drawings</i>		<i>56</i>	<i>\$8,500</i>
<b>061</b>	<b><i>Construction Field Services – North Segment</i></b>	<i>Method B</i>		
	<i>01 On-call Construction Field Services</i>		<i>40</i>	<i>\$7,600</i>
<b>062</b>	<b><i>Construction Administration Services – South Segment</i></b>	<i>Method A</i>		
	<i>01 Project Management</i>		<i>46</i>	<i>\$10,100</i>
	<i>02 Construction Administration</i>		<i>208</i>	<i>\$42,700</i>
	<i>03 Project Closeout</i>		<i>52</i>	<i>\$9,900</i>
<b>063</b>	<b><i>Construction Field Services – South Segment</i></b>	<i>Method B</i>		
	<i>01 Construction Field Services</i>		<i>444</i>	<i>\$75,300</i>
<b>Total</b>			<b><i>1,097</i></b>	<b><i>\$203,400</i></b>

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

- B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C, where Method A is a Lump Sum payment and Method B is payment for Standard Hourly Rates.

**6. Consultants retained as of the Effective Date of the Task Order:** None.

**7. Other Modifications to Agreement and Exhibits:** None.

**8. Attachments:**

Attachment 1 – Scope of Services for Task Order No. 27

**9. Other Documents Incorporated by Reference:** None.

**10. Terms and Conditions**

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

The Effective Date of this Task Order is June 7, 2023.

OWNER: City of Fargo (Water Utility)

ENGINEER: Advanced Engineering and Environmental Services, LLC (AE2S)

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: Troy B. Hall

Name: Brian Bergantine, PE

Title: Water Utility Director

Title: Project Quality Director

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Dan Portlock, PE

Name: Kevin Johnson, PE

Title: Water Utility Engineer

Title: Project Manager

Address: 435 14<sup>th</sup> Ave S  
Fargo, ND 58103

Address: 4170 28<sup>th</sup> Ave S  
Fargo, ND 58104

E-Mail Address: [DPortlock@FargoND.gov](mailto:DPortlock@FargoND.gov)

E-Mail Address: [Kevin.Johnson@AE2S.com](mailto:Kevin.Johnson@AE2S.com)

Phone: (701) 476 - 6799

Phone: (701) 364 - 9111

This is Attachment 1 to Water Consulting Task Order No. 27 consisting of 5 pages.

*Attachment 1 to Water Consulting Task Order No. 27*

*Fargo Regional Water Distribution Extensions -- Construction*

*June 7, 2023*

## Scope of Services

This Project primarily consists of water main extensions within Fargo's regional water system to provide expanded water service to Cass Rural Water District (CRWD) through new regional bulk connections and increased service to an existing connection. The project also provides for increased capacity to serve on-going commercial and industrial growth area in north Fargo. The Project is separated into two (2) separate bid packages: north segment and south segment. This Task Order provides for Construction Phase Services for the Project. The following is a detailed breakdown of this Scope of Services to Water Consulting Task Order No. 27.

### **Phase 042 – Additional Final Design Phase Services**

*In accordance with Paragraphs A1.03 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Final Design Phase services under Water Consulting Task Order No. 27:*

#### Task 01 – North Segment Additional Design

ENGINEER shall perform the following additional final design phase services for the North Segment:

- Develop sixteen (16) additional plan and profile sheets as a result of pipeline size increase from 12-inch to 16-inch.
- Prepare survey certificate and easement description revisions for pipeline alignment changes as a result of easement negotiations and at the direction of City Engineering Department staff.
- Address NDSU landowner requirements for water service needs and specific land use, grading, and seeding.
- Obtain quotes, coordinate, communicate, observe, and survey the potholing of the existing Tharaldson Ethanol Reuse Pipeline location along the proposed pipeline route, incorporate the survey data into plan and profile drawings of the located pipeline, and adjust alignment of the proposed water main.
- Prepare an Annexation Boundary Survey and Annexation Plat for one parcel per Engineering Department request.
- Process payment directly to the railroad permitting agency for the required railroad crossing permit as a direct expense with no markup.

Task 02 – South Segment Additional Design

ENGINEER shall perform the following additional final design phase services for the South Segment

- Add a large diameter steel cased bore at the crossing of Drain 27 and two (2) existing 36-inch pipelines.
- Prepare drawings, exhibits, and documents for the Southeast Cass Water Resource District easement.
- Prepare drawings, exhibits, and documents for a private landowner easement (Scherbenske).
- Develop and submit a Facility Plan to fulfill Drinking Water State Revolving Fund (DWSRF) loan requirements and coordinate with the North Dakota Department of Environmental Quality (NDDEQ) as needed for project eligibility with the program.

The net fee for services provided in this task includes the following deduction from the original design phase in Task Order No. 18 due to a scope reduction:

<i>Phase</i>	<i>Task Number and Task Name</i>	<i>Payment Method</i>	<i>Estimated Hours</i>	<i>Amount</i>
<i>040</i>	<i>North Segment Final Design Phase Services</i>	<i>Method A</i>		
	<i>04 Electrical Design (Scope Removed)</i>		<i>56</i>	<i>(\$9,600)</i>

**Phase 060 – Construction Administration Services – North Segment**

*In accordance with Paragraphs A1.05 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Construction Phase services under Water Consulting Task Order No. 27:*

Task 01 – Construction Administration

The City of Fargo Engineering Department shall perform construction administration services for construction of the North Segment. This task includes 44 hours for ENGINEER to provide general construction administration support which are anticipated to consist of the following services:

- General project coordination and correspondence with Owner and Contractors;
- Attendance of pre-construction meeting;
- Limited review and approval of shop drawings as technical assistance to Engineering Department staff;
- Review and response to requests for information (RFIs);
- Provide support with reimbursement requests for anticipated Department of Water Resources cost-share funding.

Task 02 – Record Drawings

ENGINEER shall prepare record drawings for the Fargo Regional Water Distribution Extensions – North Segment. City of Fargo Engineering Department shall provide ENGINEER with as-built mark ups documenting changes experienced during construction. ENGINEER shall provide both electronic and hard copy (11”x17” pdf) versions of the final record drawings to the OWNER upon project completion.

**Phase 061 – Construction Field Services – North Segment**

*In accordance with Paragraphs A1.05 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Post-Construction and Commissioning Phase services under Water Consulting Task Order No. 27:*

Task 01 – Construction Field Services

*In accordance with Exhibit D of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Resident Project Representative (RPR) services under Water Consulting Task Order No. 27:*

The City of Fargo Engineering Department shall perform full-time onsite inspection and construction staking services for construction of the North Segment. ENGINEER shall provide limited/part-time on-site observation services (estimated 40 hours total) to observe and document key construction activities, such as regional connection coordination, Interstate-29 crossing, and railroad crossing.

**Phase 062– Construction Administration Services – South Segment**

*In accordance with Paragraphs A1.05 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Construction Phase services under Water Consulting Task Order No. 27:*

Task 01 – Project Management

ENGINEER shall perform general Project management activities including progress monitoring, scheduling, general correspondence, office administration, and invoicing. These activities include maintaining contact and liaison with the OWNER and Project staff; providing OWNER with monthly Project financial status updates; ensuring that the needs of the OWNER are met in a timely manner, and monitoring Project budgets and schedules.

Task 02 – Construction Administration

ENGINEER shall perform general project administration activities for one prime Contractor in accordance with Paragraph A1.05 of Exhibit A of the Original Task Order Agreement including:

- General project coordination and correspondence with Owner and Contractors;
- Facilitation of project meetings, which are anticipated to consist of:
  - Preconstruction meeting
  - Construction progress meetings
  - Specialty construction coordination meetings
- Review and approval of shop drawings;



- Review of applications for payment submitted by each Contractor;
- Review and response to requests for information (RFIs);
- Prepare and issue work change directives;
- Change order review and subsequent acceptance or rejection; and
- Solicit quotes and coordinate with Construction Material Testing providers.
- Perform construction administration activities associated with the Drinking Water State Revolving Fund (DWSRF) program requirements including the following:
  - Certified payroll review;
  - DWSRF project documentation for reimbursement requests;
  - Davis-Bacon Wage interviews;
  - American Iron and Steel (AIS) submittal review; and
  - Facilitation of the NDDEQ interim construction inspections/walkthroughs.

### Task 03 – Project Closeout

ENGINEER shall provide the following project closeout services upon completion of the Fargo Regional Water Distribution Extensions – South Segment:

- Perform a preliminary final inspection walkthrough of the project with the Owner;
- Compile a final punch list containing items identified during the initial final inspection/walkthrough;
- Perform a subsequent final inspection walkthrough to verify all punch list items have been addressed; and
- Issue final acceptance form with final pay application.

### **Phase 063 – Construction Field Services – South Segment**

*In accordance with Paragraphs A1.05 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Post-Construction and Commissioning Phase services under Water Consulting Task Order No. 27:*

#### Task 01 – Construction Field Services

*In accordance with Exhibit D of the Original Task Order Agreement, dated January 1, 2021, ENGINEER shall perform the following additional Resident Project Representative (RPR) services under Water Consulting Task Order No. 27:*

ENGINEER shall provide on-site observation services of a Resident Project Representative (RPR) to observe and document construction activities in accordance with Exhibit D of the Original Task Order Agreement. The significant construction work is anticipated to occur from July 1, 2023 through November 31, 2023, totaling 20 weeks. ENGINEER shall provide part-time RPR services when the contractor is onsite performing the work based on the following approach:


- Provide part-time RPR services to observe and document the contractor's work during construction, including as-built survey data collection of installed utilities;
- Provide part-time Senior Consultant services to observe and document the contractor's work during construction;
- Provide part-time RPR services to observe and document key electrical construction activities at the Ground Storage Reservoir and Pump Station; and
- Facilitate weekly construction progress meetings to be attended by key representatives of the ENGINEER, OWNER, and Contractor.



MEMORANDUM  
May 3<sup>rd</sup>, 2023

---

**To:** Utility Committee

**From:** Dan Portlock, Water Utility Engineer 

**Re:** Apex Task Order No. 9 – Filter Improvements – Construction services

---

Attached, please find a proposed task order in the amount of \$634,118 from Apex Engineering for construction and RPR services for our Lime Softening WTP filter improvements project. Under this project the existing anthracite (coal) filter media will be changed out to Granular Activated Carbon (GAC), a more modern design for ozone facilities. There are several benefits to GAC filter media including improved taste and odor compound removal. The project had an estimated cost of \$7,000,000, bids were recently opened and the total cost is \$6.1 million. The construction services will be 10% of the project cost.

Water Utility staff is working with the North Dakota department of Environmental Quality (NDDEQ) to include the filtration improvements project in an existing SRF loan in place of the high service pump station improvements project. NDDEQ has reimbursed design engineering fees for the filter project.

We have been working with NDDEQ on grant funding for the project and were recently notified that we qualified for a 75% grant. With an overall project cost estimated at \$6.1 million, we would receive \$4.6 million in grant funds for the project.



Existing Lime Softening WTP Filters

The breakdown of hours for the task order are listed below.

Description of Service	Hours	Amount	Basis of Compensation
1. Basic Services			
a. Task 1: Project Management	88	\$20,076	Hourly Not to Exceed
b. Task 2: Construction and Contract Administration	574	\$105,326	Hourly Not to Exceed
c. Task 3: Construction Observation	2574	\$382,394	Hourly Not to Exceed
d: Task 4: SRF Administration, Payroll, & AIS Compliance	254	\$35,032	Hourly Not to Exceed
e. Task 5: Startup and Project Closeout	524	\$91,290	Hourly Not to Exceed
<b>TOTAL COMPENSATION</b>	4014	\$634,118	Hourly Not to Exceed

Plan of Financing

Water Utility staff is working with the North Dakota Department of Environmental Quality to include the filtration improvements project in an existing State Revolving Fund (SRF) loan instead of the high service pump station improvements project. The overall cost for the filter improvements project fits well within the capacity for this SRF loan. This filter improvements project was identified as SRF funded in the 2022 budget for the Water Utility.

**SUGGESTED MOTION:**

Approve task order 9 with Apex Engineering in the amount of \$634,118 for the filter improvement construction services.

Your consideration in this matter is greatly appreciated.

This is Task Order No. WA09 consisting of 13 pages.

**Task Order No. WA09 – Filter Improvements – Construction Period Service**

---

In accordance with Paragraph 1.01 of the Agreement between Owner and Engineer for Professional Services – Task Order Edition, dated January 1, 2021 ("Agreement"), Owner and Engineer agree as follows:

**1. Background Data**

- a. Effective Date of Task Order: May 3, 2023
- b. Owner: City of Fargo – Water Division
- c. Engineer: Apex Engineering Group, Inc.
- d. Specific Project (title): Filter Improvements
- e. Specific Project (description): Construction Period Services for Filter Improvements at the Lime Softening Water Treatment Plant

**2. Services of Engineer**

A. The specific services to be provided or furnished by Engineer under this Task Order are:

as follows: *See attached Scope of Services*

B. Resident Project Representative (RPR) Services

If the scope of services established in Paragraph 2.A above includes RPR services, then Exhibit D of the Agreement is expressly incorporated in this Task Order by reference.

~~C. Designing to a Construction Cost Limit~~

~~Under this Task Order Engineer will design to a Construction Cost Limit, subject to the terms of Paragraph 5.02 of the Agreement and of Exhibit F to the Agreement. Exhibit F is expressly incorporated by reference. The Construction Cost Limit is \$\_\_\_\_\_. The bidding or negotiating contingency to be added to the Construction Cost Limit is \_\_\_\_\_ percent.~~

D. Other Services

Engineer shall also provide the following services: *None*

E. All of the services included above comprise Basic Services for purposes of Engineer’s compensation under this Task Order.

**3. Additional Services**

A. Additional Services that may be authorized or necessary under this Task Order are:

as follows: *None*

**4. Owner's Responsibilities**

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following: *Attached Scope of Services*

**5. Task Order Schedule**

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

<u>Phase/Task</u>	<u>Completion Date (week of)</u>
Execute Engineering Agreement Task Order	May 3, 2023
Contractor – Notice to Proceed (estimated)	June 5, 2023
Pre-Construction Meeting with Contractor	July 10, 2023
Filter Media & Underdrain Completion	May 15, 2024
Valve & Actuator Replacement Completion	December 15, 2024
Project Closeout Complete	February 5, 2025

**6. Payments to Engineer**

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services		
a. Task 1: Project Management	\$20,076	Hourly Not to Exceed
b. Task 2: Construction & Contract Administration	\$105,326	Hourly Not to Exceed
c. Task 3: Construction Observation	\$382,394	Hourly Not to Exceed
d. Task 4: SRF Administration, Payroll, & AIS Compliance	\$35,032	Hourly Not to Exceed
e. Task 5: Startup & Project Closeout	\$91,290	Hourly Not to Exceed
<b>TOTAL COMPENSATION</b>	<b>\$634,118</b>	Hourly Not to Exceed

Amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

**7. Consultants retained as of the Effective Date of the Task Order:** *Carollo*

**8. Other Modifications to Agreement and Exhibits:** *None*

**9. Attachments:** *Scope of Services – Filter Improvements – Lime Softening Water Treatment Plant – Construction Period Services*

**10. Other Documents Incorporated by Reference:** *None*

**11. Terms and Conditions**

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



The Effective Date of this Task Order is *May 3, 2023*.

OWNER:

ENGINEER:

By: City of Fargo

By: Apex Engineering Group, Inc.

Name: \_\_\_\_\_

Name:   
Timothy J. Paustian, PE

Title: \_\_\_\_\_

Title: Vice President

Date: \_\_\_\_\_

Date: April 24, 2023

Engineer License or Firm's Certificate No. (if required): COCPC #975C

State of: North Dakota

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Troy Hall

Name: Timothy J. Paustian, PE

Title: Water Utility Director

Title: Project Manager

Address: 435 14<sup>th</sup> Avenue South  
Fargo, ND 58103

Address: 4733 Amber Valley Parkway South  
Fargo, ND 58103

E-Mail Address: [THall@FargoND.gov](mailto:THall@FargoND.gov)

E-Mail Address: [Tim.Paustian@ApexEngGroup.com](mailto:Tim.Paustian@ApexEngGroup.com)

Phone: 701-476-6741

Phone: 701-373-7991



# Scope of Services

## Task Order No. WA09

### **Filter Improvements – Lime Softening Water Treatment Plant – Construction Phase Services**

City of Fargo, North Dakota  
May 3, 2023

Task No.	Description
1	Project Management
2	Construction & Contract Administration
3	Construction Observation
4	SRF Administration, Payroll, & AIS Compliance
6	Startup & Project Closeout

## Project Background

Plans and Specifications have been prepared, as well as bidding documents for this project. Construction Bids are to be received on April 26, 2023, after which the construction period will commence.

Based on the bidding documents that have been prepared, as well as the cost of the pre-procured equipment, it is anticipated that these improvements will have a total construction cost of approximately \$6.9M.

The State Revolving Fund (SRF) will be utilized to fund this project. Therefore, coordination with the North Dakota DEQ is included in the scope, as follows:

- SRF Inspections
- Payroll Compliance
- American Iron & Steel (AIS) Compliance

Listed on the following pages you will find a breakdown of the various tasks associated with the construction period services for the Filter Improvements at the Lime Softening Water Treatment Plant. The construction period will begin after bidding is completed. The Filter Improvements are scheduled to achieve final completion in December of 2024, with project closeout occurring in February of 2025.



## **Task No. 1.0 – Project Management**

### **Objective:**

To provide management of engineers, technicians, subconsultant and all team members throughout this project, including contract administration and quality assurance / quality control. To provide a single point of contact for the City of Fargo throughout the duration of the project.

### **Activities:**

1. Review and execute Task Order between the City of Fargo, North Dakota and Apex Engineering Group, Inc. (Apex).
2. Execute sub-contractor agreement between Apex and Carollo.
3. Oversee Engineers and Technicians assigned to the project.
4. Attend and report at project update meetings, as necessary.
5. Provide communications and coordination between City of Fargo, Apex and Carollo team members.
6. Provide quality assurance/quality control throughout all phases of the project.

### **City of Fargo Responsibilities:**

- ✓ Execute task order between City of Fargo and Apex.
- ✓ Provide requested information in a timely manner.

### **Apex Responsibilities and Deliverables:**

- ✓ Review and execute task order with City of Fargo in a timely manner.
- ✓ Gather, organize, review and return (if applicable) any necessary information.
- ✓ Coordinate all activities with project team.
- ✓ Schedule and attend project update meetings.
- ✓ Communicate with City of Fargo on project updates and schedule.



## **Task No. 2.0 – Construction and Contract Administration**

### **Objective:**

To provide Administration of construction activities and administration of the Construction contract between the General Contractor and the City of Fargo. This scope is based on administration of one (1) construction contract.

### **Activities:**

1. Pre-Construction Meeting
2. Construction Contract Administration
3. Shop Drawing Review
4. Operations and Maintenance Manual Review
5. Process Requests for Information (RFIs)
6. Process Work Change Directives (WCDs)
7. Process Change Orders
8. Progress Meetings
9. As-Built Drawings

### **City of Fargo Responsibilities:**

- ✓ Provide documents as requested
- ✓ Attend meetings, as necessary
- ✓ Attend and participate in conference calls and site visits
- ✓ Provide access and support to Engineer
- ✓ Review and provide comments on submittals.

### **Apex Responsibilities and Deliverables:**

- ✓ Schedule and lead construction progress meetings and distribute minutes.
- ✓ Review all submittals and provide comments to Contractor and Owner.
- ✓ Provide Owner with as-built drawings at the conclusion of the project.



### **Task No. 3.0 – Construction Observation/RPR**

#### **Objective:**

To provide on-site Resident Project Representative to observe and document construction progress and report to Engineer and Owner. Provide operations consulting relative to improvements made.

#### **Activities:**

1. Resident Project Representative Services
2. Construction Progress Meetings
3. Operations Specialist Consulting

#### **City of Fargo Responsibilities:**

- ✓ Provide documents as requested
- ✓ Attend meetings, as necessary
- ✓ Attend and participate in conference calls and site visits
- ✓ Provide access and support to Engineer

#### **Apex Responsibilities and Deliverables:**

- ✓ Provide on-site construction observation services during construction activities.



## **Task No. 4.0 – SRF Administration, Payroll, & AIS Compliance**

### **Objective:**

To provide administration required by the State Revolving Fund (SRF) funding agency, including collecting and reviewing payrolls, and American Iron and Steel (AIS) compliance.

### **Activities:**

1. Payroll Compliance
2. AIS Compliance
3. Employee Interviews for Payroll Compliance
4. SRF Initial, Interim, and Final Inspections

### **City of Fargo Responsibilities:**

- ✓ Provide documents as requested
- ✓ Attend meetings, as necessary
- ✓ Attend and participate in conference calls and site visits
- ✓ Provide access and support to Engineer

### **Apex Responsibilities and Deliverables:**

- ✓ Provide City of Fargo with all SRF documentation at the completion of the project.



## Task No. 5.0 – Startup & Project Closeout

### Objective:

To provide engineering support services during project startup and project closeout and to complete all necessary project closeout documents required by the Contract and by the State Revolving Fund (SRF). Due to the nature of the project, four (4) separate startups will be required, two for the filter media and underdrains, and two for the valves, flow meters, and actuators.

### Activities:

1. Media and Underdrain Startup – 2 Separate Startups
2. Valve, Actuator and Meter Startup – 2 Separate Startups
3. Project Closeout
4. Final SRF Documentation

### City of Fargo Responsibilities:

- ✓ Provide documents as requested
- ✓ Attend meetings, as necessary
- ✓ Attend and participate in conference calls and site visits
- ✓ Provide access and support to Engineer.

### Apex Responsibilities and Deliverables:

- ✓ Provide personnel to assist with each startup activity.
- ✓ Provide final project closeout documentation.
- ✓ Provide final SRF closeout documentation.





### Project Schedule

<u>Task/Activity</u>	<u>Date (Week of)</u>
- Execute Task Order Agreement	May 3, 2023
- Contractor Notice to Proceed (estimated)	June 5, 2023
- Pre-Construction Meeting with Contractor	July 10, 2023
- Filter Media & Underdrain Completion	May 15, 2024
- Valve & Actuator Replacement Completion	December 15, 2024
- Project Closeout Completion	February 5, 2025





**Water Treatment Plant**  
435 14th Avenue South  
Fargo, ND 58103  
Office: 701.241.1469 | Fax: 701.241.8110  
[www.FargoND.gov](http://www.FargoND.gov)

35

July 19, 2023

Honorable Board of City Commissioners  
City of Fargo  
225 4<sup>th</sup> Street North  
Fargo, ND 58012

**Subject:** Cost-Share Amendment (Grant) with North Dakota Department of Water Resources

Dear Commissioners:

Water Utility Staff is seeking approval for a Cost-Share amendment (grant) with the North Dakota Department of Water Resources (DWR). The amendment is attached. The Cost-Share is not to exceed \$4,414,000 and will be used toward the construction of the Regional Water System Distributions Extension project. The total grant awarded for the project is \$4,586,000. The project is a collaborative effort between the Water Utility and Engineering Department in the City of Fargo. It will include water distribution improvements in both the North and South sides of Fargo.

To accept it, a signed amendment needs to be returned to the DWR within 60 days of 6/15/2023 to be valid. After review by legal counsel for the City of Fargo, there may be a minor change in the contract language regarding a litigation suspension provision.

Your consideration is greatly appreciated in this matter.

Sincerely,

Dan Portlock  
Water Utility Engineer

**SUGGESTED MOTION:**

Approve the Cost-Share Amendment (Grant) with North Dakota Department of Water Resources in the not-to-exceed amount of \$4,414,000 for the Regional Water System Distribution Extension Project.

**AMENDMENT I to the  
Agreement for Cost-Share Reimbursement  
Fargo Regional Water System Distribution Extensions Project**

1. **BACKGROUND.** In April 2022, the State of North Dakota (State), by and through the State Water Commission (Commission), and the City of Fargo (Sponsor) entered into the Agreement for Cost-Share Reimbursement Fargo Regional Water System Distribution Extensions Project (Agreement).

2. **INTENT.** The intent of the parties here is to amend the Agreement to provide an additional cost-share of \$4,414,000 for a total cost-share up to \$4,586,000.

3. **AGREEMENT.** Commission and Sponsor agree to amend the Agreement as follows:

a. Replace all of the language in paragraph 2 ("**COMMISSION'S RESPONSIBILITY AND INTENT**") with the following:

Commission will provide Sponsor with cost-share, not to exceed \$4,586,000, as approved by Commission on February 23, 2022 (\$172,000) and June 8, 2023 (\$4,414,000), to reimburse 60 percent of the actual eligible costs incurred in Sponsor's Regional Water System Distribution Extensions Project (Project), contingent on availability of funds and conditions of this agreement. Commission's intent in providing this funding to Sponsor is merely to help Sponsor financially afford Project. Sponsor retains sole and absolute discretion in the manner and means of carrying out Project, except to the extent specified in this agreement.

b. Insert the following language in paragraph 3 ("**SPONSOR'S RESPONSIBILITIES**"):

I. Notify Commission of litigation related to the Project. If a Project becomes the subject of litigation before all funds have been disbursed, the Secretary may withhold funds until the litigation is concluded.

**NORTH DAKOTA STATE WATER  
COMMISSION**

**CITY OF FARGO**

By:



\_\_\_\_\_  
ANDREA TRAVNICEK, PH.D.  
Secretary

By:

\_\_\_\_\_  
TIM MAHONEY  
Mayor

Date: 06/15/2023

Date: \_\_\_\_\_

NORTH  
**Dakota** | Water Resources


Be Legendary.

Commission Date : 6/8/23  
Commission Action : Approved (slbrost)

Approved at 60 percent of eligible costs for an additional amount of \$4,414,000 not to exceed \$4,586,000.

**MEMORANDUM**

**TO:** Governor Doug Burgum  
Members of the State Water Commission

**FROM:** Andrea Travnicek, Ph.D., Secretary 

**SUBJECT:** State Water Supply – City of Fargo  
Regional Water System Distribution Extensions

**DATE:** May 25, 2023

**Background & Description**

The City of Fargo (City) is requesting construction cost-share to install approximately 21,800 feet of 12-inch water main north and 1,700 feet of 36-inch water main south of the City. The north side connection will provide additional capacity for future Cass Rural Water District (CRWD) users and will loop the system in the north to provide for redundancy. The south side is for pump station improvements and an additional bulk service connection to CRWD for service to new users and users in the Horace area.

**Supplemental Information**

Water Development Plan/Priority	None
New/Future/Current Service Users	1,000 / 0 / 1,400
Present Value Cost / User (Preferred Alternative)	\$3,493
Rate / 5,000-Gallons	\$24
Comparable Rate / 5,000-Gallons	\$47
Water Source – Red River	

**Schedule**

Task	Dates
Study	Mar 2022
Design	May 2022
Bid South	April 26, 2023
Bid North	June 7, 2023
Construction	July 2023
Completion	Sept 2024

**Cost-Share Funding Summary**

	Preconstruction	Construction	Total	Approved	Recommend
Total	\$286,666	<del>\$8,025,000</del>	<del>\$8,311,666</del>		
Noneligible Cost	\$0	\$0	\$0		
Eligible Cost	\$286,666	<del>\$8,025,000</del>	<del>\$8,311,666</del>		
		\$7,356,667	\$7,643,333		\$4,414,000
Cost-Share 60% (Requested)	\$172,000	<del>\$4,815,000</del>	<del>\$4,987,000</del>	\$172,000 (2/23/22)	<del>\$4,815,000</del> <b>(Requested)</b>
		\$4,414,000	\$4,586,000		

This project meets requirements of the Water Commission’s cost-share policy for municipal water supply projects. Therefore, I recommend approval of this request from the City of Fargo for state cost-share participation at 60 percent of eligible costs for the Regional Water System Distribution Extensions project for an additional ~~\$4,815,000~~, with the total amount not to exceed ~~\$4,987,000~~. This approval is contingent on available funding.

\$4,586,000
\$4,414,000

AT:JM:/2050FAR

REPORT OF ACTION

**UTILITY COMMITTEE**



Project No.

Type: CWSRF Loan Application Authorization

Location: Solid Waste Division – Landfill

Date of Hearing: 06/07/2023

<u>Routing</u>	<u>Date</u>
City Commission	07/24/2023
Project File	CWSRF Loan 2

Scott Olson, Solid Waste Utility Director, presented the attached memo and resolutions requesting the authorization to apply for **Clean Water State Revolving Fund (CWSRF) Loan 2** through the North Dakota Department of Environmental Quality (NDDEQ). The loan would be used for funding the new phases of major projects involved in the reclamation and redevelopment of the East Landfill:

2016 – Cell #18 Construction Project	\$2.0M	SW Capital Budget
2018 – Cell #19 Waste Excavation Project	\$1.8M	SW Capital Budget
2019 – Cell #19 Construction Project	\$2.5M	SW Capital Budget
2021 – Cell #20 Waste Excavation Project	\$1.9M	CWSRF Loan 1
2022 – Cell #20 Construction	\$3.4M	CWSRF Loan 1
<b>2024 – Cell #21 Waste Exc. and Construction</b>	<b>\$5.0M*</b>	<b>CWSRF Loan 2</b>
<b>2027 – Cell #22 Waste Exc. and Construction</b>	<b>\$5.3M*</b>	<b>CWSRF Loan 2</b>

The department has a current CWSRF Loan (Loan 1) that was approved by the City Commission on July 27, 2021 with 2% interest. The Loan 2 request is for \$10,646,098 to fund the excavation and construction of Cells 21 and 22 as well miscellaneous closure projects required as part of the City of Fargo’s financial assurance obligation.

**MOTION:**

On a motion by Mark Miller, seconded by James Hausauer, the Utility Committee voted to approve completion of the resolutions authorizing the Solid Waste Department to file an application for **Loan 2** with the NDDEQ under the Clean Water Act.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Denise Kolpack, City Commissioner				X
Brenda Derrig, Assistant City Administrator	X	X		Thomas Knaukmuhs
Bruce Grubb, PT Administrative Advisor	X	X		
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Wastewater Plant Supt.	X	X		
Scott Liudahl, City Forester	X	X		
James Hausauer, Wastewater Util. Director	X	X		
Troy Hall, Water Utility Director				
Ben Dow, Public Works Operations Director	X	X		
Scott Olson, Solid Waste Utility Director	X	X		
Daniel Portlock, Water Utility Engineer	X	X		

ATTEST:



\_\_\_\_\_  
 Scott Olson, PE  
 Solid Waste Utility Director

C: Tim Mahoney, Mayor  
 Commissioner Preston  
 Commissioner Piepkorn  
 Commissioner Strand





# Division of Solid Waste

2301 8<sup>th</sup> Avenue North  
Fargo, North Dakota 58102  
Phone: 701-241-1449  
Fax: 701-241-8109

To: Utility Committee  
From: Scott Olson, Solid Waste Utility Director (50)  
Date: June 1, 2023  
Subject: Solid Waste Request to Authorize Application for Clean Water State Revolving Fund (CWSRF) Loan 2

The former landfill (160 acres), which is located immediately east of the current landfill, has been closed to waste disposal for over 30 years. During operation in the 1960's and 1970's acceptable landfilling methods were utilized, but with the adoption of EPA Subtitle D Regulations in the late 1970's, the practices became outdated. Accordingly, landfill cell design parameters and daily operations were adjusted to meet the new regulatory standards

After development of a 2013 landfill facility plan (updated 2020) and the review of a number of options (site landfill elsewhere, incinerator, etc.) it was decided to begin a reclamation and reuse project of the former landfill, which would effectively remove potential environmental liability and provide future permitted air space. The 8-cell reclamation project (see attached) is expected to take approximately 20-25 years to complete and was previously being funded solely through annual Landfill Capital Improvement Funds, which ranged from \$2,000,000 to \$4,700,000 (2016-2021).

In 2016, the Solid Waste Division received authorization from the North Dakota Department of Environmental Quality (NDDEQ) to begin reclaiming and reusing the former landfill. Following approval Solid Waste staff began incorporating the necessary annual funds into the Landfill Capital Improvement Budget as shown below:

2016 – Cell #18 Construction Project	\$2.0M	SW Capital Budget
2018 – Cell #19 Waste Excavation Project	\$1.8M	SW Capital Budget
2019 – Cell #19 Construction Project	\$2.5M	SW Capital Budget
2021 – Cell #20 Waste Excavation Project	\$1.9M	CWSRF Loan 1
2022 – Cell #20 Construction	\$3.4M	CWSRF Loan 1
<b>2024 – Cell #21 Waste Exc. and Construction</b>	<b>\$5.0M*</b>	<b>CWSRF Loan 2</b>
<b>2027 – Cell #22 Waste Exc. and Construction</b>	<b>\$5.3M*</b>	<b>CWSRF Loan 2</b>

\*Engineers Estimate

### Clean Water State Revolving Loan Fund (CWSRF)

In 2020, the Solid Waste Division was notified that landfill reclamation and reuse projects would be eligible for Clean Water State Revolving Loan Funds. Loans are offered at 2.0% interest for up to 30 years (or the useful life of the project).

The major advantage to the Solid Waste Division by utilizing the CWSRF would be the budget stability. Capital Improvement Project cost projections could be estimated for the next 8-10 years and that overall amount could be requested to be placed on the CWSRF Priority list. The specific funds would then be requested only as specific projects are performed. The Solid Waste Division is then able to budget annually for loan repayment amount while stabilizing the annual capital improvements budget line.

The original CWSRF loan (*Loan 1*) secured by the Solid Waste Division (City Commission approved May 2021) was for the Cell #20 Waste Excavation and Cell #20 Construction projects with a total loan amount of approximately \$4,326,000 and repayment expected to begin in 2024. The Division seeks to secure a **Loan 2** through the CWSRF program to fund the next two major construction phases scheduled to begin in 2024 and go through 2028. The current requested amount for **Loan 2** is \$10,646,098. Reimbursement terms will be similar as the original loan 1.

One requirement of the CWSRF Loan Application is the "Resolution of Governing Body of Applicant", which is a resolution authorizing filing of an application with NDDEQ for a loan under the Clean Water Act and/or the Safe Drinking Water Act. Within the packet is Resolution #1 for *Engineering Services* and Resolution #2 for the *Project Construction*.

Please note this item was reviewed and approved by the Utility Committee on June 7, 2023.

### **Recommendation**

Approve the resolution(s) authorizing filing of an application with North Dakota Department of Environmental Quality for **Loan 2** under the Clean Water Act.

Attachment

cc: Steve Sprague, City Auditor  
Randy Hanson, Stantec

**RESOLUTION OF GOVERNING BODY OF APPLICANT**  
(Suggested Format)

**RESOLUTION NO.** 1-23

Resolution authorizing filing of application with the North Dakota Department of Environmental Quality for a loan under the Clean Water Act and/or the Safe Drinking Water Act.

WHEREAS, under the terms of the Clean Water Act and/or the Safe Drinking Water Act, the United States of America has authorized the making of loans to authorized applicants to aid in the construction of specific public projects: Now, Therefore, BE IT RESOLVED City of Fargo

*(Governing Body of Applicant)*

1. That Scott Olson be and is hereby authorized to execute and file an application  
*(Designated Official)*

on behalf of City of Fargo with the North Dakota Department of Environmental  
*(Legal Name of Applicant)*

Quality for a loan to aid in the construction of:

Engineering services related to a series of landfill and leachate system improvements that are planned to be implemented in multiple phases. The major improvements include cell closure of the west landfill, cell construction of the east landfill with leachate collection systems, and waste excavation of the east landfill. The leachate collection systems are connected to the City's sanitary sewer system, which ultimately flows to the City of Fargo Regional Water Reclamation Facility for treatment.

*(Brief Project Description)*

2. That Scott Olson Solid Waste Utility Director  
*(Name of Authorized Representative)* *(Title)*

be and is hereby authorized and directed to furnish such information as the North Dakota Department of Environmental Quality may reasonably request in connection with the application which is herein authorized to be filed, to sign all necessary documents, and, on behalf of loan recipient, to accept loan offer and receive payment of loan funds.

CERTIFICATE OF RECORDING OFFICER

The undersigned duly qualified and acting \_\_\_\_\_ of the  
*(Title of Officer)*

\_\_\_\_\_ does hereby certify that the attached resolution is a true  
*(Legal Name of Applicant)*

and correct copy of the resolution, authorizing the filing of application with the North Dakota Department of Environmental Quality, as regularly adopted at a legally convened meeting of the

\_\_\_\_\_ duly held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
*(Name of Governing Body of Applicant)*

and further that such resolution has been fully recorded in the journal of proceedings and records in my office.

In WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signature of Recording Officer*
Title of Recording Officer

\*The signature needs to match the signature used for the FIND pre-application



**RESOLUTION OF GOVERNING BODY OF APPLICANT**  
(Suggested Format)

**RESOLUTION NO.** 2-23

Resolution authorizing filing of application with the North Dakota Department of Environmental Quality for a loan under the Clean Water Act and/or the Safe Drinking Water Act.

WHEREAS, under the terms of the Clean Water Act and/or the Safe Drinking Water Act, the United States of America has authorized the making of loans to authorized applicants to aid in the construction of specific public projects: Now, Therefore, BE IT RESOLVED City of Fargo

*(Governing Body of Applicant)*

1. That Scott Olson *(Designated Official)* be and is hereby authorized to execute and file an application

on behalf of City of Fargo *(Legal Name of Applicant)* with the North Dakota Department of Environmental

Quality for a loan to aid in the construction of:

This project includes a series of landfill and leachate system improvements that are planned to be implemented in multiple phases. The major improvements include cell closure of the west landfill, cell construction of the east landfill with leachate collection systems, and waste excavation of the east landfill. The leachate collection systems are connected to the City's sanitary sewer system, which ultimately flows to the City of Fargo Regional Water Reclamation Facility for treatment.

*(Brief Project Description)*

2. That Scott Olson *(Name of Authorized Representative)*, Solid Waste Utility Director *(Title)*

be and is hereby authorized and directed to furnish such information as the North Dakota Department of Environmental Quality may reasonably request in connection with the application which is herein authorized to be filed, to sign all necessary documents, and, on behalf of loan recipient, to accept loan offer and receive payment of loan funds.

**CERTIFICATE OF RECORDING OFFICER**

The undersigned duly qualified and acting \_\_\_\_\_ of the *(Title of Officer)*

\_\_\_\_\_ does hereby certify that the attached resolution is a true *(Legal Name of Applicant)*

and correct copy of the resolution, authorizing the filing of application with the North Dakota Department of Environmental Quality, as regularly adopted at a legally convened meeting of the

\_\_\_\_\_ duly held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; *(Name of Governing Body of Applicant)*

and further that such resolution has been fully recorded in the journal of proceedings and records in my office.

In WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signature of Recording Officer*
Title of Recording Officer

\*The signature needs to match the signature used for the FIND pre-application



366

**Water Treatment Plant**  
435 14th Avenue South  
Fargo, ND 58103  
Office: 701.241.1469 | Fax: 701.241.8110  
[www.FargoND.gov](http://www.FargoND.gov)

July 20, 2023

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

**Subject:** Resolutions for DWSRF Loan – Fargo Lime Softening Water Treatment Plant Filter Improvements

Dear Commissioners:

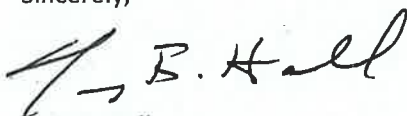
Water Utility staff is requesting the adoption of the attached State Revolving Fund (SRF) loan resolution. This resolution will allow Water Utility personnel to submit an SRF loan application for Project WA2255, Fargo Lime Softening Water Treatment Plant Filter Improvements. The North Dakota Department of Environmental Quality (DEQ) has approved Project WA2255 for 75% loan forgiveness (EPA grant) funding, which may total up to \$4,800,000 as grant.

The DEQ has requested Fargo submit Project WA2255 as a separate, unique SRF loan for tracking this project and reimbursements to the City of Fargo. Addition to the grant funding, SRF loan terms are low-interest at 2 percent (1.5% interest + 0.5% administrative fee). With the 75% grant applied, the local share of 25% will be paid over 30-years as annual loan payments.

Project WA2255 will modernize the filters in the 1997 Lime Softening Water Treatment Plant (LSWTP). This project has been in the planning phase for several years and is in the Water Utility Capital Improvement Plan (CIP). Project WA2255 is one of the last phases in updating the 1997 LSWTP and will improve tap water quality to customers.

Your consideration is greatly appreciated in this matter.

Sincerely,



Troy B. Hall  
Water Utility Director

**SUGGESTED MOTION:**

Approve resolution to allow Water Utility staff to submit an application for a low-interest Drinking Water State Revolving Fund (DWSRF) loan to fund Project WA2255, Fargo Lime Softening Water Treatment Plant Filter Improvements and collect 75% EPA grant funding.

**RESOLUTION OF GOVERNING BODY OF APPLICANT**

(Suggested Format)

**RESOLUTION NO. \_\_\_\_\_**

Resolution authorizing filing of application with the North Dakota Department of Environmental Quality for a loan under the Clean Water Act and/or the Safe Drinking Water Act.

WHEREAS, under the terms of the Clean Water Act and/or the Safe Drinking Water Act, the United States of America has authorized the making of loans to authorized applicants to aid in the construction of specific public projects: Now, Therefore, BE IT RESOLVED Fargo City Commission

(Governing Body of Applicant)

1. That Troy B. Hall be and is hereby authorized to execute and file an application  
(Designated Official)

on behalf of City of Fargo, North Dakota with the North Dakota Department of Environmental  
(Legal Name of Applicant)

Quality for a loan to aid in the construction of:

**Fargo Lime Softening Water Treatment Plant Filter Improvements**

(Brief Project Description)

2. That Troy B. Hall Water Utility Director  
(Name of Authorized Representative) (Title)

be and is hereby authorized and directed to furnish such information as the North Dakota Department of Environmental Quality may reasonably request in connection with the application which is herein authorized to be filed, to sign all necessary documents, and, on behalf of loan recipient, to accept loan offer and receive payment of loan funds.

CERTIFICATE OF RECORDING OFFICER

The undersigned duly qualified and acting City Auditor of the  
(Title of Officer)

City of Fargo, North Dakota does hereby certify that the attached resolution is a true  
(Legal Name of Applicant)

and correct copy of the resolution, authorizing the filing of application with the North Dakota Department of Environmental Quality, as regularly adopted at a legally convened meeting of the

Fargo City Commission duly held on the 24th day of July, 2023;  
(Name of Governing Body of Applicant)

and further that such resolution has been fully recorded in the journal of proceedings and records in my office.

In WITNESS WHEREOF, I have hereunto set my hand this 24th day of July, 2023.

Signature of Recording Officer*
Title of Recording Officer Fargo City Auditor

\*The signature needs to match the signature used for the FIND pre-application

July 24<sup>th</sup>, 2023

**WATER  
RECLAMATION**

**REGIONAL WATER  
RECLAMATION FACILITY**

3400 North Broadway

Fargo, ND 58102

Phone: 701.241.1454 | Fax: 701.241.8159

[FargoND.gov](http://FargoND.gov)

36

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

Subject: Resolutions for CWSRF Loan Amendment (Sewer Revenue Bond Series 2018A & 2018B)  
Project WW1701 – Water Reclamation Facility Expansion

Dear Commissioners:

As you know, the Water Reclamation Facility (WRF) is in the middle of a major facility expansion that has been planned for years. In 2014, a facility plan assessed all process equipment and structural components of the WRF, as well as deficiencies associated with capacity, condition, and future regulations. The facility plan recommended a phased approach based on deficiencies, with a goal to treat projected hydraulic & organic loading over the next 20-plus years to accommodate Fargo growth, regionalization and future changes in State and Federal regulations.

To meet schedules outlined in outside sewer agreements, portions of the expansion project need to be functionally complete by 2023-(Phase IIB). Components of the Phase IIB expansion include a hybrid Integrated Fixed Film Activated Sludge (IFAS) technology for biological treatment. The IFAS technology is a small footprint/high performance technology that will greatly reduce nitrogen and phosphorus discharge levels. Once operational the facility will double its current capacity to treat 29 million gallons per day, serving a regional population of 270,700.

The Water Reclamation Utility has a placeholder in the 20 year CIP for the Phase II Expansion. The project is funded with a 30-year/2% Clean Water State Revolving Fund (CWSRF) loan. The CWSRF loan was broken into two components (construction \$126,500,000 & engineering \$20,229,000) as requested by the NDDEQ. Phase IIA (\$24,039,116) is complete and in May 2020, bids were opened/awarded on Phase IIB (\$123,950,000) which is now over 75% complete. The commission was aware that these two bid awards exceeded the original construction loan amount that was established in 2017.

Subsequently, the PFA and NDDEQ recommended waiting to apply for a loan amendment until closer to the time the funds would be needed to ensure that additional change orders and costs had not increased the construction amount. Additionally, waiting to make an amendment to the loan will delay large principle payments until 2029, actually improving the Revenue Adequacy (RA) Model (see attached). Existing loan debt will be paid in full in the 2028-30 timeframe. **(NOTE: the increased loan amount has been included in current RA Models)**. The Utility and Finance Committees have both approved the proposed loan increases.

Your consideration in this matter is greatly appreciated.

**Recommended Motion**

Approve the attached Resolutions to amend the Clean Water State Revolving Fund Loans (Sewer Revenue Bond Series 2018A & 2018B) to complete the Water Reclamation Facility expansion.

Respectfully Submitted,



Jim Hausauer  
Water Reclamation Utility Director

REPORT OF ACTION

**FINANCE COMMITTEE**

Project No. WW1701

Type: Clean Water State Revolving Fund  
Loan Increase

Location: Water Reclamation Facility Expansion

Date of Hearing: 12/19/2022

Routing \_\_\_\_\_ Date \_\_\_\_\_  
City Commission TBD \_\_\_\_\_  
Project File \_\_\_\_\_

Jim Hausauer, Water Reclamation Utility Director, presented the attached memo requesting consideration to increase the Clean Water State Revolving Fund (CWSRF) construction & engineering loans for the Water Reclamation Facility (WRF) expansion. In 2014, the City of Fargo completed a Water Reclamation Facility (WRF) Plan to review the existing facilities condition & capacity. The facility plan assessed all process equipment and structural components of the WRF, as well as deficiencies associated with capacity, condition, and future regulations. The Facility Plan recommendations were prioritized via a phased approach based on immediate needs & deficiencies, with a goal to adequately treat projected hydraulic & organic loading over the next 20-plus years.

Components of the Phase IIB expansion include a hybrid Integrated Fixed Film Activated Sludge (IFAS) technology for biological treatment. The IFAS technology is a small footprint/high performance technology that will greatly reduce nitrogen and phosphorus levels, exceeding the City of Winnipeg discharge parameters. Fargo will reduce phosphorus discharge levels by 80% and ammonia nitrogen by 30%. West Fargo lagoon discharge for phosphorus will be reduced by 80% and ammonia nitrogen by 85-90%. Once operational the facility will double its current capacity to treat 29 million gallons per day, serving a regional population of 270,700.

The Water Reclamation Utility has a placeholder in the 20 year CIP for the Phase II Expansion. The project is funded with a 30-year/2% Clean Water State Revolving Fund (CWSRF) loan. The CWSRF loan was broken into two components (construction \$126,500,000 & engineering \$20,229,000) as requested by the NDDEQ. Phase IIA (\$24,039,116) is complete and in May 2020, bids were opened/awarded on Phase IIB (\$123,950,000) which is now over 60% complete. The commission was aware that these two bid awards exceeded the construction loan amount. (To date over \$21.5 M.)

Subsequently, the NDDEQ stated that they would increase the loan amount to cover the increased costs. An increase in loan amount will delay large principle payments until 2029 and will actually improve the Revenue Adequacy Model (see attached). Current loan debt will come off the books in the 2028-30 timeframe, thus requiring less cash for the short term. **(NOTE: the increased loan amount has been included in current RA Models).**

Existing Loans	Loan Amount	Yearly Payment	Maturity Date
45 <sup>th</sup> St Interceptor	\$63,250,000	\$4,562,900	2029
Northside Sewer Ext	\$1,640,000	\$118,450	2028
Clarifier Impr.	\$822,348	\$45,800	2029
Stabilization Ponds	\$4,061,075	\$275,000	2030
New Loan (Current Expansion)	Loan Amount	Yearly Payment	Maturity Date
Engineering	\$20,229,000	\$928,580	2052
Construction	\$147,825,000	\$7,766,500	2052

Considering the circumstances, the City of Fargo is fortunate they accepted bids when they did in May 2020. Below is a comparison of a similar wastewater project for the City of Sioux Falls, SD and the increased project costs.

Fargo Bid-2020	\$168 M Project Cost	15 mgd capacity inc.	<b>\$11.2 / gallon</b>
Sioux Falls Bid-2022	\$215 M Project Cost	9 mgd capacity inc.	<b>\$23.8 / gallon</b>

It is important to note that there have been no change orders that have increased the financial responsibility of the Water Reclamation Utility. Quite impressive for 4 years of \$148 M construction. Previous change orders are as follows:

- Phase IIA
  - Change Order #1 – Swanberg Construction (Central Generation Station)
    - \$10,000 Deduct
  - Change Order #1 – PKG Construction
    - No Cost Time Extension
  - Change Order #2- PKG Construction
    - No Cost Closeout Transfer of \$40,300 to Phase IIB
- Phase IIB
  - Change Order #1 – PKG Construction
    - No Cost Closeout Transfer of \$40,300 from Phase IIA
  - Change Order #2 – PKG Construction
    - Increase of \$52,443 (Paid by DA Funds for a storm water LS improvements

**MOTION**

On a motion by Mike Redlinger, seconded by Terri Gayhart, the Finance Committee voted to authorize staff to increase the Clean Water State Revolving Fund (CWSRF) Loans (construction (~\$25M) and engineering (~\$1M)) as needed to complete the Water Reclamation Facility expansion.

- C: Mayor Mahoney  
Commissioner Strand  
Commissioner Piepkorn  
Commissioner Preston



REPORT OF ACTION

**UTILITY COMMITTEE**

Project No. WW1701

Type: Clean Water State Revolving Fund  
Loan Increase

Location: Water Reclamation Facility Expansion

Date of Hearing: 12/21/2022

<u>Routing</u>	<u>Date</u>
City Commission	TBD
Project File	

Jim Hausauer, Water Reclamation Utility Director, presented the attached memo requesting consideration to increase the Clean Water State Revolving Fund (CWSRF) construction & engineering loans for the Water Reclamation Facility (WRF) expansion. In 2014, the City of Fargo completed a Water Reclamation Facility (WRF) Plan to review the existing facilities condition & capacity. The facility plan assessed all process equipment and structural components of the WRF, as well as deficiencies associated with capacity, condition, and future regulations. The Facility Plan recommendations were prioritized via a phased approach based on immediate needs & deficiencies, with a goal to adequately treat projected hydraulic & organic loading over the next 20-plus years.

Components of the Phase IIB expansion include a hybrid Integrated Fixed Film Activated Sludge (IFAS) technology for biological treatment. The IFAS technology is a small footprint/high performance technology that will greatly reduce nitrogen and phosphorus levels, exceeding the City of Winnipeg discharge parameters. Fargo will reduce phosphorus discharge levels by 80% and ammonia nitrogen by 30%. West Fargo lagoon discharge for phosphorus will be reduced by 80% and ammonia nitrogen by 85-90%. Once operational the facility will double its current capacity to treat 29 million gallons per day, serving a regional population of 270,700.

The Water Reclamation Utility has a placeholder in the 20 year CIP for the Phase II Expansion. The project is funded with a 30-year/2% Clean Water State Revolving Fund (CWSRF) loan. The CWSRF loan was broken into two components (construction \$126,500,000 & engineering \$20,229,000) as requested by the NDDEQ. Phase IIA (\$24,039,116) is complete and in May 2020, bids were opened/awarded on Phase IIB (\$123,950,000) which is now over 60% complete. The commission was aware that these two bid awards exceeded the construction loan amount. (To date over \$21.5 M.)

Subsequently, the NDDEQ stated that they would increase the loan amount to cover the increased costs. An increase in loan amount will delay large principle payments until 2029 and will actually improve the Revenue Adequacy Model (see attached). Current loan debt will come off the books in the 2028-30 timeframe, thus requiring less cash for the short term. **(NOTE: the increased loan amount has been included in current RA Models).**

Existing Loans	Loan Amount	Yearly Payment	Maturity Date
45 <sup>th</sup> St Interceptor	\$63,250,000	\$4,562,900	2029
Northside Sewer Ext	\$1,640,000	\$118,450	2028
Clarifier Impr.	\$822,348	\$45,800	2029
Stabilization Ponds	\$4,061,075	\$275,000	2030
New Loan (Current Expansion)	Loan Amount	Yearly Payment	Maturity Date
Engineering	\$20,229,000	\$928,580	2052
Construction	\$147,825,000	\$7,766,500	2052

Considering the circumstances, the City of Fargo is fortunate they accepted bids when they did in May 2020. Below is a comparison of a similar wastewater project for the City of Sioux Falls, SD and the Increased project costs.

Fargo Bid-2020	\$168 M Project Cost	15 mgd capacity inc.	<b>\$11.2 / gallon</b>
Sioux Falls Bid-2022	\$215 M Project Cost	9 mgd capacity inc.	<b>\$23.8 / gallon</b>

It is important to note that there have been no change orders that have increased the financial responsibility of the Water Reclamation Utility. Quite impressive for 4 years of \$148 M construction. Previous change orders are as follows:


- Phase IIA
  - Change Order #1 – Swanberg Construction (Central Generation Station)
    - \$10,000 Deduct
  - Change Order #1 – PKG Construction
    - No Cost Time Extension
  - Change Order #2- PKG Construction
    - No Cost Closeout Transfer of \$40,300 to Phase IIB
- Phase IIB
  - Change Order #1 – PKG Construction
    - No Cost Closeout Transfer of \$40,300 from Phase IIA
  - Change Order #2 – PKG Construction
    - Increase of \$52,443 (Paid by DA Funds for a storm water LS improvements)

**MOTION**

On a motion by Bruce Grubb, seconded by Ben Dow, the Utility Committee voted to authorize staff to increase the Clean Water State Revolving Fund (CWSRF) Loans (construction (~\$25M) and engineering (~\$1M)) as needed to complete the Water Reclamation Facility expansion.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous X</u>
				<u>    X    </u>
				<u>Proxy</u>
Denise Kolpack, City Commissioner	<u>    X    </u>	<u>    X    </u>		
Terri Gayhart, Director of Finance				
Brian Ward, Water Plant Superintendent	<u>    X    </u>	<u>    X    </u>		
Mark Miller, Water Reclamation Supt.	<u>    X    </u>	<u>    X    </u>		
Bruce Grubb, Temp. PT City Administrator	<u>    X    </u>	<u>    X    </u>		
Scott Liudahl, City Forester	<u>    X    </u>	<u>    X    </u>		
Scott Olson, Solid Waste Utility Director	<u>    X    </u>	<u>    X    </u>		
Jim Hausauer, Water Reclamation Utility Dir.	<u>    X    </u>	<u>    X    </u>		
Troy Hall, Water Utility Director	<u>    X    </u>	<u>    X    </u>		
Ben Dow, Public Works Operations Director	<u>    X    </u>	<u>    X    </u>		
Brenda Derrig, City Engineer	<u>    X    </u>	<u>    X    </u>		
_____, Solid Waste Utility Engineer	<u>    X    </u>	<u>    X    </u>		<u>T. Knakmuhs proxy</u>
	<u>    X    </u>			<u>Vacant</u>
Dan Portlock, Water Utility Engineer	<u>    X    </u>	<u>    X    </u>		

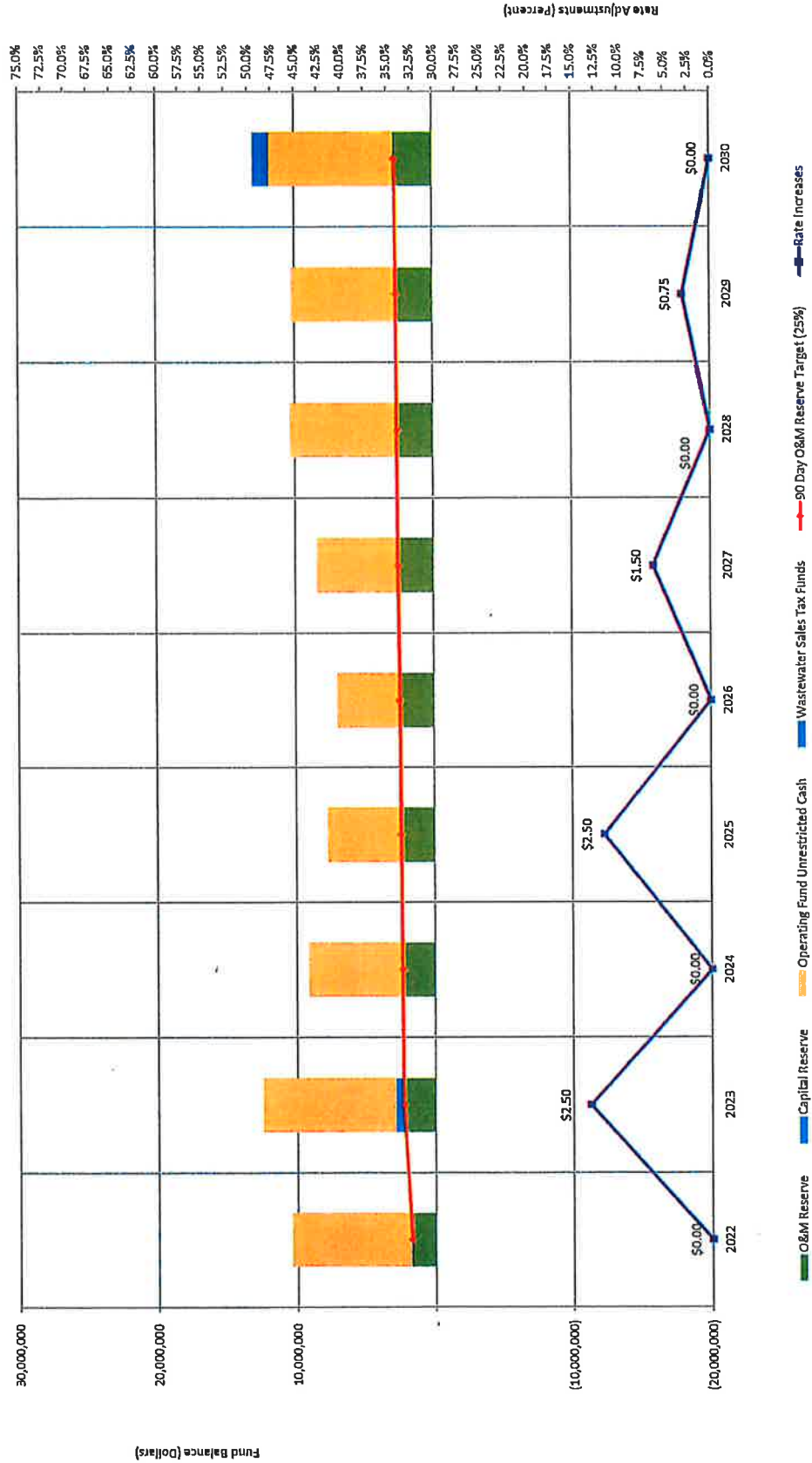
ATTEST:

  
 \_\_\_\_\_  
 Jim Hausauer  
 Water Reclamation Utility Director

- C: Mayor Mahoney  
 Commissioner Strand  
 Commissioner Piepkorn  
 Commissioner Preston



## Wastewater Projected Operating and Sales Tax Fund Balances and Proposed Rate Adjustments



**RESOLUTION OF GOVERNING BODY OF APPLICANT**  
(Suggested Format)

**RESOLUTION NO. \_\_\_\_\_**

Resolution authorizing filing of application for amendment to loan agreement with the North Dakota Department of Environmental Quality for a loan under the Clean Water Act and/or the Safe Drinking Water Act.

WHEREAS, under the terms of the Clean Water Act and/or the Safe Drinking Water Act, the United States of America has authorized the making of loans to authorized applicants to aid in the construction of specific public projects; and

WHEREAS, the City of Fargo (the "City") has previously applied for and entered into a Loan Agreement dated December 27, 2018 (the "Original Loan Agreement") with the North Dakota Public Finance Authority for a loan in the amount of up to \$126,500,000 (the "Original Loan") to finance wastewater treatment plant improvements (the "Project"); and

WHEREAS, due to increased Project costs, the City is seeking to increase the amount of the Original Loan and enter into certain amendment to the Original Loan Agreement in connection therewith;

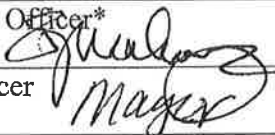
Now, Therefore, BE IT RESOLVED by the City of Fargo (the "City") City Commission:

1. That James Hausauer be and is hereby authorized to execute and file an application on behalf of the City with the North Dakota Department of Environmental Quality for an increase in the Original Loan Amount of \$25,000,000, for a total principal amount of up to \$151,500,000, which loan may be represented by a tax-exempt bond, note or other obligation of the City, for costs of the Project.
2. That James Hausauer, Water Reclamation Utility Director be and is hereby authorized and directed to furnish such information as the North Dakota Department of Environmental Quality may reasonably request in connection with the application which is herein authorized to be filed, to sign all necessary documents, and, on behalf of the loan recipient, to accept the loan offer and receive payment of loan funds.

**CERTIFICATE OF RECORDING OFFICER**

The undersigned duly qualified and acting City Auditor of the City of Fargo, North Dakota does hereby certify that the attached resolution is a true and correct copy of the resolution, authorizing the filing of application with the North Dakota Department of Environmental Quality, as regularly adopted at a legally convened meeting of the Fargo City Commission duly held on the 23<sup>rd</sup> day of January, 2023; and further that such resolution has been fully recorded in the journal of proceedings and records in my office.

In WITNESS WHEREOF, I have hereunto set my hand this 23<sup>rd</sup> day of January, 2023.

Signature of Recording Officer*	
Title of Recording Officer	Mayer

*\*The signature needs to match the signature used for the FIND pre-application*

**RESOLUTION OF GOVERNING BODY OF APPLICANT**  
(Suggested Format)

**RESOLUTION NO. \_\_\_\_\_**

Resolution authorizing filing of an application for an amendment to a loan agreement with the North Dakota Department of Environmental Quality for a loan under the Clean Water Act and/or the Safe Drinking Water Act.

WHEREAS, under the terms of the Clean Water Act and/or the Safe Drinking Water Act, the United States of America has authorized the making of loans to authorized applicants to aid in the construction of specific public projects; and

WHEREAS, the City of Fargo (the "City") has previously applied for and entered into a Loan Agreement dated November 5, 2018 (the "Original Loan Agreement") with the North Dakota Public Finance Authority for a loan in the amount of up to \$20,229,000 (the "Original Loan") to finance engineering costs relating to wastewater treatment plant improvements (the "Project"); and

WHEREAS, due to increased Project costs, the City is seeking to increase the amount of the Original Loan and enter into certain amendment to the Original Loan Agreement in connection therewith;



Now, Therefore, BE IT RESOLVED by the City of Fargo (the "City") City Commission:

1. That James Hausauer be and is hereby authorized to execute and file an application on behalf of the City with the North Dakota Department of Environmental Quality for an increase in the Original Loan Amount of \$1,000,000, for a total principal amount of up to \$21,229,000, which loan may be represented by a tax-exempt bond, note or other obligation of the City, for costs of the Project.
2. That James Hausauer, Water Reclamation Utility Director be and is hereby authorized and directed to furnish such information as the North Dakota Department of Environmental Quality may reasonably request in connection with the application which is herein authorized to be filed, to sign all necessary documents, and, on behalf of the loan recipient, to accept the loan offer and receive payment of loan funds.

**CERTIFICATE OF RECORDING OFFICER**

The undersigned duly qualified and acting City Auditor of the City does hereby certify that the attached resolution is a true and correct copy of the resolution, authorizing the filing of application with the North Dakota Department of Environmental Quality, as regularly adopted at a legally convened meeting of the Fargo City Commission duly held on the 23<sup>rd</sup> day of January, 2023; and further that such resolution has been fully recorded in the journal of proceedings and records in my office.

In WITNESS WHEREOF, I have hereunto set my hand this 23<sup>rd</sup> day of January, 2023.

Signature of Recording Officer*	
Title of Recording Officer	

*\*The signature needs to match the signature used for the FIND pre-application*

CITY OF FARGO, STATE OF NORTH DAKOTA

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF  
\$151,500,000  
CITY OF FARGO SEWER REVENUE BOND, SERIES 2023B

RECITATIONS

WHEREAS, the City of Fargo, North Dakota (the “City”), issued its \$126,500,000 Sewer Revenue Bond, Series 2018A (the “Series 2018A Bond”) pursuant to an authorizing resolution adopted on August 13, 2018, for the purpose of financing an expansion (the “Project”) to the City’s wastewater treatment facility; and

WHEREAS, the North Dakota Public Finance Authority (the “Public Finance Authority”), as the purchaser of the Series 2018A Bond, has approved an additional loan to the City in the amount of \$25,000,000 for increased costs of the Project, which shall be added to the principal amount of the Series 2018A Bond (\$126,500,000), for a total loan amount of \$151,500,000; and

WHEREAS, the City will issue its \$151,500,000 Sewer Revenue Bond, Series 2023B to the Public Finance Authority to refund the Series 2018A Bond, and evidence the loan to the City; and

WHEREAS, City Code Article 3-20 dedicates the revenues raised and collected pursuant to the sales and use tax imposed and collected pursuant to said article to infrastructure capital improvements (including sewerage system improvements) (the “Sales Tax”).

RESOLUTION

Be it resolved by the governing body of the City:

SECTION 1. Authorization and Sale.

1.01. Ratification of Prior Acts. All acts performed, resolutions, motions, or ordinances adopted or passed, and all publications incidental to the construction and financing and refinancing of the Project, whether or not reflected in the official minutes and records of the City, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the City which are in any way inconsistent with this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

1.02. Authorization. It is hereby found and determined to be necessary for the City to issue \$151,500,000 in principal amount of its CITY OF FARGO SEWER REVENUE BOND, SERIES 2023B (the “Municipal Securities”), pursuant to N.D.C.C. ch. 40-35, upon the terms as set forth in this Resolution for the purpose of constructing the Project, refunding the Series 2018A Bond, and paying related costs of issuance.

1.03. Offer and Acceptance. The governing body of the City, in response to its application for financial assistance from the Department and the Public Finance Authority, has

received an offer from the Public Finance Authority, subject to the approval of the Industrial Commission of North Dakota, to purchase the Municipal Securities at a price equal to the principal amount plus accrued interest, if any, to the date of purchase, which offer is more fully set out in an Amended and Restated Loan Agreement to be entered into between the City and the Public Finance Authority (the "Loan Agreement"). It is hereby found and determined that the offer of the Public Finance Authority to purchase the Municipal Securities is reasonable and advantageous to the City and is hereby accepted, and the Loan Agreement, in substantially the form presented to the City at this meeting, is hereby accepted and authorized to be executed on behalf of the City by its Mayor and City Auditor (the "Authorized Officers"), with such modifications as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the Loan Agreement and to deliver it to the Public Finance Authority, which execution and delivery shall be conclusive evidence of the approval of any modifications with respect to the Loan Agreement.

SECTION 2. Term of Bonds.

2.01. Form. The Municipal Securities issued under this Resolution shall be designated CITY OF FARGO SEWER REVENUE BOND, SERIES 2023B, and shall be issued to the Public Finance Authority in the form of a single registered Municipal Security in substantially the form as attached hereto as Exhibit A.

2.02. Terms. The City authorizes the issuance of the Municipal Securities in the aggregate principal amount not to exceed \$151,500,000, dated the date of issuance and delivery to the Public Finance Authority.

The Municipal Securities shall bear interest commencing on the date of delivery thereof at the rate of 1.50% per year (plus an administrative fee as set out in the Loan Agreement), with principal payable in installments on September 1 of each of the years and in accordance with "Attachment A" attached to Exhibit A to this Resolution, subject however to the final amortization schedule to be attached to the Municipal Securities upon the final loan advance in accordance with Section 2.02 of the Loan Agreement. Interest shall be payable semiannually on each March 1 and September 1 commencing September 1, 2023. Interest will be payable only on funds actually advanced to the City by the Public Finance Authority as a draw on the Municipal Securities. The schedule below and attached to the Municipal Securities will be revised to reflect the actual principal amount loaned to the City at the completion of the Project.

2.03. Payment to Registered Holders. The principal of and interest on the Municipal Securities shall be payable to the registered holder thereof at the address appearing on the registration books of the registrar in any coin or currency of the United States of America, which on the respective dates of payment is legal tender for the payment of public or private debts or by check or draft delivered to the registered holder thereof at the address appearing on the registration books of the registrar.

2.04. Registration. The Municipal Securities shall be registered as to both principal and interest and shall be initially registered in the name of and payable to the North Dakota Public Finance Authority. While so registered, principal of and interest on the Municipal Securities shall be payable at the office of the Bank of North Dakota, in Bismarck, North Dakota (the

“Bank”), or such other place as may be designated by the Public Finance Authority in writing, delivered to the Registrar. The Bank shall act as Registrar and as such shall establish and maintain a register for the purpose of recording the names and addresses of the registered holders or assigns, and the date of such registration.

2.05. Transfer and Exchange. The Municipal Securities are transferable upon the books of the City at the principal office of the Bank of North Dakota, as bond registrar, or a successor bond registrar appointed by the Bank of North Dakota (the “Bond Registrar”), by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Municipal Securities of other authorized denominations. Upon such transfer or exchange, the City will cause new Municipal Securities to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Municipal Securities shall be required to be made during the 15 days next preceding an interest payment date, nor during the 45 days next preceding the date fixed for redemption of such Municipal Securities.

2.06. Registered Owner Deemed Owner. The City, the Bond Registrar and the paying agent may deem and treat the person in whose name any Municipal Securities are registered as the absolute owner thereof, whether the Municipal Securities are overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City, the Bond Registrar nor the paying agent shall be affected by any notice to the contrary. The City shall pay the fees and expenses of the Bond Registrar and the paying agent.

2.07. Execution and Delivery. The Municipal Securities shall forthwith be prepared under the direction of the City Auditor and when so prepared shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Auditor and shall be authenticated by the manual signature of the Registrar. When the Municipal Securities have been so executed and authenticated, they shall be delivered by the City to the Public Finance Authority.

2.08. Redemption. The Municipal Securities shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Public Finance Authority, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

2.09. Authorization of Related Documents. The Mayor, City Auditor, and other authorized officers of the City are hereby authorized to execute such additional agreements, certificates, and documents required or appropriate in connection with the issuance of the Municipal Securities and the transactions contemplated by the issuance thereof.

2.10. Draws of Municipal Security Proceeds. Proceeds of the Municipal Securities shall first be applied to refund the outstanding Series 2018A Bond. The remaining proceeds of the Municipal Securities are irrevocably appropriated to pay expenses necessarily incurred in the construction and completion of the Project and to pay costs associated with the issuance of the



Municipal Securities. Draws on the Municipal Securities, in the form of Requisitions for Payment, shall be submitted by the City to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to the Public Finance Authority for approval and funding.

SECTION 3. Source of Payment. The City hereby dedicates and pledges the Net Revenues (as defined in Section 4.02 hereof) of the City's wastewater treatment facility (the "Sewer Utility") and the Sales Tax (together the "Pledged Revenues") to the payment of the principal of and interest on the Municipal Securities on a parity basis with bonds previously issued or to be issued and secured by a pledge of the Pledged Revenues and permitted herein. Concurrently with the Municipal Securities, the City will issue its Sewer Revenue Bonds, Series 2023C (the "Series 2023C Bonds"; together with the Municipal Securities and any other obligations secured by the Pledged Revenues and on a parity therewith, the "Bonds").

The Net Revenues are to be deposited in the funds set forth in Section 4 hereof.

SECTION 4. Funds.

4.01. Sewer Utility Fund. The City has created, and will maintain, a SEWER UTILITY FUND (the "Sewer Utility Fund"). The City shall credit and pay to the Sewer Utility Fund, as received, the entire gross revenues derived from the operation of the City's Sewer Utility, including any future additions thereto and betterments thereof, including all income and receipts derived from rates, fees and charges for services, facilities, products and by-products of the Sewer Utility furnished or sold to the City and its inhabitants and all other customers, and for the availability thereof, and from sale of any of the properties of the Sewer Utility not necessary to be retained, and from the investment of any of the money so collected. On the books and records of the Sewer Utility Fund there shall be established and maintained the following funds as a part of the Sewer Utility Fund. Amounts on deposit in the Sewer Utility Fund from time to time shall be apportioned among said funds at least once in each calendar month and shall thereafter be held and administered and disbursed from the several funds established in this section.

4.02. Operation and Maintenance Fund. The City has created, and will maintain, an OPERATION AND MAINTENANCE FUND (the "Operation and Maintenance Fund"). Upon each such monthly apportionment, as a first lien and charge on the gross revenue, the City shall transfer to the Operation and Maintenance Fund from amounts on deposit in the Sewer Utility Fund such sum as shall be needed, over and above any credit balance held therein, to pay all claims then due and allowed which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the utility, and to pay such expenses estimated to accrue for a period of one month, and to maintain a reasonable reserve for contingencies. Monies in the Operation and Maintenance Fund shall be used only to pay expenses of the foregoing type and not for major repairs, replacements, or capital improvements which are properly chargeable to replacement and depreciation reserves or surplus funds. All revenues in excess of such amount deposited to the Operation and Maintenance Fund shall be the Net Revenues (the "Net Revenues") of the Sewer Utility.

4.03. Sewer Revenue Bond Fund. The City has created, and will maintain, a SEWER REVENUE BOND FUND (the "Sewer Revenue Bond Fund"). Upon each such monthly

apportionment, out of the Pledged Revenues on hand at the time of each such distribution, an amount equal to not less than one-sixth (1/6) of the amount necessary to pay interest which becomes due on the next interest payment dates for the Bonds and an amount equal to not less than one-twelfth (1/12) of the sum of principal payments to become due on the next principal payment dates for the Bonds. These amounts may be reduced by an amount equal to the interest earnings on the Sewer Revenue Bond Fund credited to the Sewer Revenue Bond Fund subsequent to the last monthly apportionment. If Pledged Revenues on hand at any time are insufficient to permit the transfer to the Sewer Revenue Bond Fund of the full amount so required, such deficiencies shall be restored out of the next Pledged Revenues thereafter received. There shall also be credited to said fund the accrued interest, if any, paid on each subsequent issue of Additional Bonds and Additional SRF Bonds, if any. The money in said fund shall be solely for the purposes of paying principal of, and premium, if any, and interest on Bonds, as such principal, premium and interest respectively come due. Subordinate Bonds (hereinafter defined) shall not be payable from the Sewer Revenue Bond Fund.

In the event Pledged Revenues on deposit in the Sewer Revenue Bond Fund and amounts on deposit in the Surplus Fund available for transfer to the Sewer Revenue Bond Fund are insufficient to pay the principal of, and premium, if any, and interest on the Bonds then due, such Pledged Revenues and the transfers from the Surplus Fund shall be apportioned among each series of Bonds in proportion to the amount of principal, premium, if any, and interest then payable on the Bonds of each series. Transfers from any SRF Reserve Fund, including the Reserve Account established hereunder, shall be applied only to principal, premium, if any, and interest payable on the related series of SRF Bonds.

4.04. Surplus Fund. All surplus Net Revenues from time to time received in excess of the current requirements of the Sewer Revenue Bond Fund and any SRF Reserve Fund shall be credited on the books of the City to the Surplus Fund of the Sewer Utility Fund, provided that City reserves the right to create additional funds within said fund for the purpose of segregating any of such surplus Net Revenues which may be pledged and appropriated to the payment of any Subordinate Bonds hereafter issued to finance improvements, replacements, or repairs of the Sewer Utility, subject to the prior lien on the Net Revenues of the Bonds. Surplus Net Revenues on hand from time to time shall be available and shall be used to the full extent necessary to restore a deficiency in the Operation and Maintenance Fund, the Sewer Revenue Bond Fund, the Reserve Account and any other SRF Reserve Fund, but when not so needed may be used to pay for capital improvements, replacements, or repairs to the Sewer Utility, or to pay principal and interest on Subordinate Bonds hereafter issued for such purposes, or they may be used to redeem and pay prior to maturity Bonds (other than Subordinate Bonds) when and as such bonds become redeemable according to their terms, or purchase Bonds (other than Subordinate Bonds) in the secondary market when deemed advisable. The City shall maintain in the Surplus Fund such cash or investments as it shall from time to time determine to constitute an adequate reserve for operation or maintenance emergencies and for depreciation and contemplated improvement or replacement of the Sewer Utility. At the end of the City's fiscal year, if there are no deficiencies in the Operation and Maintenance Fund, the Sewer Revenue Bond Fund, or any SRF Reserve Fund and there is an adequate reserve for operation and maintenance emergencies and for depreciation, contemplated improvements and replacements of the Sewer Utility, the City may transfer monies in excess of such requirements to other funds of the City in accordance with and subject to the limitations contained in the ordinances of the City and the provisions of state law.

4.05. Rebate Fund. There is hereby established a Rebate Fund. The City shall from time to time, and as required by Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated in connection therewith, as amended (collectively, the “Code”), calculate the amount of rebate payable with respect to Bonds to the United States of America pursuant to Section 148 of the Code. The City may from time to time, and shall upon payment being due to the United States of America, withdraw the amount of such payment from the Surplus Fund and any SRF Reserve Fund, the Sewer Revenue Bond Fund and the Operation and Maintenance Fund, in such order, the amount of such payment notwithstanding any provision to the contrary in this Resolution. Amounts in the Rebate Fund shall be used solely to make required payments to the United States of America and shall not be pledged to the payment of the Bonds. All interest earnings on investments in the Rebate Fund shall be retained in the Rebate Fund.

4.06. Reserve Account. A separate SRF Reserve Fund (the “Reserve Account”) is established within the Sewer Utility Fund and shall be funded to the total amount of \$7,244,325.00, in five installments of \$1,448,865.00, payable on each September 1 beginning September 1, 2026, which may be reduced proportionately if the final loan amount is less than the approved loan amount of \$151,500,000. Moreover, the City shall receive a credit for funds already on deposit in the Reserve Account.

SECTION 5. Additional Net Revenues Parity Pledges.

5.01. Parity Bonds. The City reserves the right to issue one or more series of bonds with a parity of lien on the Net Revenues as to both principal and interest with the Bonds (herein referred to as “Additional Bonds”). The term Additional Bonds does not include Subordinate Bonds issued pursuant to Section 5.03 hereof, but does include Additional Bonds issued for refunding purposes. In the event the City shall at any time determine it to be necessary and expedient to issue Additional Bonds to finance capital improvements of the Sewer Utility, such Additional Bonds will be made payable from the Net Revenues of the Sewer Utility on a parity as to both principal and interest with the then outstanding Bonds. Additional Bonds or Additional SRF Bonds may be issued only if the annual Net Revenues, together with other revenues pledged for payment of the Bonds, received during the fiscal year of the City next preceding such issuance shall have equaled or exceeded 110% of the average annual principal and interest to become due and payable on all Bonds to be outstanding during the term of the proposed Additional Bonds.

If any of the rates and charges for sewer service shall have been increased or reduced at any time subsequent to the commencement of the fiscal year immediately preceding the issuance of additional Bonds as contemplated above, the Net Revenues for the period prior to such change shall be deemed, for the purpose of the computation required above, to be those which would have been received by applying the revised rates and charges to the service actually provided during such period, less the estimated amount of decrease in service, if any, due to an increase in said rates and charges, and by deducting from the gross revenues so determined the actual operating expenses of the Sewer Utility, together with reasonably expected increases in operating expenses resulting from the improvements financed by such Additional Bonds, as determined by the report of an independent engineer selected by the City, for said period.

So long as Bonds are outstanding pursuant to resolutions which require greater coverage for the issuance of additional parity bonds, the provisions of such resolutions shall govern.

5.02. Additional SRF Bonds. The City reserves the right to issue one or more series of bonds with a parity pledge of Net Revenues (hereinafter referred to as “Additional SRF Bonds”), so long as such bonds can be issued in compliance with the requirements of Section 5.01 and pursuant to applicable policies of the Public Finance Authority. The Additional SRF Bonds may be secured by a separate reserve fund (an “SRF Reserve Fund”), funded either by proceeds of such bonds or from Pledged Revenues, provided such separate reserve fund shall not be a greater amount than that required generally by the Public Finance Authority of the State of North Dakota for its similar loans. All Additional SRF Bonds must be sold to the Public Finance Authority of the State of North Dakota pursuant to its state revolving loan fund program and shall bear interest at rates determined by the City to be less than available on publicly offered Additional Bonds at the time such bonds are issued.

5.03. Subordinate Lien Bonds. Except as authorized in Sections 5.01, 5.02 and this 5.03, the City will issue no additional bonds or other obligations of any kind payable from or constituting a lien upon said Net Revenues of the Sewer Utility, unless the lien thereof is expressly made junior and subordinate to the lien on the then outstanding Bonds issued hereunder (“Subordinate Bonds”), and such additional bonds or obligations shall not be payable from the Sewer Revenue Bond Fund or any SRF Reserve Fund but may be payable from funds permitted to be transferred from the Surplus Fund to other funds of the City pursuant to Section 4.04 of this Resolution.

SECTION 6. Sewer Utility Covenants.

6.01. Rate Covenant. The City will establish, impose and collect rates and charges for the services, facilities, products, and by-products of the Sewer Utility, according to a schedule projected to generate Net Revenues in each fiscal year at least equal to, together with other revenues expected to be available therefor including the Sales Tax, 110% of the actual annual debt service on all Bonds outstanding, and to pay all amounts owed to any insurer of the Bonds outstanding. If the actual Net Revenues, together with other revenues expected to be available therefor including the Sales Tax, fail to meet this level, the City shall promptly increase its rates and charges to a level so that Net Revenues are projected to meet the required level. Annual debt service shall be determined for each fiscal year on the basis of a bond year ending on the January 1 immediately following the end of each fiscal year.

6.02. Covenant to Maintain Sewer Utility. The City will continue to own, operate and maintain the Sewer Utility, and will not sell or otherwise dispose of any properties thereof; provided, that any properties of the Sewer Utility not essential to continued operation of the Sewer Utility in satisfaction of other covenants herein prescribed may be sold or otherwise disposed of at their market value, and the proceeds thereof used to purchase other property required for the Sewer Utility or to pay principal and interest on obligations issued with respect to the Sewer Utility. The City will continue to maintain the Sewer Utility in good and efficient operating condition, supplying wastewater service and facilities to the City and its inhabitants, and will not authorize or enfranchise the establishment of any other utility for such purpose.

6.03. General. The City covenants and agrees with the Holders from time to time of all the Municipal Securities that until all the Municipal Securities are fully discharged as provided in this Resolution, it will continue to hold, maintain and operate the Sewer Utility as a public convenience, free from all liens thereon or on the income therefrom, and will maintain, expend and account for its Sewer Utility Fund and the several funds therein as provided in Section 4, and will not issue bonds, notes or other indebtedness secured by or payable from the income or revenues of the Sewer Utility except upon the conditions and in the manner prescribed in Section 5, and will perform and cause all officers and employees of the City to perform and enforce each and all of the additional covenants and agreements set forth in this Section 6. The City further covenants to cause the Sewer Utility to be properly maintained and no free service shall be provided to any person or corporation.

6.04. Competing Service. The City will not establish or enfranchise any other facilities in competition with the facilities of the Sewer Utility.

6.05. Property Insurance. The City will cause all buildings, properties, fixtures and equipment constituting a part of the Sewer Utility to be kept insured with a reputable insurance carrier or carriers, qualified under the laws of North Dakota, in such amounts as are ordinarily carried, and against loss or damage by such hazards and risks as are ordinarily insured against, by public bodies owning and operating properties of a similar character and size; provided that if at any time the City is unable to obtain insurance, it will obtain insurance in such amounts and against risks as are reasonably obtainable. The proceeds of all such insurance shall be available for the repair, replacement or reconstruction of damaged or destroyed property, and until paid out in making good such loss or damage, are pledged as security for the outstanding Bonds. All insurance proceeds received in excess of the amount required for restoration of the loss or damage compensated thereby shall be and become part of the revenues appropriated to the Sewer Utility Fund. If for any reason insurance proceeds are insufficient for the repair, replacement and reconstruction of the insured property, the City shall supply the deficiency from revenues on hand in the Surplus Fund.

6.06. Liability Insurance and Surety Bonds. The City will carry insurance against liability of the City and its employees for damage to persons and property resulting from the operation of the Sewer Utility in such amounts as the City determines from time to time to be necessary or advisable by reason of the character and extent of such operation. It will also cause all persons handling money and other assets of the Sewer Utility Fund to be adequately bonded for the faithful performance of their duties and to account for and pay over such money to the City. All amounts received under such insurance and bonds shall be applied to the payment of the loss or damage covered thereby. The premiums for all insurance and bonds required by this Section 6.06 and Section 6.05 constitute part of the operating expenses of the Sewer Utility, but no insurance liabilities of the City in excess of amounts received under such insurance and bonds shall constitute a lien or charge on revenues or any other assets herein or otherwise pledged to the Sewer Utility Fund.

6.07. Cost of Insurance and Accounting. The insurance and fidelity bond premiums and the cost of the bookkeeping and audits herein provided for and of the billings and collection of the gross revenues shall be payable from the Operation and Maintenance Fund.

6.08. General Covenants. The City hereby covenants and agrees with the owners of all outstanding Municipal Securities as follows:

- a. That it will, to the extent the Pledged Revenues are sufficient, promptly cause the principal and interest on all Municipal Securities to be paid as they become due.
- b. That it will maintain complete books and records relating to the operation of the Sewer Utility, the Sewer Revenue Bond Fund, Reserve Account, Operation and Maintenance Fund, and Surplus Fund, in accordance with generally accepted accounting principles, and will cause such books and records to be audited annually at the end of each fiscal year, and an audit report prepared and made available for inspection of owners of the Municipal Securities.
- c. That it will not issue bonds or other obligations having a claim superior to the claim of the Municipal Securities upon the Net Revenues of the Sewer Utility.
- d. That it will promptly deposit into the Sewer Revenue Bond Fund all sums required to be so deposited.
- e. That it will operate the Sewer Utility in a sound, efficient and economic manner.

SECTION 7. Miscellaneous.

7.01. Limited Obligations. The Municipal Securities issued hereunder shall not constitute a charge, lien or encumbrance upon any property of the City, and no holder or holders thereof shall ever have the right to compel any exercise of the taxing power of the City to pay the principal and interest on the Municipal Securities. The principal and interest of the Municipal Securities shall not be a general obligation of the City but are payable solely from the Pledged Revenues as set forth in this resolution.

7.02. Federal Tax Laws. The City hereby covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the holders of the Municipal Securities of the interest on the Municipal Securities under Section 103 of the Code. The City also covenants that it will not directly or indirectly use or permit the use of any of the proceeds of the Municipal Securities or any other funds or any facilities refinanced thereby or take or omit to take any action which would cause the Municipal Securities to be "arbitrage bonds" within the meaning of Section 148(a) of the Code or "private activity bonds" within the meaning of Section 141 of the Code. The City will comply with all requirements of Section 148 of the Code to the extent applicable to the Municipal Securities. The City shall comply with all requirements set forth in any tax compliance certificate executed in connection with the issuance of the Municipal Securities. The covenants and obligations of the City set forth in this Section 7.02 shall survive the payment, redemption and defeasance of the Municipal Securities until the expiration of all statutes of limitation applicable to the City with respect to the Municipal Securities.

The City recognizes that the provisions of this Section 7.02 are intended to comply with provisions of the Code applicable to the Municipal Securities and if as a result of a change in an applicable section of the Code or in the interpretation thereof, a change in this Section 7.02 shall

be permitted or necessary to assure continued compliance with provisions of the Code, then the City shall be empowered to amend this Section 7.02 upon receipt of a written opinion of bond counsel satisfactory of the City to the effect that either (i) such amendment is required to maintain the exclusion from gross income under Section 103 of the Code of interest paid and payable on the Municipal Securities, or (ii) such amendment shall not adversely affect the exclusion from gross income under Section 103 of the Code of interest paid or payable on the Municipal Securities.

This section shall be applicable only to the obligations, covenants, agreements, limitations, conditions and restrictions of and upon the City in relation to the holder of the Municipal Securities.

[The remainder of this page intentionally left blank.]

Adopted \_\_\_\_\_, 2023.

CITY OF FARGO

By: \_\_\_\_\_  
Tim Mahoney, Mayor

ATTEST:

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



FORM OF MUNICIPAL SECURITY

UNITED STATES OF AMERICA  
STATE OF NORTH DAKOTA  
COUNTY OF CASS

CITY OF FARGO

SEWER REVENUE BOND,  
SERIES 2023B

No. R-1 \$151,500,000

<u>Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
1.50%	September 1, 2055	[ _____ ], 2023	NONE

REGISTERED OWNER: NORTH DAKOTA PUBLIC FINANCE AUTHORITY

PRINCIPAL AMOUNT: ONE HUNDRED FIFTY-ONE MILLION FIVE HUNDRED THOUSAND DOLLARS

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, North Dakota (the "City"), a political subdivision of and existing under and pursuant to the laws of the State of North Dakota, for value received, hereby promises to pay solely from the sources set forth herein to the Registered Owner specified above, or registered assigns, the Principal Amount (set forth above), or such lesser amount actually disbursed to the City, on or before the Maturity Date (set forth above). Interest shall accrue from the Date of Original Issuance at the annual rate of one and one half percent (1.50%) and shall be payable semiannually on March 1 and September 1, commencing September 1, 2023. The Principal Amount of this Bond is subject to mandatory redemption on the dates and in the amounts set forth in Attachment A to this Municipal Security, which Attachment A shall be revised in accordance with Section 2.02 of the Loan Agreement in the event funds are advanced to the City less than as originally set forth in the Loan Agreement. The City hereby promises to pay the Administrative Fee, as defined in the Loan Agreement (being one half of one percent (0.50%) per annum on the outstanding principal amount of the Bond), payable semi-annually on each March 1 and September 1. All payments due with respect to this Bond are payable in lawful money of the United States of America at the main office of the Bank of North Dakota, in Bismarck, North Dakota, as paying agent and Registrar under the Resolution hereinafter described or of its successor as such. Interest shall be paid by check or draft mailed to the Registered Owner at the Owner's address set forth on the registration books or by wire or other electronic funds transfer.

This Municipal Security is issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota, including N.D.C.C. ch. 40-35 (the "Act"), and pursuant to a Resolution (the "Resolution") and an Amended and Restated Loan Agreement (the "Loan

Agreement”) adopted and entered into by the City. Reference is hereby made to the Resolution and the Loan Agreement for a description of the Funds and Accounts pledged to the payment of the Municipal Securities and the rights of the Registered Owner of the Municipal Securities. The principal and interest payments for this Bond and the Administrative Fee payable hereunder are not general obligations of the City, but are payable solely from Net Revenues received by the City from the operation of the wastewater treatment facility of the City of Fargo, together with other revenues expected to be available therefor, and from any future additions thereto and betterments thereof.

This Municipal Security is transferable, as provided in the Resolution and the Loan Agreement, only upon books of the City kept by the Bank of North Dakota, as bond registrar, by the Registered Owner hereof in person or by the Owner’s duly authorized attorney, or it may be surrendered in exchange for new Municipal Securities of the same aggregate principal amount, maturity and interest rate, as provided in the Resolution.

This Municipal Security shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Registered Owner, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

It is further certified, recited and declared that all acts, conditions and things required by the Constitution and the statutes of the State of North Dakota to exist, to have happened and to have been performed precedent to and in connection with the issuance of the Municipal Securities have been performed in due time, form and manner as required by law; and that the issuance of the Municipal Securities is within every debt and other limit prescribed by law.

IN WITNESS WHEREOF, the City has caused this Municipal Securities to be executed in its name by the manual or facsimile signatures of its Mayor and of its City Auditor, all as of the Date of Original Issue set forth above.

CITY OF FARGO, NORTH DAKOTA

By: \_\_\_\_\_  
Tim Mahoney  
Mayor

ATTEST:

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

\_\_\_\_\_  
CERTIFICATE OF AUTHENTICATION

This Municipal Security is one of the Municipal Securities described in and issued under the provisions of the within-mentioned Resolution.

BANK OF NORTH DAKOTA

By: \_\_\_\_\_  
Authorized Representative

ASSIGNMENT

For Value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within-mentioned Municipal Security and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney-in-fact, to transfer the same on the books of registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Social Security or other identifying number of Assignee

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Municipal Security in every particular, without alteration or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company.



CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that attached hereto is a full, true and correct copy of the Resolution adopted by the governing body of the City of Fargo at the meeting held on [\_\_\_\_\_], 2023, and that such Resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this \_\_\_ day of [\_\_\_\_\_], 2023.

\_\_\_\_\_  
City Auditor

(SEAL)

CITY OF FARGO, STATE OF NORTH DAKOTA

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF  
\$21,229,000  
CITY OF FARGO SEWER REVENUE BOND, SERIES 2023C

RECITATIONS

WHEREAS, the City of Fargo, North Dakota (the “City”) issued its \$20,229,000 Sewer Revenue Bond, Series 2018B (the “Series 2018B Bond”) pursuant to an authorizing resolution adopted on August 13, 2018 for the purpose of financing an expansion (the “Project”) to the City’s wastewater treatment facility; and

WHEREAS, the North Dakota Public Finance Authority (the “Public Finance Authority”), as the purchaser of the Series 2018B Bond, has approved an additional loan to the City in the amount of \$1,000,000 for increased costs of the Project, which shall be added to the principal amount of the Series 2018B Bond (\$20,229,000), for a total loan amount of \$21,229,000; and

WHEREAS, the City will issue the above-captioned Bond to the North Dakota Public Finance Authority to refund the Series 2018B Bond, and evidence the combined loans to the City; and

WHEREAS, City Code Article 3-20 dedicates the revenues raised and collected pursuant to the sales and use tax imposed and collected pursuant to said article to infrastructure capital improvements (including sewerage system improvements) (the “Sales Tax”).

RESOLUTION

Be it resolved by the governing body of the City:

SECTION 1. Authorization and Sale.

1.01. Ratification of Prior Acts. All acts performed, resolutions, motions, or ordinances adopted or passed, and all publications incidental to the construction and financing and refinancing of the Project, whether or not reflected in the official minutes and records of the City, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the City which are in any way inconsistent with this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

1.02. Authorization. It is hereby found and determined to be necessary for the City to issue \$21,229,000 in principal amount of its CITY OF FARGO SEWER REVENUE BOND, SERIES 2023C (the “Municipal Securities”), pursuant to N.D.C.C. ch. 40-35, upon the terms as set forth in this Resolution for the purpose of constructing the Project, refunding the Series 2018B Bond, and paying related costs of issuance.

1.03. Offer and Acceptance. The governing body of the City, in response to its application for financial assistance from the Department and the Public Finance Authority, has

received an offer from the Public Finance Authority, subject to the approval of the Industrial Commission of North Dakota, to purchase the Municipal Securities at a price equal to the principal amount plus accrued interest, if any, to the date of purchase, which offer is more fully set out in an Amended and Restated Loan Agreement to be entered into between the City and the Public Finance Authority (the "Loan Agreement"). It is hereby found and determined that the offer of the Public Finance Authority to purchase the Municipal Securities is reasonable and advantageous to the City and is hereby accepted, and the Loan Agreement, in substantially the form presented to the City at this meeting, is hereby accepted and authorized to be executed on behalf of the City by its Mayor and City Auditor (the "Authorized Officers"), with such modifications as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the Loan Agreement and to deliver it to the Public Finance Authority, which execution and delivery shall be conclusive evidence of the approval of any modifications with respect to the Loan Agreement.

SECTION 2. Term of Bonds.

2.01. Form. The Municipal Securities issued under this Resolution shall be designated CITY OF FARGO SEWER REVENUE BOND, SERIES 2023C, and shall be issued to the Public Finance Authority in the form of a single registered Municipal Security in substantially the form as attached hereto as Exhibit A.

2.02. Terms. The City authorizes the issuance of the Municipal Securities in the aggregate principal amount not to exceed \$21,229,000, dated the date of issuance and delivery to the Public Finance Authority.

The Municipal Securities shall bear interest commencing on the date of delivery thereof at the rate of 1.50% per year (plus an administrative fee as set out in the Loan Agreement), with principal payable in installments on September 1 of each of the years and in accordance with "Attachment A" attached to Exhibit A to this Resolution, subject however to the final amortization schedule to be attached to the Municipal Securities upon the final loan advance in accordance with Section 2.02 of the Loan Agreement. Interest shall be payable semiannually on each March 1 and September 1 commencing September 1, 2023. Interest will be payable only on funds actually advanced to the City by the Public Finance Authority as a draw on the Municipal Securities. The schedule below and attached to the Municipal Securities will be revised to reflect the actual principal amount loaned to the City at the completion of the Project.

2.03. Payment to Registered Holders. The principal of and interest on the Municipal Securities shall be payable to the registered holder thereof at the address appearing on the registration books of the registrar in any coin or currency of the United States of America, which on the respective dates of payment is legal tender for the payment of public or private debts or by check or draft delivered to the registered holder thereof at the address appearing on the registration books of the registrar.

2.04. Registration. The Municipal Securities shall be registered as to both principal and interest and shall be initially registered in the name of and payable to the North Dakota Public Finance Authority. While so registered, principal of and interest on the Municipal Securities shall be payable at the office of the Bank of North Dakota, in Bismarck, North Dakota (the "Bank"), or



such other place as may be designated by the Public Finance Authority in writing, delivered to the Registrar. The Bank shall act as Registrar and as such shall establish and maintain a register for the purpose of recording the names and addresses of the registered holders or assigns, and the date of such registration.

2.05. Transfer and Exchange. The Municipal Securities are transferable upon the books of the City at the principal office of the Bank of North Dakota, as bond registrar, or a successor bond registrar appointed by the Bank of North Dakota (the "Bond Registrar"), by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Municipal Securities of other authorized denominations. Upon such transfer or exchange, the City will cause new Municipal Securities to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Municipal Securities shall be required to be made during the 15 days next preceding an interest payment date, nor during the 45 days next preceding the date fixed for redemption of such Municipal Securities.

2.06. Registered Owner Deemed Owner. The City, the Bond Registrar and the paying agent may deem and treat the person in whose name any Municipal Securities are registered as the absolute owner thereof, whether the Municipal Securities are overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City, the Bond Registrar nor the paying agent shall be affected by any notice to the contrary. The City shall pay the fees and expenses of the Bond Registrar and the paying agent.

2.07. Execution and Delivery. The Municipal Securities shall forthwith be prepared under the direction of the City Auditor and when so prepared shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Auditor and shall be authenticated by the manual signature of the Registrar. When the Municipal Securities have been so executed and authenticated, they shall be delivered by the City to the Public Finance Authority.

2.08. Redemption. The Municipal Securities shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Public Finance Authority, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

2.09. Authorization of Related Documents. The Mayor, City Auditor, and other authorized officers of the City are hereby authorized to execute such additional agreements, certificates, and documents required or appropriate in connection with the issuance of the Municipal Securities and the transactions contemplated by the issuance thereof.

2.10. Draws of Municipal Security Proceeds. Proceeds of the Municipal Securities shall first be applied to refund the outstanding 2018A Bond. The remaining proceeds of the Municipal Securities are irrevocably appropriated to pay expenses necessarily incurred in the construction and completion of the Project and to pay costs associated with the issuance of the Municipal Securities. Draws on the Municipal Securities, in the form of Requisitions for Payment, shall be

submitted by the City to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to the Public Finance Authority for approval and funding.

SECTION 3. Source of Payment. The City hereby dedicates and pledges the Net Revenues (as defined in Section 4.02 hereof) of the City's wastewater treatment facility (the "Sewer Utility") and the Sales Tax (together the "Pledged Revenues") to the payment of the principal of and interest on the Municipal Securities on a parity basis with bonds previously issued or to be issued and secured by a pledge of the Pledged Revenues and permitted herein. Concurrently with the Municipal Securities, the City will issue its Sewer Revenue Bonds, Series 2023B (the "Series 2023B Bonds"; together with the Municipal Securities and any other obligations secured by the Pledged Revenues and on a parity therewith, the "Bonds").

The Net Revenues are to be deposited in the funds set forth in Section 4 hereof.

SECTION 4. Funds.

4.01. Sewer Utility Fund. The City has created, and will maintain, a SEWER UTILITY FUND (the "Sewer Utility Fund"). The City shall credit and pay to the Sewer Utility Fund, as received, the entire gross revenues derived from the operation of the City's Sewer Utility, including any future additions thereto and betterments thereof, including all income and receipts derived from rates, fees and charges for services, facilities, products and by-products of the Sewer Utility furnished or sold to the City and its inhabitants and all other customers, and for the availability thereof, and from sale of any of the properties of the Sewer Utility not necessary to be retained, and from the investment of any of the money so collected. On the books and records of the Sewer Utility Fund there shall be established and maintained the following funds as a part of the Sewer Utility Fund. Amounts on deposit in the Sewer Utility Fund from time to time shall be apportioned among said funds at least once in each calendar month and shall thereafter be held and administered and disbursed from the several funds established in this section.

4.02. Operation and Maintenance Fund. The City has created, and will maintain, an OPERATION AND MAINTENANCE FUND (the "Operation and Maintenance Fund"). Upon each such monthly apportionment, as a first lien and charge on the gross revenue, the City shall transfer to the Operation and Maintenance Fund from amounts on deposit in the Sewer Utility Fund such sum as shall be needed, over and above any credit balance held therein, to pay all claims then due and allowed which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the utility, and to pay such expenses estimated to accrue for a period of one month, and to maintain a reasonable reserve for contingencies. Monies in the Operation and Maintenance Fund shall be used only to pay expenses of the foregoing type and not for major repairs, replacements, or capital improvements which are properly chargeable to replacement and depreciation reserves or surplus funds. All revenues in excess of such amount deposited to the Operation and Maintenance Fund shall be the Net Revenues (the "Net Revenues") of the Sewer Utility.

4.03. Sewer Revenue Bond Fund. The City has created, and will maintain, a SEWER REVENUE BOND FUND (the "Sewer Revenue Bond Fund"). Upon each such monthly apportionment, out of the Pledged Revenues on hand at the time of each such distribution, an

amount equal to not less than one-sixth (1/6) of the amount necessary to pay interest which becomes due on the next interest payment dates for the Bonds and an amount equal to not less than one-twelfth (1/12) of the sum of principal payments to become due on the next principal payment dates for the Bonds. These amounts may be reduced by an amount equal to the interest earnings on the Sewer Revenue Bond Fund credited to the Sewer Revenue Bond Fund subsequent to the last monthly apportionment. If Pledged Revenues on hand at any time are insufficient to permit the transfer to the Sewer Revenue Bond Fund of the full amount so required, such deficiencies shall be restored out of the next Pledged Revenues thereafter received. There shall also be credited to said fund the accrued interest, if any, paid on each subsequent issue of Additional Bonds and Additional SRF Bonds, if any. The money in said fund shall be solely for the purposes of paying principal of, and premium, if any, and interest on Bonds, as such principal, premium and interest respectively come due. Subordinate Bonds (hereinafter defined) shall not be payable from the Sewer Revenue Bond Fund.

In the event Pledged Revenues on deposit in the Sewer Revenue Bond Fund and amounts on deposit in the Surplus Fund available for transfer to the Sewer Revenue Bond Fund are insufficient to pay the principal of, and premium, if any, and interest on the Bonds then due, such Pledged Revenues and the transfers from the Surplus Fund shall be apportioned among each series of Bonds in proportion to the amount of principal, premium, if any, and interest then payable on the Bonds of each series. Transfers from any SRF Reserve Fund, including the Reserve Account established hereunder, shall be applied only to principal, premium, if any, and interest payable on the related series of SRF Bonds.

4.04. Surplus Fund. All surplus Net Revenues from time to time received in excess of the current requirements of the Sewer Revenue Bond Fund and any SRF Reserve Fund shall be credited on the books of the City to the Surplus Fund of the Sewer Utility Fund, provided that City reserves the right to create additional funds within said fund for the purpose of segregating any of such surplus Net Revenues which may be pledged and appropriated to the payment of any Subordinate Bonds hereafter issued to finance improvements, replacements, or repairs of the Sewer Utility, subject to the prior lien on the Net Revenues of the Bonds. Surplus Net Revenues on hand from time to time shall be available and shall be used to the full extent necessary to restore a deficiency in the Operation and Maintenance Fund, the Sewer Revenue Bond Fund, the Reserve Account and any other SRF Reserve Fund, but when not so needed may be used to pay for capital improvements, replacements, or repairs to the Sewer Utility, or to pay principal and interest on Subordinate Bonds hereafter issued for such purposes, or they may be used to redeem and pay prior to maturity Bonds (other than Subordinate Bonds) when and as such bonds become redeemable according to their terms, or purchase Bonds (other than Subordinate Bonds) in the secondary market when deemed advisable. The City shall maintain in the Surplus Fund such cash or investments as it shall from time to time determine to constitute an adequate reserve for operation or maintenance emergencies and for depreciation and contemplated improvement or replacement of the Sewer Utility. At the end of the City's fiscal year, if there are no deficiencies in the Operation and Maintenance Fund, the Sewer Revenue Bond Fund, or any SRF Reserve Fund and there is an adequate reserve for operation and maintenance emergencies and for depreciation, contemplated improvements and replacements of the Sewer Utility, the City may transfer monies in excess of such requirements to other funds of the City in accordance with and subject to the limitations contained in the ordinances of the City and the provisions of state law.

4.05. Rebate Fund. There is hereby established a Rebate Fund. The City shall from time to time, and as required by Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated in connection therewith, as amended (collectively, the “Code”), calculate the amount of rebate payable with respect to Bonds to the United States of America pursuant to Section 148 of the Code. The City may from time to time, and shall upon payment being due to the United States of America, withdraw the amount of such payment from the Surplus Fund and any SRF Reserve Fund, the Sewer Revenue Bond Fund and the Operation and Maintenance Fund, in such order, the amount of such payment notwithstanding any provision to the contrary in this Resolution. Amounts in the Rebate Fund shall be used solely to make required payments to the United States of America and shall not be pledged to the payment of the Bonds. All interest earnings on investments in the Rebate Fund shall be retained in the Rebate Fund.

4.06. Reserve Account. A separate SRF Reserve Fund (the “Reserve Account”) is established within the Sewer Utility Fund and shall be funded to the total amount of \$937,225.00, in five installments of \$187,445.00, payable on each September 1 beginning September 1, 2026, which may be reduced proportionately if the final loan amount is less than the approved loan amount of \$21,229,000. Moreover, the City shall receive a credit for funds already on deposit in the Reserve Account.

SECTION 5. Additional Net Revenues Parity Pledges.

5.01. Parity Bonds. The City reserves the right to issue one or more series of bonds with a parity of lien on the Net Revenues as to both principal and interest with the Bonds (herein referred to as “Additional Bonds”). The term Additional Bonds does not include Subordinate Bonds issued pursuant to Section 5.03 hereof, but does include Additional Bonds issued for refunding purposes. In the event the City shall at any time determine it to be necessary and expedient to issue Additional Bonds to finance capital improvements of the Sewer Utility, such Additional Bonds will be made payable from the Net Revenues of the Sewer Utility on a parity as to both principal and interest with the then outstanding Bonds. Additional Bonds or Additional SRF Bonds may be issued only if the annual Net Revenues, together with other revenues pledged for payment of the Bonds, received during the fiscal year of the City next preceding such issuance shall have equaled or exceeded 110% of the average annual principal and interest to become due and payable on all Bonds to be outstanding during the term of the proposed Additional Bonds.

If any of the rates and charges for sewer service shall have been increased or reduced at any time subsequent to the commencement of the fiscal year immediately preceding the issuance of additional Bonds as contemplated above, the Net Revenues for the period prior to such change shall be deemed, for the purpose of the computation required above, to be those which would have been received by applying the revised rates and charges to the service actually provided during such period, less the estimated amount of decrease in service, if any, due to an increase in said rates and charges, and by deducting from the gross revenues so determined the actual operating expenses of the Sewer Utility, together with reasonably expected increases in operating expenses resulting from the improvements financed by such Additional Bonds, as determined by the report of an independent engineer selected by the City, for said period.

So long as Bonds are outstanding pursuant to resolutions which require greater coverage for the issuance of additional parity bonds, the provisions of such resolutions shall govern.

5.02. Additional SRF Bonds. The City reserves the right to issue one or more series of bonds with a parity pledge of Net Revenues (hereinafter referred to as “Additional SRF Bonds”), so long as such bonds can be issued in compliance with the requirements of Section 5.01 and pursuant to applicable policies of the Public Finance Authority. The Additional SRF Bonds may be secured by a separate reserve fund (an “SRF Reserve Fund”), funded either by proceeds of such bonds or from Pledged Revenues, provided such separate reserve fund shall not be a greater amount than that required generally by the Public Finance Authority of the State of North Dakota for its similar loans. All Additional SRF Bonds must be sold to the Public Finance Authority of the State of North Dakota pursuant to its state revolving loan fund program and shall bear interest at rates determined by the City to be less than available on publicly offered Additional Bonds at the time such bonds are issued.

5.03. Subordinate Lien Bonds. Except as authorized in Sections 5.01, 5.02 and this 5.03, the City will issue no additional bonds or other obligations of any kind payable from or constituting a lien upon said Net Revenues of the Sewer Utility, unless the lien thereof is expressly made junior and subordinate to the lien on the then outstanding Bonds issued hereunder (“Subordinate Bonds”), and such additional bonds or obligations shall not be payable from the Sewer Revenue Bond Fund or any SRF Reserve Fund but may be payable from funds permitted to be transferred from the Surplus Fund to other funds of the City pursuant to Section 4.04 of this Resolution.

SECTION 6. Sewer Utility Covenants.

6.01. Rate Covenant. The City will establish, impose and collect rates and charges for the services, facilities, products, and by-products of the Sewer Utility, according to a schedule projected to generate Net Revenues in each fiscal year at least equal to, together with other revenues expected to be available therefor including the Sales Tax, 110% of the actual annual debt service on all Bonds outstanding, and to pay all amounts owed to any insurer of the Bonds outstanding. If the actual Net Revenues, together with other revenues expected to be available therefor including the Sales Tax, fail to meet this level, the City shall promptly increase its rates and charges to a level so that Net Revenues are projected to meet the required level. Annual debt service shall be determined for each fiscal year on the basis of a bond year ending on the January 1 immediately following the end of each fiscal year.

6.02. Covenant to Maintain Sewer Utility. The City will continue to own, operate and maintain the Sewer Utility, and will not sell or otherwise dispose of any properties thereof; provided, that any properties of the Sewer Utility not essential to continued operation of the Sewer Utility in satisfaction of other covenants herein prescribed may be sold or otherwise disposed of at their market value, and the proceeds thereof used to purchase other property required for the Sewer Utility or to pay principal and interest on obligations issued with respect to the Sewer Utility. The City will continue to maintain the Sewer Utility in good and efficient operating condition, supplying wastewater service and facilities to the City and its inhabitants, and will not authorize or enfranchise the establishment of any other utility for such purpose.

6.03. General. The City covenants and agrees with the Holders from time to time of all the Municipal Securities that until all the Municipal Securities are fully discharged as provided in this Resolution, it will continue to hold, maintain and operate the Sewer Utility as a public convenience, free from all liens thereon or on the income therefrom, and will maintain, expend

and account for its Sewer Utility Fund and the several funds therein as provided in Section 4, and will not issue bonds, notes or other indebtedness secured by or payable from the income or revenues of the Sewer Utility except upon the conditions and in the manner prescribed in Section 5, and will perform and cause all officers and employees of the City to perform and enforce each and all of the additional covenants and agreements set forth in this Section 6. The City further covenants to cause the Sewer Utility to be properly maintained and no free service shall be provided to any person or corporation.

6.04. Competing Service. The City will not establish or enfranchise any other facilities in competition with the facilities of the Sewer Utility.

6.05. Property Insurance. The City will cause all buildings, properties, fixtures and equipment constituting a part of the Sewer Utility to be kept insured with a reputable insurance carrier or carriers, qualified under the laws of North Dakota, in such amounts as are ordinarily carried, and against loss or damage by such hazards and risks as are ordinarily insured against, by public bodies owning and operating properties of a similar character and size; provided that if at any time the City is unable to obtain insurance, it will obtain insurance in such amounts and against risks as are reasonably obtainable. The proceeds of all such insurance shall be available for the repair, replacement or reconstruction of damaged or destroyed property, and until paid out in making good such loss or damage, are pledged as security for the outstanding Bonds. All insurance proceeds received in excess of the amount required for restoration of the loss or damage compensated thereby shall be and become part of the revenues appropriated to the Sewer Utility Fund. If for any reason insurance proceeds are insufficient for the repair, replacement and reconstruction of the insured property, the City shall supply the deficiency from revenues on hand in the Surplus Fund.

6.06. Liability Insurance and Surety Bonds. The City will carry insurance against liability of the City and its employees for damage to persons and property resulting from the operation of the Sewer Utility in such amounts as the City determines from time to time to be necessary or advisable by reason of the character and extent of such operation. It will also cause all persons handling money and other assets of the Sewer Utility Fund to be adequately bonded for the faithful performance of their duties and to account for and pay over such money to the City. All amounts received under such insurance and bonds shall be applied to the payment of the loss or damage covered thereby. The premiums for all insurance and bonds required by this Section 6.06 and Section 6.05 constitute part of the operating expenses of the Sewer Utility, but no insurance liabilities of the City in excess of amounts received under such insurance and bonds shall constitute a lien or charge on revenues or any other assets herein or otherwise pledged to the Sewer Utility Fund.

6.07. Cost of Insurance and Accounting. The insurance and fidelity bond premiums and the cost of the bookkeeping and audits herein provided for and of the billings and collection of the gross revenues shall be payable from the Operation and Maintenance Fund.

6.08. General Covenants. The City hereby covenants and agrees with the owners of all outstanding Municipal Securities as follows:

- a. That it will, to the extent the Pledged Revenues are sufficient, promptly cause the principal and interest on all Municipal Securities to be paid as they become due.
- b. That it will maintain complete books and records relating to the operation of the Sewer Utility, the Sewer Revenue Bond Fund, Reserve Account, Operation and Maintenance Fund, and Surplus Fund, in accordance with generally accepted accounting principles, and will cause such books and records to be audited annually at the end of each fiscal year, and an audit report prepared and made available for inspection of owners of the Municipal Securities.
- c. That it will not issue bonds or other obligations having a claim superior to the claim of the Municipal Securities upon the Net Revenues of the Sewer Utility.
- d. That it will promptly deposit into the Sewer Revenue Bond Fund all sums required to be so deposited.
- e. That it will operate the Sewer Utility in a sound, efficient and economic manner.

SECTION 7. Miscellaneous.

7.01. Limited Obligations. The Municipal Securities issued hereunder shall not constitute a charge, lien or encumbrance upon any property of the City, and no holder or holders thereof shall ever have the right to compel any exercise of the taxing power of the City to pay the principal and interest on the Municipal Securities. The principal and interest of the Municipal Securities shall not be a general obligation of the City but are payable solely from the Pledged Revenues as set forth in this resolution.

7.02. Federal Tax Laws. The City hereby covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the holders of the Municipal Securities of the interest on the Municipal Securities under Section 103 of the Code. The City also covenants that it will not directly or indirectly use or permit the use of any of the proceeds of the Municipal Securities or any other funds or any facilities refinanced thereby or take or omit to take any action which would cause the Municipal Securities to be "arbitrage bonds" within the meaning of Section 148(a) of the Code or "private activity bonds" within the meaning of Section 141 of the Code. The City will comply with all requirements of Section 148 of the Code to the extent applicable to the Municipal Securities. The City shall comply with all requirements set forth in any tax compliance certificate executed in connection with the issuance of the Municipal Securities. The covenants and obligations of the City set forth in this Section 7.02 shall survive the payment, redemption and defeasance of the Municipal Securities until the expiration of all statutes of limitation applicable to the City with respect to the Municipal Securities.

The City recognizes that the provisions of this Section 7.02 are intended to comply with provisions of the Code applicable to the Municipal Securities and if as a result of a change in an applicable section of the Code or in the interpretation thereof, a change in this Section 7.02 shall be permitted or necessary to assure continued compliance with provisions of the Code, then the City shall be empowered to amend this Section 7.02 upon receipt of a written opinion of bond counsel satisfactory of the City to the effect that either (i) such amendment is required to maintain

the exclusion from gross income under Section 103 of the Code of interest paid and payable on the Municipal Securities, or (ii) such amendment shall not adversely affect the exclusion from gross income under Section 103 of the Code of interest paid or payable on the Municipal Securities.

This section shall be applicable only to the obligations, covenants, agreements, limitations, conditions and restrictions of and upon the City in relation to the holder of the Municipal Securities.

[The remainder of this page intentionally left blank.]



Adopted \_\_\_\_\_, 2023.

CITY OF FARGO

By: \_\_\_\_\_  
Tim Mahoney, Mayor

ATTEST:

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

FORM OF MUNICIPAL SECURITY

UNITED STATES OF AMERICA  
 STATE OF NORTH DAKOTA  
 COUNTY OF CASS

CITY OF FARGO

SEWER REVENUE BOND,  
 SERIES 2023C

No. R-1 \$21,229,000

<u>Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
1.50%	September 1, 2055	[ _____ ], 2023	NONE

REGISTERED OWNER: NORTH DAKOTA PUBLIC FINANCE AUTHORITY

PRINCIPAL AMOUNT: TWENTY-ONE MILLION TWO HUNDRED TWENTY-NINE THOUSAND DOLLARS

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, North Dakota (the "City"), a political subdivision of and existing under and pursuant to the laws of the State of North Dakota, for value received, hereby promises to pay solely from the sources set forth herein to the Registered Owner specified above, or registered assigns, the Principal Amount (set forth above), or such lesser amount actually disbursed to the City, on or before the Maturity Date (set forth above). Interest shall accrue from the Date of Original Issuance at the annual rate of one and one half percent (1.50%) and shall be payable semiannually on March 1 and September 1, commencing September 1, 2023. The Principal Amount of this Bond is subject to mandatory redemption on the dates and in the amounts set forth in Attachment A to this Municipal Security, which Attachment A shall be revised in accordance with Section 2.02 of the Loan Agreement in the event funds are advanced to the City less than as originally set forth in the Loan Agreement. The City hereby promises to pay the Administrative Fee, as defined in the Loan Agreement (being one half of one percent (0.50%) per annum on the outstanding principal amount of the Bond), payable semi-annually on each March 1 and September 1. All payments due with respect to this Bond are payable in lawful money of the United States of America at the main office of the Bank of North Dakota, in Bismarck, North Dakota, as paying agent and Registrar under the Resolution hereinafter described or of its successor as such. Interest shall be paid by check or draft mailed to the Registered Owner at the Owner's address set forth on the registration books or by wire or other electronic funds transfer.

This Municipal Security is issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota, including N.D.C.C. ch. 40-35 (the "Act"), and pursuant to a Resolution (the "Resolution") and an Amended and Restated Loan Agreement (the "Loan

Agreement”) adopted and entered into by the City. Reference is hereby made to the Resolution and the Loan Agreement for a description of the Funds and Accounts pledged to the payment of the Municipal Securities and the rights of the Registered Owner of the Municipal Securities. The principal and interest payments for this Bond and the Administrative Fee payable hereunder are not general obligations of the City, but are payable solely from Net Revenues received by the City from the operation of the wastewater treatment facility of the City of Fargo, together with other revenues expected to be available therefor, and from any future additions thereto and betterments thereof.

This Municipal Security is transferable, as provided in the Resolution and the Loan Agreement, only upon books of the City kept by the Bank of North Dakota, as bond registrar, by the Registered Owner hereof in person or by the Owner’s duly authorized attorney, or it may be surrendered in exchange for new Municipal Securities of the same aggregate principal amount, maturity and interest rate, as provided in the Resolution.

This Municipal Security shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Registered Owner, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

It is further certified, recited and declared that all acts, conditions and things required by the Constitution and the statutes of the State of North Dakota to exist, to have happened and to have been performed precedent to and in connection with the issuance of the Municipal Securities have been performed in due time, form and manner as required by law; and that the issuance of the Municipal Securities is within every debt and other limit prescribed by law.

IN WITNESS WHEREOF, the City has caused this Municipal Securities to be executed in its name by the manual or facsimile signatures of its Mayor and of its City Auditor, all as of the Date of Original Issue set forth above.

CITY OF FARGO, NORTH DAKOTA

By: \_\_\_\_\_  
Tim Mahoney  
Mayor

ATTEST:

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

\_\_\_\_\_  
CERTIFICATE OF AUTHENTICATION

This Municipal Security is one of the Municipal Securities described in and issued under the provisions of the within-mentioned Resolution.

BANK OF NORTH DAKOTA

By: \_\_\_\_\_  
Authorized Representative

ASSIGNMENT

For Value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within-mentioned Municipal Security and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney-in-fact, to transfer the same on the books of registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Social Security or other identifying number of Assignee

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Municipal Security in every particular, without alteration or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company.



