

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.

- Page 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.

Page 29. 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).



39

## MEMORANDUM

---

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Transfer Application – North Dakota Horse Park

DATE: July 14, 2023

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: N  
Business Name: North Dakota Horse Park  
Location: 5180 19<sup>th</sup> Ave North  
Applicants: Hugh Dexter

The request is for the issuance of a Class N alcoholic beverage license to Horse Race North Dakota d/b/a The North Dakota Horse Park; Business operations are intended to continue as they have been in the past.

Being no significant concerns, the Liquor Control Board voted to approve the issuance of a Class N alcoholic beverage license to Horse Race North Dakota d/b/a The North Dakota Horse Park. The complete application is available for review in the Auditor's Office.

**Recommended Motion:**

**Move to approve the issuance of a Class N alcoholic beverage license to Horse Race North Dakota LLC d/b/a The North Dakota Horse Park.**



# FARGO POLICE DEPARTMENT

A SAFE AND UNIFIED COMMUNITY BUILT ON TRUST, ACCOUNTABILITY AND INCLUSION

**CRIMINAL INVESTIGATIONS DIVISION**

## MEMORANDUM

To: Chief David Zibolski

From: Sergeant Adam Melquist *Am*

Date: 6/22/2023

RE: Alcoholic Beverage License Application, Class "N" North Dakota Horse Park

---

Application for a class "N" Alcoholic Beverage License from

Horse Race North Dakota d/b/a The North Dakota Horse Park located at 5180 19<sup>th</sup> Ave N, Fargo.

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation, I examined the applicants' credit reports and public record criminal backgrounds.

The following information was discovered through this investigation:

**Drexler, Hugh**

**Criminal History -**

A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (<https://chs.state.mn.us>) and an internet search showed no criminal activity.

**Credit History -**

Hugh Drexler's credit history was reviewed. There are no recent past due accounts or debts turned over to collections. Drexler disclosed on his application that he filed for bankruptcy in 2007 due to having real estate assets during the market crash. This bankruptcy did not show up on this credit history.

**Investigation Notes**

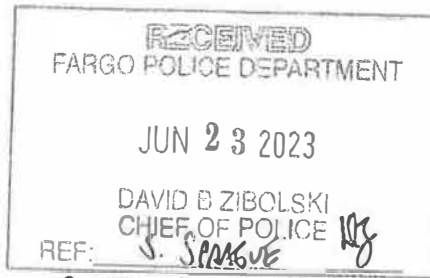
This application is for a class "N" alcoholic beverage license (Authorizes the licensee to sell beer, wine and spirits "On-Sale" at a stadium with a minimum capacity of 1,500).

**Business Location**

The North Dakota Horse Park is located at 5180 19<sup>th</sup> Ave N. There are no other businesses in the area with an alcoholic beverage license.

**Conclusion**

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.



— RECOMMEND APPROVAL



### APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE

Legal Company Name: Horse Race North Dakota  
(Must match State of North Dakota registration name)

DBA Name: The North Dakota Horse Race

Is the establishment applying for (or has) a food license under the same name? Yes \_\_\_ No X

Business location address: 5180 19th Ave N. Fargo, ND. 58102

Mailing address: P.O. Box 1917 Fargo ND. 58107

Business E-mail address: Fargoracinggm@gmail.com

Local Manager E-mail address: Hugindret1ea@gmail.com

Best Contact Phone number: (602) 695-9230

Anticipated Date of Opening: July 14th, 2023

**Please contact the Auditor's Office at 701-241-1301 or 241-8108 to determine the appropriate License Classification Type that would fit your business model.**

**The following section to be completed by City Staff:**

Date Received: 6/6/23 Class of License: N - Standard Transfer: \_\_\_ Yes X No

Investigations Fee Paid (\$250) X Yes \_\_\_ No Date Paid: 6/6/23

Police Department review completed by: \_\_\_\_\_ Date: \_\_\_\_\_

(Attached recommendation report):

X Approval Recommendation

\_\_\_ Denial Recommendation

Daniel B. Jil  
Chief of Police

06-23-23  
Date

*rec'd 6/2/23*

40

**AUDITOR'S OFFICE**

Fargo City Hall  
225 4th Street North  
PO Box 2471  
Fargo, ND 58108  
Phone: 701.241.8108 | Fax: 701.241.8184  
[www.FargoND.gov](http://www.FargoND.gov)

**MEMORANDUM**

---

TO: Board of City Commissioners  
FROM: Steven Sprague, City Auditor  
SUBJECT: Liquor License Transfer Application – Wurst Bier Hall  
DATE: July 14, 2023

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: FA-RZ-M  
Business Name: Wurst Bier Hall  
Location: 630 1<sup>st</sup> Ave North  
Applicants: Sebastian Ramos & Zachary Nicklaus

The request is to transfer a Class FA-RZ-M license from Wurst Pub LLC d/b/a Wurst Bier Hall to Two Star Boys LLC d/b/a Wurst Bier Hall; Business operations are intended to continue as they have been in the past.

Being no significant concerns, the Liquor Control Board voted to approve the transfer of a Class FA-RZ-M alcoholic beverage license to Two Star Boys LLC d/b/a Wurst Bier Hall. The complete application is available for review in the Auditor's Office.

**Recommended Motion:**

**Move to approve the transfer of a Class FA-RZ-M alcoholic beverage license to Two Star Boys LLC d/b/a Wurst Bier Hall.**



# FARGO POLICE DEPARTMENT

A SAFE AND UNIFIED COMMUNITY BUILT ON TRUST, ACCOUNTABILITY AND INCLUSION

## CRIMINAL INVESTIGATIONS DIVISION

# MEMORANDUM

To: Chief David Zibolski

From: Sergeant Adam Melquist *Am*

Date: 6/22/2023

RE: Alcoholic Beverage License Application, Class "FA-RZ-M" Wurst Bier Hall

---

Application for a Transfer of Class "FA-RZ-M" Alcoholic Beverage License from

Wurst Pub LLC d/b/a Wurst Bier Hall, to Two Star Boys LLC Wurst Bier Hall, located at 630 1<sup>st</sup> Ave N, Fargo.

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation, I examined the applicants' credit reports and public record criminal backgrounds.

The following information was discovered through this investigation:

Ramos, Sebastian

**Criminal History -**

A search of Fargo Police Department criminal records, North Dakota public records ([publicsearch.ndcourts.gov](https://publicsearch.ndcourts.gov)) and Minnesota public records (<https://chs.state.mn.us>) showed Ramos received a citation for MIP/MCA/MUI/Minor purchase alc and Noisy Party or Gathering in Fargo in 2012 during the same incident. Ramos also received a citation for Minor Consumption in Moorhead in 2012. Ramos disclosed these charges on his application. No criminal charges discovered since 2012.

**Credit History -**

Sebastian Ramos' credit history was reviewed. There are no prior bankruptcies, recent past due accounts or debts turned over to collections.

**Nicklaus, Zachary - Manager**

**Criminal History -**

A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (https://chs.state.mn.us) showed no criminal history.

**Credit History -**

Zachary Nicklaus' credit history was reviewed. Nicklaus has one account that is listed as a collections account that was opened in March of 2023. All other accounts are current with no recent past due accounts.

**Investigation Notes**

This application is for a Transfer of 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, located at 630 1<sup>st</sup> Ave N, Fargo. The new license holders plan to keep the same concept, with some minor upgrades and changes.

I spoke with Nicklaus over the phone about the collections account that had been opened March of this year. Nicklaus said he was unaware of the account. After thinking about it, Nicklaus guessed it was from medical bills he thought were taken care of by Tricare. Nicklaus' guess at the amount of the medical bill correlated with the collections account. Nicklaus was cooperative during the discussion.

**Business Location**

Wurst Bier Hall is located at 630 1<sup>st</sup> Ave N. Other businesses in the area with an alcoholic beverage license include JL Beers, Dempsey's, Fort Noks, Old Broadway, Sports Bar, Vinyl Taco, Sammy's Pizza, The Boiler Room, Beer & Fish Company, Rosewild, Rooter's, District 64, VFW, No Bull, Blarney Stone Pub, and Bottle Barn Off Broadway.

**Conclusion**

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.





# FARGO POLICE DEPARTMENT

A SAFE AND UNIFIED COMMUNITY BUILT ON TRUST, ACCOUNTABILITY AND INCLUSION

## CRIMINAL INVESTIGATIONS DIVISION

# MEMORANDUM

To: Chief David Zibolski

From: Lieutenant Matt Christensen *MDC*

Date: 06.23.2023

RE: Alcoholic Beverage License Application, Class "FA-RZ-M" Wurst Bier Hall (Supplement)

Upon review of the attached license application, it was noted one of the applicants, Zachary Nicklaus, indicated he had his North Dakota driver's license suspended in 2017 in West Fargo, ND. I completed a records check in our records management system and found that he had been cited for Failure to Display Current Vehicle license in November of 2016 by the West Fargo Police Department. A search of ND courts did not show the citation, and I was not able to find any evidence of Nicklaus's license being suspended. I contacted Nicklaus via phone to ask for clarification on the citation and subsequent suspension of his license. Nicklaus stated he had been pulled over in West Fargo, ND for having a loud muffler. Nicklaus said he had a hole in his muffler, which caused the noise issue. Nicklaus said the officer did not cite him for the muffler, but did cite him for having expired tabs on his license plates.

I asked Nicklaus if he failed to pay the fine, and he said he could not remember if he paid the fine on time or not, and then said that he thought he did actually pay the fine on time. Nicklaus said when he filled out the application he couldn't remember if the fine was paid on time, and thought he might have paid it late and assumed his license would have been suspended. I was unable to locate a record showing his license had been suspended for failure to pay the fine.

RECEIVED
FARGO POLICE DEPARTMENT
JUN 23 2023
DAVID B ZIBOLSKI
CHIEF OF POLICE
REF: <i>File - Assumed</i>


May 30, 2023

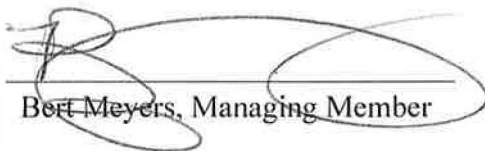
To: City of Fargo Auditors Office

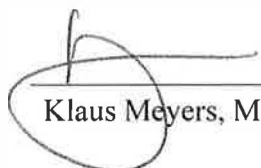
From: Wurst Pub LLC dba Wurst Bier Hall  
Lisa Meyers  
Bert Meyers  
Klaus Meyers

Re: Alcoholic Beverage License Transfer

We wish to transfer the alcoholic beverage license, FA-RZ-M 9 issued to Wurst Pub LLC dba Wurst Bier Hall, to Two Star Boys LLC with purchase Wurst Bier Hall.

  
\_\_\_\_\_  
Lisa Meyers, Managing Member

  
\_\_\_\_\_  
Bert Meyers, Managing Member

  
\_\_\_\_\_  
Klaus Meyers, Managing Member



APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE

Legal Company Name: Two Star Boys LL C  
(Must match State of North Dakota registration name)

DBA Name: Wurst Bier Hall

Is the establishment applying for (or has) a food license under the same name? Yes X No    

Business location address: 630 1st Ave N Fargo, ND 58102

Mailing address: 630 1st Ave N Fargo, ND 58102

Business E-mail address: wurst bierhall@gmail.com

Local Manager E-mail address: zjnicklaus7@gmail.com

Best Contact Phone number: ( 701 ) 840-5451

Anticipated Date of Opening: July 8, 2023

**Please contact the Auditor's Office at 701-241-1301 or 241-8108 to determine the appropriate License Classification Type that would fit your business model.**

**The following section to be completed by City Staff:**

Date Received: 5/30/23 Class of License: FA RZ - M Transfer: X Yes     No

Investigations Fee Paid (\$250)     Yes X No Date Paid:     BILLED

Police Department review completed by:     Date:    

(Attached recommendation report):

X Approval Recommendation

    Denial Recommendation

Chief of Police

06-23-23  
Date

43

<b>City of Fargo Staff Report</b>			
<b>Title:</b>	Radio Second Addition	<b>Date: Update:</b>	3/29/2023 7/20/2023
<b>Location:</b>	5709-5790 53rd Avenue South	<b>Staff Contact:</b>	Donald Kress, planning coordinator
<b>Legal Description:</b>	Lots 1 through 10, Block 1, Radio Addition		
<b>Owner(s)/Applicant:</b>	Four Horsemen, LLC / Tony Eukel, MBN Engineering	<b>Engineer:</b>	RJN Survey
<b>Entitlements Requested:</b>	<b>Major Subdivision</b> (replat of Lots 1 through 10, Block 1, Radio Addition including a vacation of a portion of 53 <sup>rd</sup> Avenue South right of way)		
<b>Status:</b>	City Commission Public Hearing: July 24 <sup>th</sup> , 2023		
<b>Existing</b>		<b>Proposed</b>	
<b>Land Use:</b> Undeveloped and vacant commercial		<b>Land Use:</b> Commercial	
<b>Zoning:</b> GC, General Commercial		<b>Zoning:</b> No change	
<b>Allowed Uses:</b> GC – General Commercial. Allows colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self storage, vehicle repair, limited vehicle service, aviation, surface transportation, and major entertainment events, basic utilities, and certain telecommunications facilities		<b>Allowed Uses:</b> No change	
<b>Maximum building coverage</b> 85%		<b>Maximum building coverage</b> no change	
<b>Proposal:</b>			
The applicant requests one entitlement:			
<ol style="list-style-type: none"> <li><b>Major Subdivision</b>, replat of Lots 1 through 10, Block 1, Radio Addition, including a vacation of a portion of 53<sup>rd</sup> Avenue South right of way, to be known as Radio Second Addition</li> </ol>			
<b>Surrounding Land Uses and Zoning Districts:</b>			
<ul style="list-style-type: none"> <li>• North: AG, Agricultural; undeveloped</li> <li>• East: GC, Commercial uses; one property with conditional use permits for industrial uses</li> <li>• South: P/I, Public/Institutional with City of Fargo-owned water reservoir and ditch</li> <li>• West: GC, commercial uses; some properties with conditional use permits for industrial uses</li> </ul>			
<b>Area Plans:</b>			
The current GC, General Commercial zoning is consistent with the "Commercial" land use designation for this property on the 2007 Growth Plan. No amendment to the growth plan is required.			

**Context:**

**Schools:** The subject property is located within the West Fargo School District, specifically within the Deer Creek Elementary, Heritage Middle and Horace High schools.

**Neighborhood:** The subject property is located within the Deer Creek neighborhood.

**Parks:** Osgood Park (4951 47<sup>th</sup> Street North) is approximately 0.7 mile from the subject property. This park provides playgrounds for ages 2-5 and 5-12, recreational trails, a shelter, picnic table, multi-purpose field, basketball court, grill, recreational trails, disc golf, and a soccer field.

**Pedestrian / Bicycle:** The existing multi-use path along Veterans Boulevard north of 52<sup>nd</sup> would be continued south of 52<sup>nd</sup> as Veterans Boulevard is developed. A new shared use path was built on either side of 52<sup>nd</sup> Avenue South with the recent reconstruction. These paths connect to the metro area path system.

**MATBUS Route:** The subject property is not along a MATBUS route.

**Staff Analysis:**

The plat replats the existing 10 lots into five lots for commercial development. The existing zoning is GC, General Commercial. No zone change is proposed.

**VACATION OF 53<sup>rd</sup> AVENUE SOUTH CUL-DE-SAC:** The plat includes a vacation of a portion of the 53<sup>rd</sup> Avenue South right of way (ROW). This ROW was dedicated on the Radio Addition plat (2022) and has not been improved. Staff supports the proposed vacation of this portion of the 53<sup>rd</sup> Avenue South ROW. Vacation of the ROW includes vacation of the adjacent negative access easements. Findings specific to this vacation are below.

**ACCESS:** None of the lots will take access directly from 52<sup>nd</sup> Avenue South or Veterans Boulevard South due to negative access easements. All lots will take access from the 40-foot wide access and utility easement depicted on the plat. Utility service to some of the lots will also be provided through the access and utility easements.

**REQUIRED TURN LANES:** In order to maintain orderly access in relation to Veterans Boulevard (an arterial street) right turn lanes from Veterans Boulevard into the two private drive accesses will be required. The cost for these right turn lanes will be special assessed to the properties within Radio Second Addition. The timing of construction for these right turn lanes would be either as deemed necessary by the City or whenever Veterans Boulevard is extended over Drain 27, whichever occurs first. The north private drive will eventually become a right in, right out intersection once traffic volumes on Veterans Boulevard necessitate the change.

The requirement for these right turn lanes will be stated in a developers agreement, to be prepared by the City and signed by the developers. The plat will not be recorded until this developers agreement has been executed to the satisfaction of the City Engineer.

**EASEMENT AGREEMENT:** The applicant has submitted a draft agreement for maintenance of the access and utility easements, which has been reviewed by staff.

**DRAIN DEDICATION NOT REQUIRED:** The watercourse adjacent to the south side of this property is not owned by the Southeast Cass Water Resources District; therefore, the 175-foot dedication noted in Land Development Code Section 20-0610 is not required.

The plat depicts a 50-foot wide City of Fargo easement adjacent to this watercourse for the protection of the bank. No structures can be built within this easement.

(continued on next page)

### Major Subdivision

The LDC stipulates that the following criteria is met before a major subdivision plat can be approved

1. **Section 20-0907 of the LDC stipulates that no major subdivision plat application will be accepted for land that is not consistent with an approved Growth Plan or zoned to accommodate the proposed development.**

The property is zoned GC, General Commercial. No zone change is proposed. The GC zone will accommodate the proposed commercial development on these lots. Additionally, certain industrial uses could be allowed by conditional use permit on individual lots. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received no comment on the application. **(Criteria Satisfied)**

2. **Section 20-0907.4 of the LDC further stipulates that the Planning Commission shall recommend approval or denial of the application and the City Commission shall act to approve or deny, based on whether it is located in a zoning district that allows the proposed development, complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The property is zoned GC, General Commercial. No zone change is proposed. The GC zone will accommodate the proposed commercial development on these lots. Additionally, certain industrial uses could be allowed by conditional use permit on individual lots. The GC zoning designation is consistent with the "Commercial" land use designation of the 2007 Growth Plan for this area. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments.

**(Criteria Satisfied)**

3. **Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

The applicant has submitted a draft amenities plan mainly relating to stormwater management; there are no public improvements with this plat. The amenities plan has been reviewed by the Public Works Project Evaluation Committee (PWPEC). Any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. **(Criteria Satisfied)**

**ROW Vacation Approval Criteria:** The City of Fargo does not currently have any adopted regulation dealing with the vacation of rights-of-way. However, city policy requires that any applicant wishing to vacate right-of-way must submit a Vacate Application—a one-page form wherein the petitioner provides: a description of the area to be vacated and signatures of all property owners adjoining the area to be vacated. In addition, the applicant must submit a vacation plat (a major subdivision). Notwithstanding the Land Development Code's (LDC) silence on the matter, the North Dakota Century Code (N.D.C.C) does address the opening and vacating of roadways in Chapter 40-39 (inside municipal limits). To that end, the balance of this report will focus on the specific approval criteria outlined within Chapter 40-39 of the N.D.C.C.

***N.D.C.C. 40-39-04. Vacation of streets and alleys where sewers, water mains, pipes, and lines located – Conditions. No public grounds, streets, alleys, or parts thereof over, under, or through which have been constructed, lengthwise, any sewers, water mains, gas, or other pipes or telephone, electric, or cable television lines, of the municipality or the municipality's grantees of the right of way thereof, may be vacated unless the sewers, mains, pipes, or lines have been abandoned and are not in use, or unless the grantee consents, thereto, or unless perpetual easements for the maintenance of sewers, water mains, gas, or other pipes, or telephone, electric facilities, whether underground or aboveground, is subject to the continued right of location of such electric facilities in the vacated streets.***

The applicant has contacted potential utility providers and submitted documentation that there are no utilities in these easements. City staff has reviewed this documentation. There are no existing utilities in the ROW to be vacated. **(Criteria Satisfied)**

***N.D.C.C. 40-39-05. Petition for vacation of streets, alleys, or public grounds – Contents – Verification. No public grounds, streets, alleys, or parts thereof within a municipality shall be vacated or discontinued by the governing body except on a petition signed by all of the owners of the property adjoining the plat to be vacated. Such petition shall set forth the facts and reasons for such vacation, shall be accompanied by a plat of such public grounds, streets, or alleys proposed to be vacated, and shall be verified by the oath of at least one petitioner.***

In accordance with the requirement of this section, a petition signed by all adjacent owners has been submitted for review and consideration, along with a plat of such public street. **(Criteria Satisfied)**

***N.D.C.C 40-39-06. Petition filed with city auditor – Notice published – Contents of notice. If the governing body finds that the petition for vacation is in proper form and contains the requisite signatures, and if it deems it expedient to consider such petition, it shall order the petition to be filed with the city auditor who shall give notice by publication in the official newspaper of the municipality at least once each week for four weeks. The notice shall state that a petition has been filed and the object thereof, and that it will be heard and considered by the governing body or a committee thereof on a certain specified day which shall not be less than thirty days after the first publication of the notice.***

The vacation plat was advertised as required by this section prior to the hearing before the City Commission (the City’s governing body). **(Criteria Satisfied)**

***N.D.C.C. 40-39-07. Hearing on petition – Passage of resolution declaring vacation by governing body. The governing body, or such committee as may be appointed by it, shall investigate and consider the matter set forth in the petition specified in section 40-39-05 and, at the time and place specified in the notice, shall hear the testimony and evidence of persons interested. After hearing the testimony and evidence or upon the report of the committee favoring the granting of the petition, the governing body, by a resolution passed by a two-thirds vote of all its members, may declare the public grounds, streets, alleys, or highway described in the petition vacated upon such terms and conditions as it shall deem just and reasonable.***

This action will be taken by the City Commission. **(Criteria Satisfied)**

**Staff Recommendation:**

Suggested Motion: ““To accept the findings and recommendations of the Planning Commission and staff and approve the proposed **Radio Second Addition** subdivision plat as presented, including the vacation of right of way; as the proposal complies with the 2007 Growth Plan, Standards of Article 20-06, Section 20-0907.C, and all other applicable requirements of the LDC, and NDCC 40-39-04 through -07.”

**Planning Commission Recommendation: April 4<sup>th</sup>, 2023**

At the April 4<sup>th</sup>, 2023 Planning Commission, by a vote of 7-0 with two Commissioners absent and two Commission seats vacant, the Planning Commission moved to accept the findings and recommendations of staff and recommended to the City Commission approval of the proposed **Radio Second Addition** subdivision plat as presented, including the vacation of right of way; as the proposal complies with the 2007 Growth Plan, Standards of Article 20-06, Section 20-0907.C, and all other applicable requirements of the LDC, and NDCC 40-39-04 through -07.

**Attachments:**

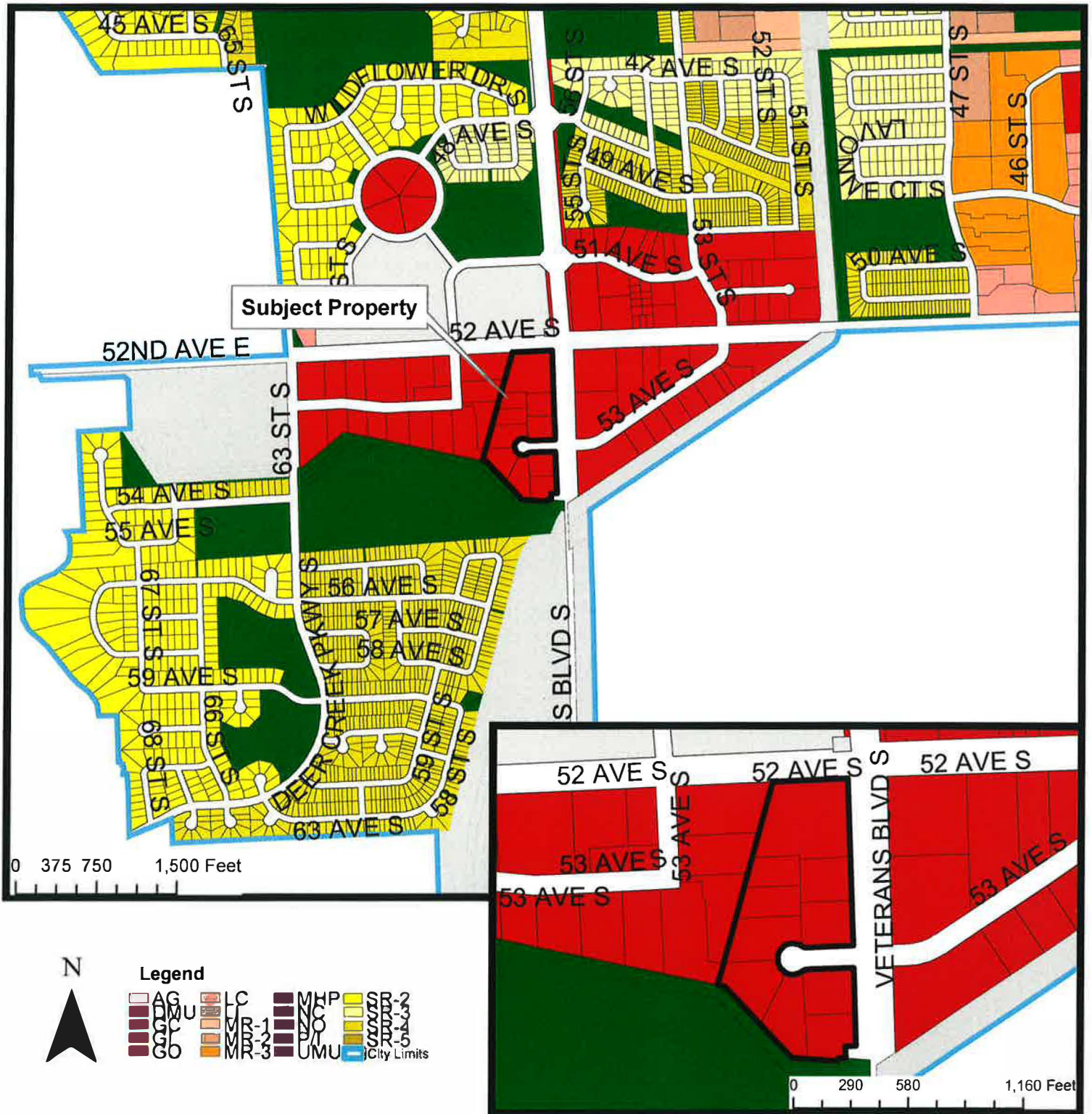
1. Zoning map
2. Location map
3. Preliminary plat



# Major Subdivision including Vacation of Right of Way

## Radio Second Addition

5709-5790 53rd Avenue South

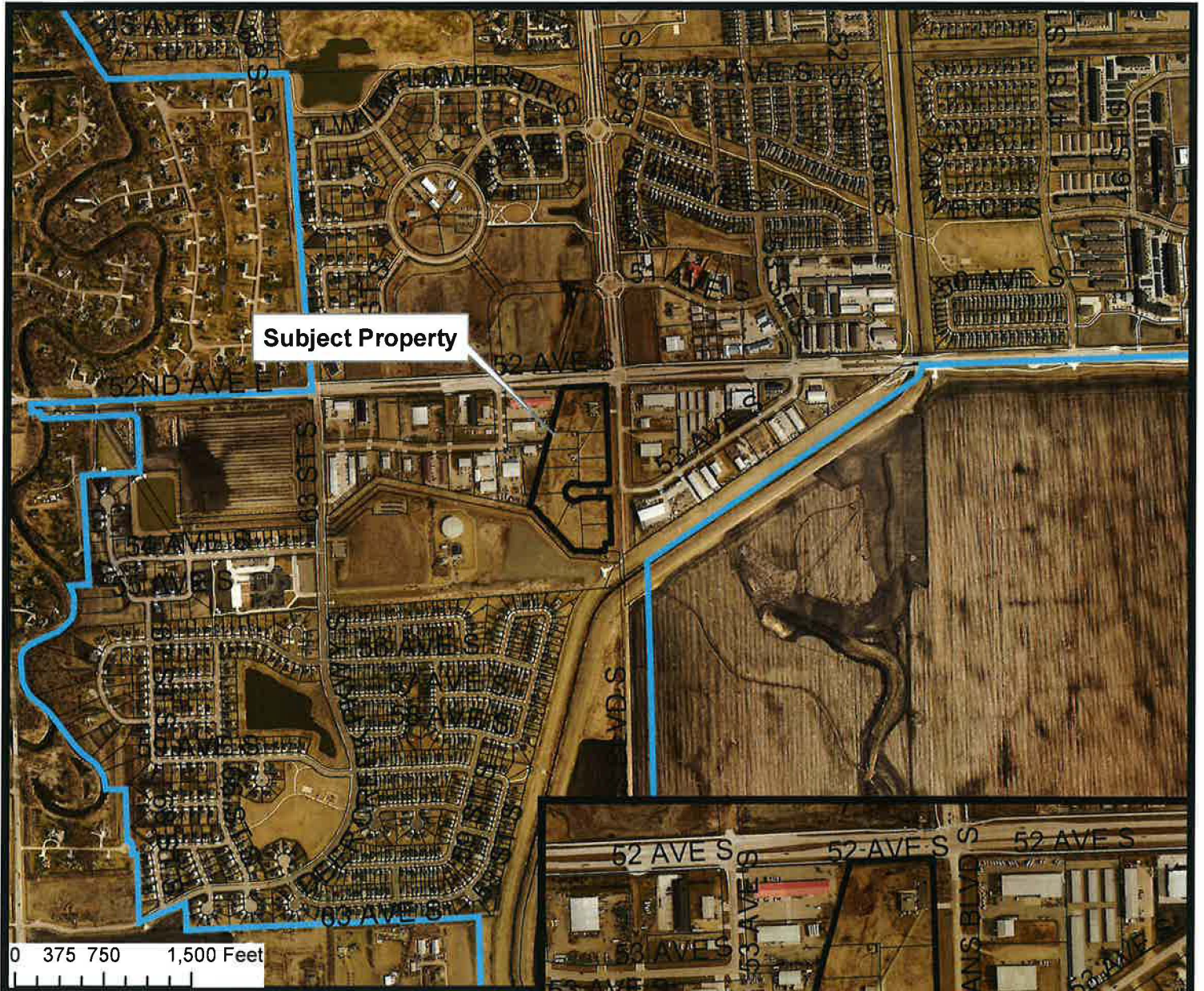




# Major Subdivision including Vacation of Right of Way

## Radio Second Addition

5709-5790 53rd Avenue South



**Legend**

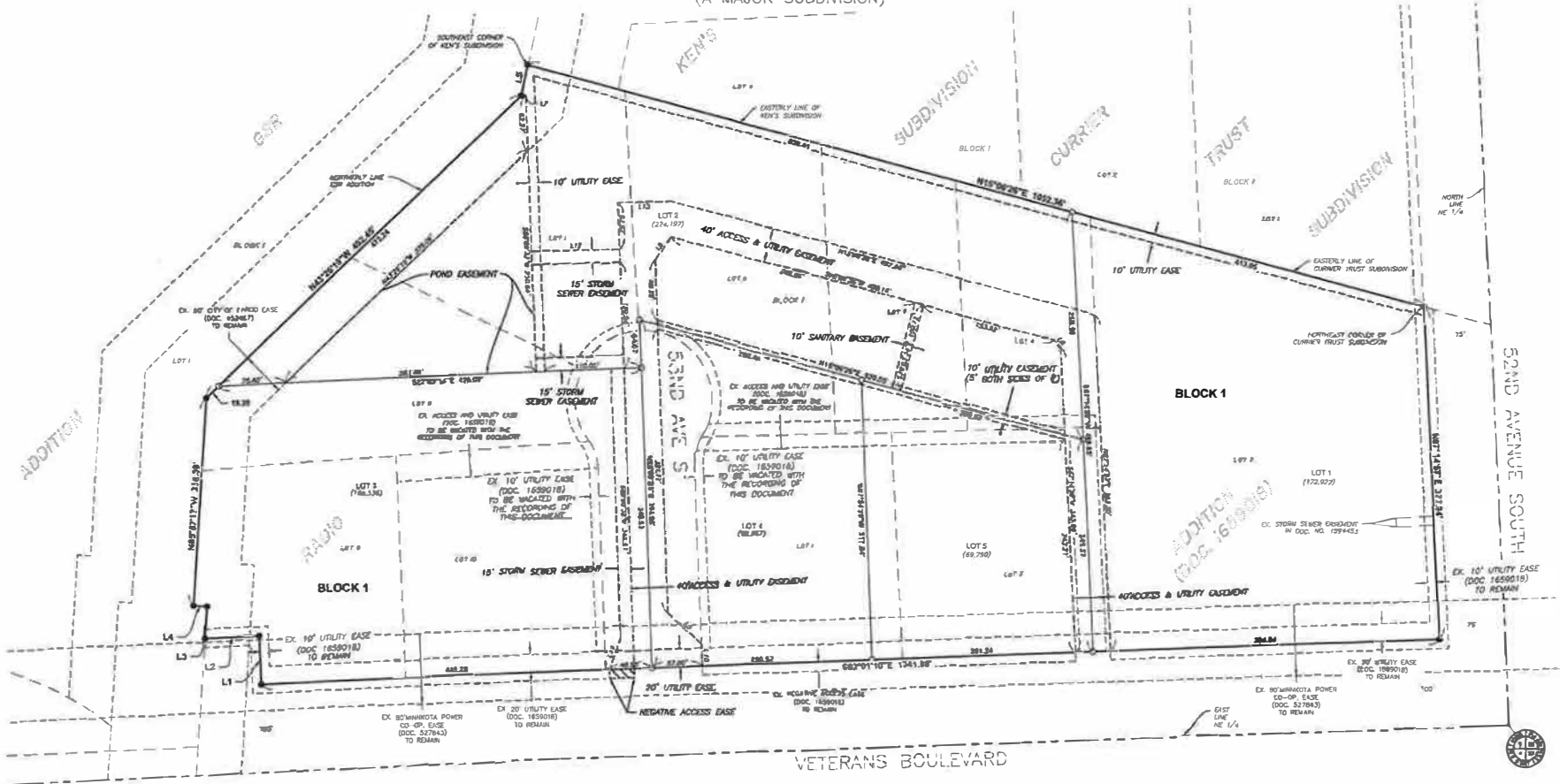
 City Limits





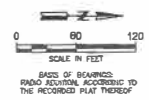
# RADIO SECOND ADDITION

TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA  
 A REPLAT OF LOTS 1 THROUGH 10, BLOCK 1 OF RADIO ADDITION AND A VACATION OF 53RD AVENUE SOUTH, UTILITY AND  
 INGRESS/EGRESS EASEMENTS LYING AND BEING WITHIN THE BOUNDARY OF THE PLAT DESCRIBED HEREIN  
 (A MAJOR SUBDIVISION)



- NOTES**
- GROUND RECORDED HEREON AND ARE IN URGE OF U.S. SURVEY FOOT.
  - PART OF THIS PLAT FALLS IN FLOODPLAIN ZONE, THE ACCURACY TO THE FIRM MAY VARY SIGNIFICANTLY WITH AN EFFECTIVE DATE 1/16/2015. THE BASE FLOOD ELEVATION IN THIS AREA IS 806.7' (RANGE) ACCORDING TO FEMA. CONTOUR INFORMATION SHOWN IS DERIVED FROM CITY OF FARGO CONTOUR DATA.
  - SEWERAGE SYSTEM INFORMATION LOCATED ON THE EAST SIDE OF 53RD AVENUE SOUTH, 4'-200' SOUTH OF THE INTERSECTION OF 52ND AVENUE SOUTH AND 53RD AVENUE SOUTH (S-2100) PUBLISHED ON SHEET 225 OF THE CITY OF FARGO (REMARKS BOOK 1201) SHOWS ELEVATION = 814.82 (RANGE).
  - NEGATIVE ACCESS EASEMENT, AS NOTED ON THE PLAT OF RADIO SECOND ADDITION, IS AN EASEMENT DEDICATED AS PART OF THE RIGHT-OF-WAY DEDICATION WHICH ENSURES STREET REGULAR ACCESS TO A STREET OF PUBLIC WAY FROM THE LOT OR LOTS ADJACENT TO SUCH STREET OR WAY. THE NEGATIVE ACCESS EASEMENT IS NOT A STRIP OF LAND OF ANY CERTAIN WIDTH, BUT IS A LINE COINCIDENT WITH THE BOUNDARY OF THE ADJACENT LOT OR LOTS.

- LEGEND**
- SET 3/8" REBAR CAP (S-2722)
  - POLE HOUSING
  - EXISTING PROPERTY LINE
  - EXISTING EASEMENT LINE
  - PLAT NEW EASEMENT
  - SECTION LINE
  - PLAT OVERALL BOUNDARY
  - PLAT INTERIOR LOT LINES
  - 8FT NEGATIVE ACCESS EASEMENT
  - BOUNDARY LINES OF THIS PLAT
  - PLAT STREET VACATED BY THIS PLAT
  - EXISTING NEGATIVE ACCESS EASEMENT - TO REMAIN
  - 100 YR. FLOODPLAIN
  - EXISTING GROUND CONTOUR



LINE TABLE		
#	DISTANCE	BEARING
L1	55.00	S87°59'50"W
L2	61.03	S02°01'10"E
L3	36.23	N86°57'17"W
L4	15.00	S04°02'43"W
L5	35.38	N78°14'59"W
L6	11.29	S81°10'42"W
L7	5.18	N01°50'28"W


LINE TABLE		
#	DISTANCE	BEARING
L8	31.66	S85°13'42"E
L9	52.36	N43°09'32"E
L10	24.31	N88°13'57"E
L11	36.33	N68°20'28"W
L12	98.99	N01°39'44"W
L13	58.66	N01°50'28"W





MEMORANDUM

**TO:** Fargo City Commission

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

**DATE:** July 19, 2023

**SUBJECT:** Wave Water Park PILOT request

---

The City of Fargo received a request for a PILOT property tax exemption for 17 years on two properties at 4410 24th Avenue South and 4471 24th Avenue South. The proposed project is a water park, hotel, parking ramp and a third building. The request and information from the developer is attached.

The request was referred to PFM, one of the City's financial advisers. That review indicates the project is not feasible without a property tax exemption but a 10-year property tax exemption should be sufficient to make the project feasible. This exemption would also be limited to the hotel and water park, not the third building. The PFM reports are attached.

A public hearing on the Developer Agreement is part of the review process. One of the purposes of the hearing is to provide potential competitors an opportunity to comment if they feel the agreement would result in unfair competition. A letter protesting the property tax exemption and a response letter from EPIC Companies is attached.

The Economic Development Incentives Committee voted 5-0 to recommend approval of a 10-year property tax exemption with the conditions that there be a 500-space parking ramp free and open to the public, construction of the proposed hotel and water park and an additional \$79 million of private development on the site in a time certain. A Development Agreement will need to be prepared to implement this project.

**Recommended Motion:**

Direct the City Attorney and City staff to prepare a Development Agreement to provide a 10-year property tax exemption to implement the proposed project and to bring that agreement back to the City Commission for final approval.



**EPIC Companies**

**EPICCompaniesND.com**  
745 31st Ave. E Suite 105  
West Fargo, ND 58078  
701.866.1006

May 9, 2023

Jim Gilmour  
Director of Strategic Planning & Research  
City of Fargo  
225 4<sup>th</sup> St N  
Fargo, ND 58102

Mr. Gilmour,

Please find the enclosed summary for a proposed payment in lieu of taxes (PILOT) project that is a critical component to support the construction of a public 500 space parking ramp as part of a smart-growth, high-density, mixed-use development.

Summary:

The two (2) lots that will support the financing of the public parking ramp include (i) The Wave Waterpark Resort located south of the ramp, and (ii) the lot west of the ramp that is planned to complete this regional destination. The Wave is designed at over 50,000sf and connects to a 7-story tower for resort components that include: family entertainment center, restaurant and lounge, gift-shop, and 135 guest rooms. The lot west of the ramp can support the final hospitality component to this regional destination and has an approved franchise agreement with IHG for a future Holiday Inn. This PILOT request does not include the ramp lot itself, or other projects like the Makt buildings that are already under construction and are estimated to contribute over \$450,000 in annual property taxes once complete.

Benefit:

The parking ramp will benefit the public in many ways, including: (i) allowing for high-density development which provides for higher property tax values, (ii) additional parking for key neighbors such as: Cornerstone Bank Arena, Fargo Park District's Anderson Fields, The Red River Zoo, and the FM Curling Club, (iii) and provides for a quality of life amenity for the entire community which has been identified as a key piece to employee attraction and retention.







## EPIC Companies

EPICCompaniesND.com  
745 31st Ave. E Suite 105  
West Fargo, ND 58078  
701.866.1006

### Financial info:

- \$64,000,000 total estimated cost of the waterpark resort component.
- \$20,000,000 total estimated cost of the future lot building component.
- \$13,000,000 total estimated cost of the public parking ramp.
  - Requesting a 20 year PILOT on the two (2) lots adjacent to the ramp.
  - Those lots are estimated to pay \$24,000 annually during the PILOT.
  - Those lots are estimated to pay over \$1,100,000 annually after the PILOT program expires.

We are truly excited about this project becoming a reality and look forward to partnering with you on what will become a tremendous public benefit for the community of Fargo. If you need any else to supplement this request, please let me know. Thanks for your consideration.

Sincerely,

Blake Nybakken  
Chief Operating Officer  
Cc: Todd Berning, President







The  
**Wave**  
by EPIC  
**Water Park Resort**



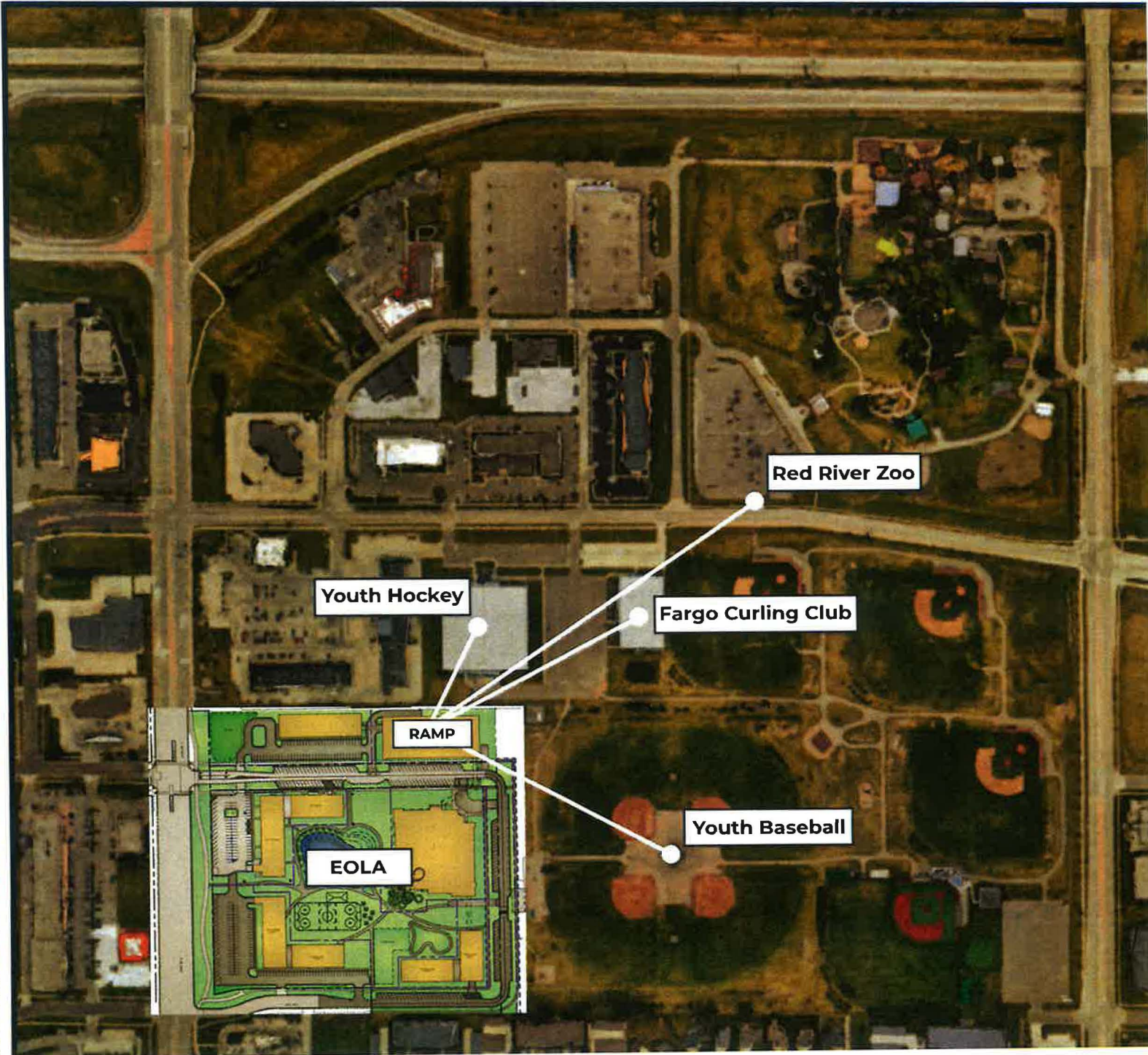
# LOCATION AND SITE PLAN

## EOLA By EPIC

45th St. S, Fargo, ND 58104

EOLA is a master-planned development located just south of I-94 and right off 45th Street South in Fargo. EOLA offers commercial & office space, condos of all sizes, upscale apartments, a public park, and The Wave Water Park Resort.

The buildings surround a four-acre urban public park with year-round features and programming. Other features such as green space, walking paths, youth activities, and art will make EOLA a great addition to the neighborhood and will boost property values and continue to help spur revitalization.





# THE WAVE WATER PARK RESORT

Featuring 50,000+ SF of entertainment for the whole family, The Wave by EPIC Water Park Resort will be the largest indoor water park within a 180-mile radius of Fargo, ND.

Once inside, you decide where the fun begins...thrilling slides, a splash pad, an activity pool, and a wave pool. Cabanas, self-use lockers, a fully stocked snack bar, and a gift shop will also be available for water park guests to utilize.



## Resort Hotel

Connected to The Wave Water Park is a seven-story full-service hotel that will have 135-rooms. This will attract out-of-town water park guests and accommodate local staycationers, in addition to those who use day passes. The hotel will feature a first floor restaurant and lounge as well as a family entertainment center, truly elevating the site as a regional destination.

## Parking Ramp

The EOLA By EPIC Development will feature a public parking garage with 500 spots that will provide convenient access for all nearby activities including: **Fargo Park District's Anderson Fields, Cornerstone Bank Arena, The Red River Zoo, and The FM Curling Club.**





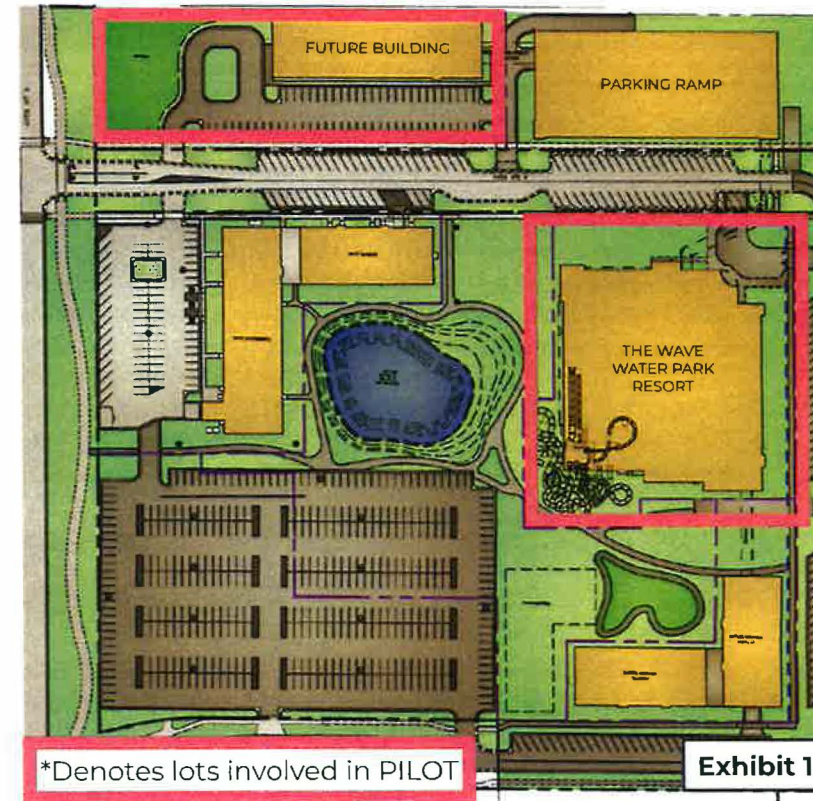


## Align with Fargo GO 2030 Comprehensive Plan

- Allows for higher density & smart growth - similar to a Downtown district
- Prosper as a business center with numerous commercial tenants
- Thrive as a location
- Complete our Streets
- Park Smart
- Play with a Purpose

## MEETING KEY OBJECTIVES

1. Served by existing infrastructure of the development or will upgrade the infrastructure to meet the needs of the development;
2. Compatible with the adjacent area or the future land use in the area;
3. Sidewalks, bike trails or a transit stop within 4 blocks;
4. Shared parking by the different land uses;
5. Include public spaces or public art;
6. Replaces surface parking;
7. Create significant growth in the tax base on the site;
8. Encourages additional development on adjacent sites;
9. Contains businesses that will provide needed services or goods used by adjacent land uses



## Parking Ramp & PILOT

Creating an on-grade public parking lot in our development that also serves the various public attractions in the surrounding area would drastically limit the amount of buildable square footage at the EOLA Development (**Exhibit 1 - showing only 378 parking spaces comparable to the ramp which would be 500 parking spaces**). By utilizing the density of a parking structure, the municipality will benefit from the taxable property value that will be created through our vision for EOLA as we build privately owned buildings throughout the development.

## Economic Impact

Like The Lights in West Fargo - The Wave Water Park Resort by EPIC will boost property values outside the developments and continue to spur revitalization.

### Property Tax History and Projections for 2 parcels seeking PILOT\*

Time Frame	Owner	Annual Property Tax	20 Year Time Frame
20 years prior to EPIC's purchase of land	Fargo Park District	\$0	\$0
20 years of PILOT	The Wave/Future Building	\$23,957.11	\$479,142.20
20 years after PILOT	The Wave/Future Building	\$1,109,072.01	\$22,181,440.20

*\*Estimates are based on current tax rates assessed property values and include no inflation over time.*

### First Project at EOLA Development, Currently Under Construction (NOT part of PILOT Application)

Project	Annual Property Tax	20 Year Time Frame
MAKT Project Property Taxes (est.)	\$470,000	\$9,400,000

The following chart displays our proposed parking ramp, operationally and functionally compared to the recently approved N.P. Ave Parking ramp in Downtown Fargo.

### EOLA Ramp & N.P. Ave Ramp Comparisons\*\*

	WAVE PILOT Proposed	N.P. Ave Ramp
# of Spots	500	465
Incentive Program	PILOT	TIF
Ownership	Private	City
Initial City Funding	No city cash requested	City \$4,000,000 injection
Financing	Private	City Bond financing
DSC Responsibility	Private Investors	City
Cost per stall	\$24,000	\$43,000
Maintenance and Management	Private	City
Property taxes paid after incentive	Yes	No

*\*\*Data collected from Fargo Forum article*

### Application For Property Tax Incentives For New or Expanding Businesses

N.D.C.C. Chapter 40-57.1

Project Operator's Application To Fargo

City or County

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

This application is a public record

#### Identification Of Project Operator

1. Name of project operator of new or expanding business The Wave by EPIC , LLC

2. Address of project 4410 24th Ave S & 4471 24th Ave S  
City Fargo County Cass

3. Mailing address of project operator 745 31st Ave E #105  
City West Fargo State ND Zip 58078

4. Type of ownership of project  
 Partnership                       Subchapter S corporation                       Individual proprietorship  
 Corporation                       Cooperative                       Limited liability company

5. Federal Identification No. or Social Security No. [REDACTED]

6. North Dakota Sales and Use Tax Permit No. \_\_\_\_\_

7. If a corporation, specify the state and date of incorporation North Dakota August 4, 2022

8. Name and title of individual to contact Blake Nybakken, Chief Operating Officer  
Mailing address 745 31st Ave E #105  
City, State, Zip West Fargo, ND 58078 Phone No. 701-721-8047

#### Project Operator's Application For Tax Incentives

9. Indicate the tax incentives applied for and terms. Be specific.

**Property Tax Exemption**                       **Payments In Lieu of Taxes**  
\_\_\_\_\_ Number of years                      2025 Beginning year                      2042 Ending year  
\_\_\_\_\_ Percent of exemption                      \_\_\_\_\_ Amount of annual payments (attach schedule if payments will vary)

10. Which of the following would better describe the project for which this application is being made:  
 New business project                       Expansion of a existing business project



**Description of Project Property**

11. Legal description of project real property  
Lot 3, Block 1, EOLA 2nd Addition to the City of Fargo (Wave lot as proposed with current replat).  
Lot 1, Block 1, EOLA Addition to the City of Fargo (Future building lot).

---

12. Will the project property be owned or leased by the project operator?     Owned     Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?  
 Yes     No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility?     New construction     Existing facility

If existing facility, when was it constructed? \_\_\_\_\_

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application    8/1/2023

b. Description of project to be constructed including size, type and quality of construction  
The Wave is a full-service Waterpark Resort with a 50,000sf waterpark connected to a 7-story  
hotel tower that will include 135 rooms, family entertainment center, restaurant and lounge, gift

c. Projected number of construction employees during the project construction \_\_\_\_\_

14. Approximate date of commencement of this project's operations    8/1/2025

---

<p>15. Estimated market value of the property used for <u>this project</u>:</p> <p>a. Land..... \$ <u>1,551,683.5</u></p> <p>b. Existing buildings and structures for which an exemption is claimed..... \$ <u>0</u></p> <p>c. Newly constructed buildings and structures when completed ..... \$ <u>83,434,677.50</u></p> <p>d. Total..... \$ <u>84,986,361</u></p> <p>e. Machinery and equipment..... \$ _____</p>	<p>16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:</p> <p>a. Land (not eligible) ..... <span style="background-color: black; color: black;">[REDACTED]</span></p> <p>b. Eligible existing buildings and structures ..... \$ <u>0</u></p> <p>c. Newly constructed buildings and structures when completed..... \$ <u>4,171,733.88</u></p> <p>d. Total taxable valuation of property eligible for exemption (Add lines b and c)..... \$ <u>4,171,733.88</u></p> <p>e. Enter the consolidated mill rate for the appropriate taxing district ..... <u>283.22</u></p> <p>f. Annual amount of the tax exemption (Line d multiplied by line e) ..... \$ <u>1,203,491.86</u></p>
--	---

**Description of Project Business**

**Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.**

17. Type of business to be engaged in:  Ag processing  Manufacturing  Retailing  
 Wholesaling  Warehousing  Services

18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

The Wave will be engaged in leisure, hospitality, food & beverage, and entertainment services as part of their operations. Guests are expected to travel from 180+ miles to visit the property and there will be day passes available for local residents to utilize the amenities on a daily basis.

19. Indicate the type of machinery and equipment that will be installed

Wave generator, slides, pool equipment and associated mechanical systems associated with the waterpark. Also there will be commercial equipment, elevator and other standard commercial building equipment associated with the project.

20. For the project only, indicate the projected annual revenue, expense, and net income (before tax) from either the new business or the expansion itself for each year of the requested exemption.

Year (12 mo. periods)	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only	New/Expansion Project only
	Year 1	Year 2	Year 3	Year 4	Year 5
Annual revenue	21,087,542	21,857,377	22,686,254	23,387,763	23,675,002
Annual expense	19,620,539	19,841,047	20,362,661	20,637,670	20,773,733
Net income	1,467,002	2,016,328	2,323,591	2,750,092	2,901,267

21. Projected number and salary of persons to be employed by the project for the first five years:

Current positions & positions added the initial year of project

# Current Positions	New Positions Under \$13.00	New Positions \$13.01-\$15.00	New Positions \$15.01-\$20.00	New Positions \$20.01-\$28.00	New Positions \$28.01-\$35.00	New Positions Over \$35.00

Year	(Before project)	Year 1	Year 2	Year 3	Year 4	Year 5
No. of Employees	(1) _____	_____	_____	_____	_____	_____
	(2) _____	_____	_____	_____	_____	_____
Estimated payroll	(1) _____	_____	_____	_____	_____	_____
	(2) _____	_____	_____	_____	_____	_____

(1) - full time  
(2) - part time

**Previous Business Activity**

22. Is the project operator succeeding someone else in this or a similar business?  Yes  No

23. Has the project operator conducted this business at this or any other location either in or outside of the state?  
 Yes  No However, S&L Hospitality (who will help manage), does conduct similar business in other states.

24. Has the project operator or any officers of the project received any prior property tax incentives?  Yes  No  
 If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).  
Renaissance Zone benefits were granted to EPIC Companies for the development of their Gateway, The Arch, and Unite projects in downtown Fargo.

**Business Competition**

25. Is any similar business being conducted by other operators in the municipality?  Yes  No

If YES, give name and location of competing business or businesses

Percentage of Gross Revenue Received Where Underlying Business Has ANY Local Competition %

**Property Tax Liability Disclosure Statement**

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it?  Yes  No

27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property?  Yes  No

If the answer to 26 or 27 is Yes, list and explain

**Use Only When Reapplying**

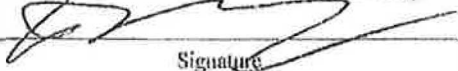
28. The project operator is reapplying for property tax incentives for the following reason(s):

- To present additional facts or circumstances which were not presented at the time of the original application
- To request continuation of the present property tax incentives because the project has:
  - moved to a new location
  - had a change in project operation or additional capital investment of more than twenty percent
  - had a change in project operators
- To request an additional annual exemption for the year of \_\_\_\_\_ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

**Notice to Competitors of Hearing**

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Todd Berning, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

 \_\_\_\_\_  
 Signature President Title Date

6/2/2023  
Date



July 14, 2023

## Memorandum

To: Jim Gilmour, Strategic Planning Director, City of Fargo

From: Matt Schnackenberg, Managing Director, PFM Financial Advisors LLC

Re: The Wave Resort PILOT Request

---

PFM had follow-up correspondences with EPIC Companies (the "Applicant") related to their request for Payment in Lieu of Taxes (PILOT) to finance a parking ramp for The Wave Resort, at 2424 45<sup>th</sup> St. SW. PFM is providing the following updates and clarifications to the "But-For" Report, dated June 20, 2023.

### The Project

The Applicant is requesting PILOT assistance through annual property tax savings for 17 years for the development of a parking ramp (the "project") at The Wave Resort. If the Applicant does not receive PILOT financing assistance, they estimate that the construction of the parking ramp will not be economically viable, and the Applicant would instead include surface parking at The Wave Resort, which would reduce the available space at the property for future development.

### Debt Service Coverage

In the "But-For" Report, PFM projected that without public assistance, the project would not meet the minimum 1.50x debt coverage on the primary loan until Year 7. The Applicant has indicated that their financing sources will require 1.50x debt coverage on both primary and subordinate debt.

Inclusive of primary and subordinate debt, PFM estimates that without public assistance, the project will not meet 1.50x debt coverage until Year 12. If the project received 17 years of public assistance, the project would have a maximum debt coverage of 1.75x in Year 17, with 1.52x debt coverage in Year 4. If the project received 10 years of public assistance, the project would have a maximum debt coverage of 1.65x in Year 10. After the 10 years of public assistance would end, the project would have 1.48x debt coverage in Year 11, 1.50x debt coverage in Year 12, and increasing debt coverage thereafter.

### Primary Loan Amount

In the "But-For" Report, PFM estimated the primary loan amount as \$56,969,220. The Applicant has indicated that the value of 17 years of PILOT assistance is leveraged to secure the primary loan. If the PILOT term is reduced from 17 years, the primary loan amount would decrease by the present value of the reduced benefit. This difference would need to be raised with additional subordinate debt or equity. PFM calculated the present value of 17 years of PILOT assistance as \$9,741,841, and the present value of 10 years of PILOT assistance as \$6,527,307, a difference of \$3,214,534.



If 10 years of PILOT assistance are offered, and the \$3,214,534 is raised with subordinate debt, the 10-year internal rate of return would remain substantially unchanged at 15.25%, but debt coverage may change, depending on the difference in interest rates between primary and subordinate debt.

If the difference is raised with equity, the internal rate of return would decrease, and debt coverage would increase. PFM estimates that increasing equity by \$3,214,534, and decreasing the primary loan by the same amount, would provide a 14.27% internal rate of return. The project would have a maximum debt coverage of 1.85x in Year 10 and a minimum debt coverage of 1.57x in Year 1. Every year, including after the public assistance period, would meet the project's minimum required 1.50x debt coverage.

#### **Conclusion**

PFM stands by the conclusion that the construction of the project with a parking ramp would not be feasible without public assistance. If no assistance is offered, the project does not meet the minimum required 1.50x debt coverage until Year 12, assuming the privately financed portion remains unchanged.

PFM stands by the conclusion that the project with surface parking would be feasible without public assistance, both in meeting the minimum 1.50x debt coverage ratio and in producing a reasonable rate of return for this type of project.

**FINAL**

# City of Fargo, North Dakota

PILOT Program  
“But-For” Report

The Wave Resort

---



June 20, 2023



## Table of Contents

---

	<u>Page</u>
1. Purpose	1
2. Project	2
3. Assistance Request	3
4. Project Financing	5
5. Return Analysis	6
6. Conclusion	7

## Purpose

The purpose of this report is to establish and determine the necessity of Payment In Lieu Of Taxes (PILOT) financing for The Wave Resort, at 2424 45<sup>th</sup> St. SW, a development by EPIC Companies (the "Developer").

PFM first reviewed the application to ensure that reasonable assumptions regarding property value, hotel occupancy, waterpark sales, income from guest amenities, expenses, and debt were used by the Developer. Based on those assumptions, PFM projected a 10-year cash flow, calculating an internal rate of return ("IRR"). The following report details PFM's analysis and conclusions concerning the viability of the proposed project without the subsidy.





## Project

The project being proposed by the Developer includes the development of a 135-unit hotel with an indoor waterpark and parking ramp located at 2424 45<sup>th</sup> St. SW. The Developer is requesting PILOT assistance through annual property tax savings for 17 years. If the Developer does not receive PILOT financing assistance, they estimate that the construction of the parking ramp will not be economically viable, and the Developer would instead include surface parking, which would reduce the available parking space at the property for future development.

The Developer estimates the construction will be completed in late 2024 with occupancy immediately following. The Developer has requested PILOT financing assistance in the amount of \$9,741,841 on a present value basis to complete the project. This amount is based on projections of the future tax payments less the projected PILOT payments. The estimated tax payments assume a property value increase of 1.00% per year. This amount assumes PILOT for 17 years.

PFM also calculated the value of PILOT financing assistance if the City offered the PILOT for 10 years and no exemption thereafter. The present value of the PILOT financing assistance would be \$6,527,307.



## Project Financing

The Developer is investing 22% equity, or \$17,000,000, and will be privately financing \$60,469,220. A majority will be financed through the Bank of North Dakota. The remaining amount will be subordinate debt raised from investors. The Developer is additionally requesting PILOT assistance through annual property tax savings. The private financing is estimated to be a 25-year loan with an estimated interest rate of 7.0% resulting in an annual principal and interest payment of \$4,831,759.15. The application states the project will be completed by the late 2024.



## Return Analysis

In calculating the internal rate of return, PFM first analyzed the Developer's assumptions including average rate per occupied night in the hotel, occupancy rate, and operating income and expenses. The Developer is proposing an average rate of \$240.13 per occupied hotel room. The Developer has proposed a reasonable daily average rate for the current market and location. Annual estimates of operating expenses for the 135-unit resort with an indoor waterpark were provided, as follows; Rooms - \$1,542,920, Food and Beverage - \$2951,351, Guest Experience - \$134,536, Retail - \$676,286, Family Entertainment Center - \$1,171,912, Waterpark - \$1,622,935, Administration & General - \$1,714,182, Information and Telecommunications - \$105,624, Sales and Marketing - \$1,097,693, Property Operations and Maintenance - \$687,657, Utilities - \$869,307, Resort Management Fee - \$843,502, Insurance - \$550,636, Snow Removal and Lawn Care - \$60,000, Contract Services - \$60,000, and Replacement Reserve - \$422,355. The estimated property tax in PFM's analysis, based on the market value of the resort and the location, is \$844,235 without any public assistance. The total expenses are approximately 70% of gross operating income after stabilization.

The second step in determining the internal rate of return is to determine the earned incremental value of the property over a 10-year period. That value, along with the net operating income cash flows, was used to calculate the internal rate of return. PFM determined that without public assistance the Developer would have about a 11.56% internal rate of return based on a 10-year internal rate of return. The Developer would have about a 15.25% internal rate for 10 years if it received the public assistance. PFM also looked at the rate of return over a 17-year period if PILOT was received for the full 17 years. The IRR in that case is projected to be 15.90%. Finally, the Developer expects to continue to raise more equity above the \$17 million that was used for this analysis. If the Developer were to raise \$18.75 million in equity then the 10-year IRR drops to 14.37% for a 10-year PILOT and the 17-year IRR drops to 15.32% for a 17-year PILOT. It should be noted that with the additional equity the loan amount drops which has a positive impact on the cash flow of the project and may slightly reduce the risk associated with the project. A reasonable rate of return for the proposed project is 14% - 22%.

Another measure of feasibility and project viability is the debt coverage ratio. PFM received documentation from one of the Developer's financing sources that a minimum of 1.50x debt coverage is necessary to secure the estimated loan interest rate. PFM has projected a maximum debt coverage ratio in Year 17 of 1.65x without assistance, with a Year 3 coverage of 1.36x. The project would not meet the minimum 1.50x debt coverage until Year 7, but the project would meet 1.50x debt coverage each year thereafter. If the City provided assistance to the project for 17 years, the maximum debt coverage is projected to be 1.85x in Year 17, with a Year 3 coverage of 1.53x. If the City provided assistance to the project for 10 years, the maximum debt coverage is projected to be 1.75x in Year 10. After assistance would end, debt coverage in Year 11 is 1.57x and increases each year thereafter.

Using PFM's "without assistance" cash flow as the base scenario, PFM ran sensitivity analyses in order to determine if the project would be likely to occur without public assistance. For the first sensitivity analysis, PFM analyzed how much project funds would have to decrease in order to produce a reasonable debt coverage ratio. We also looked at how much the average room rates would have to fluctuate in order to achieve a reasonable debt coverage. Lastly, we looked at a combination of the two scenarios. For the sensitivity analyses, we assumed a reasonable debt coverage ratio of 1.50x by Year 3.

### Sensitivity Scenario 1 – Project Costs

The project would have to be reduced by \$7,194,538 or 9.29% in order for the project to become viable without assistance. This reduces the amount to be financed from \$56,969,220 to \$51,678,509 and reduces the annual payment from \$4,831,759 to \$4,383,035 for the loan. It is unlikely that a reduction in project costs of this magnitude would occur at this stage in the development, but it would occur if the Developer provided a surface parking lot in lieu of a parking ramp



**Sensitivity Scenario 2 – Average Daily Rates**

In order for the project to be viable without public assistance, the average daily rates would have to increase by 7.6%. PFM believes this is a high increase to the Developer's proposed average rates. This increases annual room revenue from \$8,306,349 to \$8,940,910. PFM believes the current proposed rates are reasonable and does not believe an increase this large would occur.

**Sensitivity Scenario 3 – Combination of Project Costs and Average Daily Rates**

The final scenario looks at both a reduction of project costs and an increase in average daily rates. The analysis showed that project costs would have to be reduced by \$3,708,272 or 4.8% and rates would have to increase by about 3.7%. PFM believes either of these events could occur.

The above scenarios show the circumstances in which the project would become viable without public assistance. PFM has determined that the project is unlikely to occur "but-for" the public assistance.



## Conclusion

The Developer will bear all the risk involved with the project. The Developer is dependent on a number of factors before and after the project is completed, including project costs, occupancy of the resort, the hospitality market, and monthly expenses. The base scenario without assistance along with the sensitivity analyses demonstrates that the project as is with the parking ramp may be unlikely to be feasible without some form of assistance.

PFM has calculated that with public assistance for at least 10 years, and based on the assumptions outlined in this report, a 10-year internal rate of return is estimated to be 15.25%. In addition, the coverage ratio in Year 10 is estimated to be 1.75x. The estimated internal rate of return is appropriate given the risk level for this type of project. Based on the information provided to PFM, the calculated internal rate of return and the coverage requirements, PFM concludes the project would not be feasible without public assistance in order to meet the minimum debt service coverage in the first six years and to produce a more reasonable rate of return for this type of project.



July 13, 2023

To: City of Fargo

Subject: EPIC Companies Tax Incentive Application on Land on 45<sup>th</sup> Street south of Interstate 94

It has come to our attention that EPIC Companies (EPIC) is seeking tax incentives for projects they are working on along 45<sup>th</sup> Street South in Fargo. Specifically, EPIC is seeking a 17 year payment in lieu of taxes (PILOT) amounting to \$9.7 million to help cover the cost of a public parking ramp which is part of the proposed water park named "The Wave by EPIC". Collectively, we oppose this incentive and any other potential future incentives for any projects EPIC proposes on this piece of land in the future due to reasons as outlined below.

EPIC purchased land along 45<sup>th</sup> Street south of Interstate 94 from the Fargo Park District. Since this land was viewed by all interested buyers as prime development land, the City of Fargo and the Fargo Park District agreed that the purchase could not be contingent on tax incentives for future projects to be constructed on the land. EPIC acknowledged this at city meetings. Any other buyer would have been happy to purchase the land and put together projects that would not have required or requested incentives.

Other Fargo developers (including some of those included on this opposition) have asked for tax incentives on similar projects in South Fargo in the past which were quickly shot down by the City of Fargo. We believe the past projects that were quickly rejected were much more deserving of tax incentives that EPIC's current project on 45<sup>th</sup> Street.

The current PILOT program in place by the City of Fargo allows for such financing for projects that create jobs or encourage hard-to-develop sites. This land is prime to develop with no soils conditions or topography challenges. Regarding job creation, this has typically been focused more on primary sector business which this would not qualify for. In order to grant a PILOT, the city would need to change the PILOT policy to create a new qualifying sector. Likely adding a new sector would open a can of worms for many future projects to be able to benefit from tax incentives as well as open the city to potential lawsuits for prior projects that were not offered these benefits and given a "dead on arrival" answer when requesting tax incentives.

If these tax incentives are approved, it's going to be a slippery slope going forward and there would be a precedent set to approve tax incentives for a vast amount of future projects that have historically not qualified for incentives. Projects like this have not been the focus of granting incentives, so why start now after rejected similar past requests? If the City of Fargo wants to help financially support a new parking ramp, we would encourage doing so at the airport instead.

In the event these tax incentives are approved, it would be more than appropriate to retroactively put tax incentives in place for all similar prior projects that were denied as well as similar projects that never requested incentives due to the past precedent of not qualifying. Furthermore, if these tax incentives are approved, we believe EPIC's original purchase price paid to the Fargo Park District should be increased by the amount of the incentive given all other bids were underwritten under the understanding that tax incentives would not be allowed on this property. If there were tax incentives were "on the table" during

the purchasing process, this would have driven up the purchase price accordingly. Selling the Fargo Park District land to EPIC at a discount is unacceptable. Retroactively opening the doors to incentives on past projects and changing EPIC's purchase price are not realistic solutions, so really the only good solution is to reject the incentives all-together.

In summary, there are several reasons why this tax incentive should not be granted. Approving any type of tax incentive to EPIC on this property would put the City of Fargo in the middle of potential legal battles given the City's history of not granting incentives to other developers for similar projects as well more or less selling this land to EPIC at a discount which is not allowed to be done by Cities and Park Districts. The playing field needs to be level for the development companies and it clearly would not be if this were to pass.



Kevin Christianson  
President, Christianson Companies



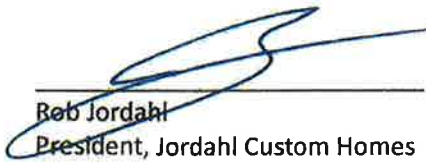
Don Dabbert  
President, Dabbert Custom Homes



Tyler Brandt  
President, Brandt Family Ventures



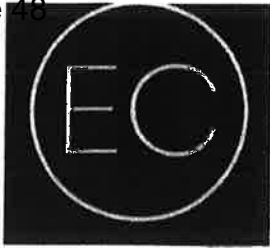
Jim Bullis  
President, EagleRidge Development



Rob Jordahl  
President, Jordahl Custom Homes



Mark Buchholz  
Owner, Buchholz Construction



## EPIC Companies

EPICCompaniesND.com

745 31st Ave. E

West Fargo, ND 58078

701.866.1006

July 15, 2023

TO: Mr. Gilmour, City of Fargo  
 FROM: Todd Berning, President, EPIC Companies  
 CC: Blake Nybakken, COO & Brian Kounovsky, Partner, EPIC Companies

RE: The Wave Memo From Competitive Developers

Jim,

There is quite a bit of misinformation and completely false information in a memo dated July 13, 2023 from a few of our competitors in the Fargo area.

It is completely false that the land was sold to us contingent on no other tax incentives being used. In fact, it was just the opposite. The Park District has even made that public, that tax incentives would be prudent way for creating community programmable spaces and even came with EPIC to a city council meeting to discuss it. With a current tax base of zero on this land, it made sense.

The Park District chose EPIC over the other two bidders because we came with a vision, guaranteed public space of approximately 4 acres, and the Park District wanted input in the development of this land and didn't want a typical out lot and multi-family development. Two represented on that letter include PRG who initially bid only \$2,000,000, and Mark Buchholz whose price was very comparable to ours, but lacked the public amenities that EPIC Companies proposed, and had a taxable value less than half of what EPIC proposed. The land was never sold at a discount to EPIC. EPIC won the bid from the Park District because EPIC proposed to integrate our land into what the Park District is doing with the baseball complex long term and leaving nearly a quarter of the land for public use.

EPIC and the Park District agreed to maintaining public space. We were in favor of that as we have demonstrated time and time again that we are about creating public programmable spaces AND continuing to support them. **EPIC has a track record of award-winning projects and public amenities being developed across the state and we intend to complete our vision here.**

For this group to comment on other incentives shot down for more deserving projects is completely irrelevant and suggesting that future litigation could happen, or even retroactive approvals for projects that may not have even applied for incentives is senseless and unfortunate. Policies change, we need density and smart growth, and we feel our project makes sense!

Analyzing ways to fund the airport ramp has no relevance by our competitors as that is a public facility that has a completely different model. EPIC would always enjoy researching an efficient ramp under a public private partnership

I really regret that competitors feel the need to bash other competitors. Instead of supporting a project that will benefit the community and perhaps provide insight on a successful way to utilize incentives for public good through a qualified project, they are choosing to oppose it because of unsuccessful attempts of their own.

We appreciate feedback, but we would prefer it be true, and not trying to hinder what is good for the community as a whole because you lost the proposal of the land in the first place.

We live here together, we develop together, and we all want Fargo to continue to grow in an economic fashion that makes sense for all wage levels and demographics. Thank you for your time and service.

Sincerely,

Todd Berning  
 President



July 20, 2023  
**MEMORANDUM**

45

---

**To:** City Commission  
**From:** Tim Mahoney, Mayor and LAWA Chair  
**Subject:** Red River Valley Water Supply Project (RRVWSP) – Series D Interim Financing Agreement

---

Attached for your reference, please find a Series D Interim Financing Agreement related to the continuation of construction activities on strategic components of the RRVWSP. As you may recall, the Commission previously approved Interim Financing Agreements Series A, B and C for the start-up and continued construction on the RRVWSP. The parties to the Series A through C Interim Financing Agreements were the Garrison Diversion Conservancy District (GDGD), the Lake Agassiz Water Authority (LAWA) and the cities of Fargo and Grand Forks.

### Background

The RRVWSP is a project to deliver Missouri River water to the Red River Valley and central North Dakota. The project is necessary due to the susceptibility of existing water supplies under drought conditions. Thus, the project is critical for our region to establish climate resiliency during periods of drought.



Red River - 1930s



Red River - 1988

The project is being funded through a State and Local partnership with the GDGD representing the State of North Dakota and LAWA representing the local water users. Fargo, as a member of LAWA and a key sponsor of the RRVWSP, was previously asked to approve Series A, B and C Agreements to enable construction to begin on three strategic project components. The three components include the Missouri River Intake, Transmission Pipeline Segments and the Sheyenne River Discharge Structure. All necessary State and Federal permits for the construction had been obtained and it was important to get the project started in advance of the permits expiring.

### Series D Work Plan 2023 – 2025 Biennium

The Series D Interim Financing Agreement is for local cost-share participation associated with a 2023-2025 State funding allocation of \$180 million. The State allocation is subject to a 25% local cost-share match of \$60 million. GDCD is financing the local cost-share for the Series D work through an infrastructure revolving loan with the Bank of North Dakota. Cost estimates for Series D work plan items have been summarized below:

<b>Admin., Legal, Communications, Insurance, etc.</b>	\$2.50 million
<b>Property Acquisition, Easements, Crop Damage</b>	\$5.48 million
<b>Transmission Pipeline Segments:</b>	
▪ East Contract 5C	\$63.87 million
▪ East Contract 5D	\$69.95 million
▪ Contract 6A	\$63.30 million
▪ Contract 1	\$3.30 million
▪ East Contracts 4A and 4B	\$8.30 million
▪ Contract 7	\$4.30 million
<b>McClusky Canal Intake and Pumping Station</b>	\$0.80 million
<b>Biota Water Treatment Plant and Pumping Station</b>	\$3.20 million
<b>Hydraulic Break Tanks</b>	\$0.50 million
<b>PMIS Annual License Maintenance/Upgrades</b>	\$0.50 million
<b>Program Management</b>	\$1.00 million
<b>Negotiation and Outreach to Secure User Contracts</b>	\$2.50 million
<b>Asset Management &amp; Operations – Phase 3</b>	\$0.50 million
<b>Financial Planning Support</b>	\$0.50 million
<b>Contingency</b>	<u>\$13.50 million</u>
<b>Total</b>	<b>\$244.00 million</b>

(\$180M State, \$60M Local, \$4M Federal MR&I)

### Interim Financing Agreements – Series A and B

At the November 1, 2020, Commission meeting, the Commission approved Series A and B Interim Financing Agreements to allow for the start of construction on strategic components of the RRVWSP. The reason for the separate agreements was because each series was associated with a different State biennial funding commitment and cost-share percentage as shown below:

- Series A was associated with the 2017-2019 biennium and subject to a 10% local cost-share (\$1,115,327).
- Series B was associated with the 2019-2021 biennium and subject to a 25% local cost-share (\$1,447,781).

Fargo's share of the Series A and B local project cost-share was included in the annual Water Utility budget over three budget cycles in 2019, 2020 and 2021.

<u>Budget Year</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Budget Amount	\$850,000	\$900,000	\$800,000

**Interim Financing Agreements – Series C and D**

At the July 26, 2021, Commission meeting, the Commission approved a Series C Interim Financing Agreement for the continuation of construction on strategic components of the RRVWSP.

- Series C was associated with the 2021-2023 biennium and subject to a 25% local cost-share. GDCD is financing the local cost-share for the Series C work plan through an infrastructure revolving loan with the Bank of North Dakota. Fargo’s share of the local cost-share match will be in the form of equal annual debt service payments of \$553,669/yr.

A Series D Interim Financing Agreement is being requested at this time for continuation of construction activities on the RRVWSP.

- Series D is associated with the 2023-2025 biennium and subject to a 25% local cost-share. GDCD is financing the local cost-share for the Series D work plan through an infrastructure revolving loan with the Bank of North Dakota. Fargo’s share of the local cost-share match will be in the form of shaped annual debt service payments starting at \$1,247,669/yr. in 2024.

Fargo’s share of the Series C and D annual debt service has been included in the annual Water Utility budget over three budget cycles in 2022, 2023 and 2024 (proposed).

<u>Budget Year</u>	<u>2022</u>	<u>2023</u>	<u>2024 (Proposed)</u>
Budget Amount	\$700,000	\$700,000	\$1,000,000

**SUGGESTED MOTION**

Approve the attached Interim Financing Agreement Series D for Fargo’s portion of the 25% local cost-share for 2023-2025 construction activities associated with the Red River Valley Water Supply Project.

Your consideration in this matter is greatly appreciated.

- C: Mike Redlinger, City Administrator  
 Brenda Derrig, Assistant City Administrator  
 Troy Hall, Water Utility Director  
 Ian McLean, Assistant City Attorney  
 John Shockley, LAWA Attorney  
 Merri Mooridian, Garrison Diversion Conservancy District

DRAFT 5-17-23

---

**INTERIM FINANCING AGREEMENT  
SERIES D**

**BY AND BETWEEN  
GARRISON DIVERSION CONSERVANCY DISTRICT  
AND  
LAKE AGASSIZ WATER AUTHORITY  
AND  
CITY OF FARGO, NORTH DAKOTA  
AND  
CITY OF GRAND FORKS, NORTH DAKOTA**

**Dated as of May \_\_\_\_, 2023**

---

**TABLE OF CONTENTS**

**ARTICLE I. DEFINITIONS AND INTERPRETATION .....2**

**SECTION 1.01 DEFINITIONS.....2**

**SECTION 1.02 INTERPRETATION.....3**

**ARTICLE II. CONSTRUCTION CONTEMPLATED .....4**

**SECTION 2.01 INTENT.....4**

**SECTION 2.02 MEMBER ENTITY REPRESENTATIVE AND POINT OF CONTACT .....4**

**SECTION 2.03 PROJECT GENERALLY.....4**

**SECTION 2.04 CONTRACT INPUT .....4**

**ARTICLE III. COST SHARE COMPONENTS .....4**

**SECTION 3.01 COST SHARE FOR 2023-2025 BIENNIUM BUDGET .....4**

**SECTION 3.02 INITIAL COST RESPONSIBILITY .....5**

**SECTION 3.03 GARRISON DIVERSION WILL OBTAIN LOAN FOR LOCAL PROJECT COST.....5**

**SECTION 3.04 PAYMENT BY FARGO AND GRAND FORKS. ....5**

**SECTION 3.05 DEFERRED REPAYMENT FOR LAWA SMALL SYSTEMS. ....5**

**SECTION 3.06 REFUNDING .....76**

**SECTION 3.07 PROJECT RISKS.....76**

**SECTION 3.08 ASSIGNMENT .....76**

**ARTICLE IV. FINANCING AND INVOICING.....7**

**SECTION 4.01 FINANCING ADMINISTRATION .....7**

**SECTION 4.02 SEPARATE PROJECT FUND.....7**

**SECTION 4.03 INVOICES AND PAYMENT.....87**

**SECTION 4.04 DISPUTE .....87**

**ARTICLE V. OPERATIONS AND MAINTENANCE.....87**

**SECTION 5.01 GENERALLY .....87**

**SECTION 5.02 DISPUTES .....8**

**SECTION 5.03 O&M PLAN AND MANUAL .....8**

**ARTICLE VI. INSURANCE AND LIABILITY .....98**

**SECTION 6.01 PARTIES' INSURANCE .....98**

**SECTION 6.02 INSURANCE CONSULTANT RECOMMENDATION .....98**

**SECTION 6.03 LIABILITY.....98**

**ARTICLE VII. TERMINATION AND STAY .....9**

**SECTION 7.01 TERM .....9**

**SECTION 7.02 TERMINATION BY MUTUAL AGREEMENT .....9**

**SECTION 7.03 COST SHARE THRESHOLD.....9**

**ARTICLE VIII. MISCELLANEOUS.....9**

**SECTION 8.01 ENTIRE AGREEMENT .....109**

**SECTION 8.02 NOTICE .....109**

**SECTION 8.03 GOVERNING LAW .....10**

**SECTION 8.04 SEVERABILITY.....10**



<b>SECTION 8.05</b>	<b>MODIFICATIONS.....</b>	<b>10</b>
<b>SECTION 8.06</b>	<b>BINDING EFFECT.....</b>	<b>1140</b>
<b>SECTION 8.07</b>	<b>REPRESENTATION.....</b>	<b>1140</b>
<b>SECTION 8.08</b>	<b>HEADINGS.....</b>	<b>1140</b>
<b>SECTION 8.09</b>	<b>REPRESENTATION OF AUTHORITY.....</b>	<b>1140</b>
<b>SECTION 8.10</b>	<b>FORCE MAJEURE.....</b>	<b>1140</b>
<b>SECTION 8.11</b>	<b>COUNTERPARTS; ELECTRONIC SIGNATURES.....</b>	<b>11</b>
<b>SIGNATURE PAGES</b>	<b>.....</b>	<b>S-1 THROUGH S-4</b>

**EXHIBIT A – 2023-2025 BIENNIUM BUDGET FEATURES**

**EXHIBIT B – LOCAL COST SHARE DISTRIBUTION**

**INTERIM FINANCING AGREEMENT, SERIES D**

**THIS INTERIM FINANCING AGREEMENT, SERIES D** (the “Series D Agreement”), is entered this \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and between GARRISON DIVERSION CONSERVANCY DISTRICT, a governmental agency, body politic and corporate of the State of North Dakota (“Garrison Diversion”); LAKE AGASSIZ WATER AUTHORITY, a governmental agency, body politic and corporate of the State of North Dakota (“LAWA”); CITY OF FARGO, NORTH DAKOTA, a municipal corporation and political subdivision of the State of North Dakota (“Fargo”); and CITY OF GRAND FORKS, NORTH DAKOTA, a municipal corporation and political subdivision of the State of North Dakota (“Grand Forks”); individually, a “Party,” and collectively, the “Parties.”

**WHEREAS**, the State of North Dakota, acting through the legislature, created Garrison Diversion in order to, among other things, construct and operate the Garrison Diversion Unit (the “GDU”) of the Missouri River basin project, and to develop municipal, rural and industrial water supplies, irrigation and recreation. The legislature also authorized Garrison Diversion to acquire, construct, improve and own the Red River Valley Water Supply Project (the “Project”) and sell a bulk water supply to end users; and

**WHEREAS**, the State of North Dakota, acting through the legislature, created LAWA to, among other things, acquire, construct, improve, own, and utilize the Project, to store and distribute water to eastern and central North Dakota, and to provide for the supply and distribution of water to the people of eastern and central North Dakota through the bulk purchase of water from Garrison Diversion for beneficial and public uses; and

**WHEREAS**, the State of North Dakota, acting through the legislature, authorized LAWA to enter one or more contracts to acquire bulk water from Garrison Diversion; and

**WHEREAS**, Garrison Diversion intends to finance, construct, own and operate the Project, and thereafter to sell to LAWA, and LAWA intends to purchase from Garrison Diversion all or a portion of the water derived therefrom as determined in accordance with a Project Participation and Water Supply Agreement (“PPA”, which is currently being negotiated), as well as this, prior and possibly more future interim financing agreements for design, planning, construction and operations before the PPA is entered into; and

**WHEREAS**, Garrison Diversion and LAWA agree to have Garrison Diversion finance, construct, own and operate a water supply and distribution system that will ultimately convey water from the Missouri River and/or the GDU System to LAWA, with initial construction governed by the terms set forth herein; and

**WHEREAS**, the Parties have not completed negotiations of the PPA and are still identifying which entities will ultimately participate in the Project. Garrison Diversion, LAWA, Fargo, and Grand Forks enter this Series D Agreement subject to the ~~parties~~ Parties obligations in certain previous Project financing agreements, including the Cooperation Agreement dated May 8, 2020, the Interim Financing Agreement Series A dated November 15, 2020, the Interim Financing Agreement Series B dated November 15, 2020, and the Interim Financing Agreement Series C dated August 5, 2024. Through this Series D Agreement, the ~~parties~~ Parties wish to

continue with the construction contemplated in the 2023-2025 budget ("Project Costs," see Exhibit A) despite not having final agreements in place on the PPA; and

**WHEREAS**, Fargo and Grand Forks herein agree to pay a portion of the Local Project Cost based upon their proportion of water supply nominations for the RRVWSP. These payments are made by Fargo and Grand Forks on behalf of LAWA. Their respective payment obligations for Local Project Costs are identified on Exhibit B. LAWA or the remaining users who sign up for the Project besides Fargo and Grand Forks ("Small Systems"), will be obligated to pay the remaining Local Project Costs. The Bank of North Dakota has tentatively agreed to defer payments for the Small Systems until the PPA is finalized or until a future ~~Interim Financing Agreement~~ interim financing agreement is signed; and

**WHEREAS**, Garrison Diversion and LAWA entered into a Cooperation Agreement ~~dated May 8, 2020~~, which governs their general relationship. The terms of the Cooperation Agreement are incorporated herein by reference as if the terms are stated herein, and they apply to Fargo and Grand Forks in the same manner they apply to LAWA. If the specific terms of this Series D Agreement are inconsistent with the Cooperation Agreement in any manner, the terms of this Series D Agreement govern; and

**NOW THEREFORE**, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, Garrison Diversion, LAWA, Fargo, and Grand Forks agree as follows:

#### **ARTICLE I. DEFINITIONS AND INTERPRETATION**

**Section 1.01** DEFINITIONS. All capitalized terms used, and not otherwise defined herein, shall have the meanings given to them in this Series D Agreement and as defined in the Cooperation Agreement unless a different meaning clearly applies from the context.

"CFS" shall mean cubic feet per second.

"**Cooperation Agreement**" means an agreement entered into between Garrison Diversion and LAWA dated May 8, 2020, which governs their general relationship.

"**Debt Obligation**" means any loan, note, bond, credit facility or other security instrument issued by a ~~party~~ Party to this Series D Agreement to provide either temporary or permanent financing of the Project.

"**Interim Financing Agreement Series A**" means the Interim Financing Agreement, Series A, by and between Garrison Diversion, LAWA, City of Fargo, and City of Grand Forks, dated November 15, 2020.

"**Interim Financing Agreement Series B**" means the Interim Financing Agreement, Series B, by and between Garrison Diversion, LAWA, City of Fargo, and City of Grand Forks, dated November 15, 2020.

**“Interim Financing Agreement Series C”** means the Interim Financing Agreement, Series BC, by and between Garrison Diversion, LAWA, City of Fargo, and City of Grand Forks, dated August 5, 2021.

**“Interim Financing Agreement Series D” or “Series D Agreement”** shall mean this Agreement.

**“Project” or “RRVWSP”** means the Red River Valley Water Supply Project.

**“Project Development Agreement”** means a RRVWSP Project Development Agreement executed between LAWA and a Small System.

~~“Interim Financing Agreement Series D” or “Series D Agreement” shall mean this Agreement.~~

**Section 1.02** INTERPRETATION.

(a) The headings of articles and sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of this Series D Agreement. Any and all exhibits to this Series D Agreement are hereby incorporated by reference. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (ii) any reference herein to any person shall be construed to include such person’s permitted assigns, (iii) the words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to this Series D Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this Series D Agreement, and (v) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to and including.”

(b) This Series D Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Series D Agreement or some provision of it or because that Party relies on a provision of this Series D Agreement to protect itself. The Parties acknowledge and agree that this Series D Agreement has been prepared jointly by the Parties and has been the subject of arm’s length and careful negotiation, that each Party has been given the opportunity to independently review this Series D Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of this Series D Agreement. Accordingly, in the event of an

ambiguity in or dispute regarding the interpretation of this Series D Agreement, this Series D Agreement will not be interpreted or construed against the Party preparing it simply as a consequence of preparing it.

**ARTICLE II.  
CONSTRUCTION CONTEMPLATED**

**Section 2.01** INTENT. Throughout this Series D Agreement, Garrison Diversion, subject to reimbursement from LAWA member entities, agrees to finance the local cost share to allow for the continued development of the 2023-2025 Biennium work plan items. The budget for the 2023-2025 Biennium work plan items is attached as Exhibit B, and the items to be financed through this Series D Agreement from the 2023-2025 Biennium are identified in detail in Exhibit A.

**Section 2.02** MEMBER ENTITY REPRESENTATIVE AND POINT OF CONTACT. As indicated in the Cooperation Agreement, LAWA will work collaboratively with Garrison Diversion in the planning, construction, and operation and maintenance for the Project. Additionally, LAWA and LAWA Members will continue to negotiate the PPA with Garrison Diversion that addresses capital repayment and operation and maintenance agreements on the full Project, as well as a water supply component outlining the agreement and terms on which LAWA and/or its member entities will purchase a bulk water supply from Garrison Diversion. Regardless of which member entities participate in this Series D Agreement, LAWA will be the point of contact for the users and will represent all LAWA member entities in discussion. Garrison Diversion will apprise LAWA of any LAWA user meetings on the Project and offer LAWA an opportunity to participate. A representative of LAWA will attend all such user meetings.

**Section 2.03** PROJECT GENERALLY. As indicated in the Cooperation Agreement and unless otherwise agreed between the Parties, Garrison Diversion shall finance, design, build, construct, own, maintain, and operate the features contemplated by this Series D Agreement. Garrison Diversion, in cooperation with LAWA as identified herein, may choose to use any legally authorized project delivery method to design, construct, own, maintain, and/or operate the construction features, as agreed under the terms of this, past and future agreements.

**Section 2.04** CONTRACT INPUT. As indicated in the Cooperation Agreement, Garrison Diversion will present all draft contracts and consultant task orders to LAWA for review and seek input from LAWA on the terms of the agreements and financial considerations. The provisions governing Garrison Diversion and LAWA engagement provided in the Cooperation Agreement apply to this Series D Agreement and are not restated herein, including those provisions governing contracts, task orders, consultant communication, and decision-making.

**ARTICLE III.  
COST SHARE COMPONENTS**

**Section 3.01** COST SHARE FOR 2023-2025 BIENNIUM BUDGET. The North Dakota Legislature provided a grant for the Project during the 2023-2025 Biennium that authorized a budget of \$180 million in State funding, subject to a seventy-five percent (75%) cost share of eligible costs, with the remainder paid by local entities. Garrison Diversion will obtain LAWA's



approval of task orders that will obligate local cost share payments under this Section. After obtaining LAWA's approval of task orders and construction contracts, Garrison Diversion will diligently pursue the work contemplated thereunder. Garrison Diversion will manage contracts and consultants. Garrison Diversion will initially pay all related costs, subject to seventy five percent (75%) reimbursement from the State. The Local Project Cost will consist of the local 25% cost share of reimbursable costs plus any non-reimbursable costs.

**Section 3.02 INITIAL COST RESPONSIBILITY.** This Series D Agreement solely addresses the Parties' responsibilities for their share of the initial costs associated with and limited to the specific categories identified in Exhibit A through the later of (1) June 30, 2025, if budgeted funds are expended by that date or (2) thereafter if the completion of the scope of work extends beyond that date and so long as there are budgeted funds available to complete the approved budget items.

**Section 3.03 GARRISON DIVERSION WILL OBTAIN LOAN FOR LOCAL PROJECT COST.** As set forth herein, Garrison Diversion is responsible for initially financing the Local Project Costs. To pay for the Local Project Costs, Garrison Diversion will obtain a loan from the Bank of North Dakota. The legislatively authorized repayment terms of the Bank of North Dakota loan will include a 40 year loan repayment term and 2 percent interest rate. Garrison Diversion is actively seeking a shaped debt repayment schedule in consultation with Fargo and Grand Forks. Garrison Diversion is also seeking a deferred repayment schedule for the pro ~~rated~~ rated share of the loan payments attributed to the Small Systems' Local Project Costs, as is outlined in Exhibit D of the Draft PPA. The final loan terms and repayment schedule will be identified in an Addendum to this Series D Agreement when the loan package is finalized. The Parties understand and agree that Fargo and Grand Forks will repay their respective proportion of Garrison Diversion's cost of financing and the interest paid on the loan as part of their payment obligations to Garrison Diversion, which will be included in the referenced Addendum.

**Section 3.04 PAYMENT BY FARGO AND GRAND FORKS.** Fargo and Grand Forks will each reimburse Garrison Diversion for their proportion of Local Project Costs, subject to the maximums identified in Exhibit B, plus costs identified in Section 3.03. Once the loan payment schedule is established in the Addendum, Fargo and Grand Forks will be responsible for payment of their proportionate share of each loan payment, to be paid at least ten (10) calendar days in advance of Garrison Diversion's loan payment due date. Fargo will make payment to Garrison Diversion amounting to 66.74% of each loan payment due. Grand Forks will make payments amounting to 14.42% of each loan payment due. All payments made by Fargo and Grand Forks will be deemed to be made on behalf of LAWA and will extinguish Fargo and Grand Forks' contribution requirements for Local Project Costs on behalf of LAWA. Fargo and Grand Forks do not have the authority to seek reimbursement from the other LAWA member entities for the funds they pay pursuant to this Series D Agreement.

**Section 3.05 DEFERRED REPAYMENT FOR LAWA SMALL SYSTEMS.**

A. Garrison Diversion agrees to pay for and carry 18.84% of the Local Project Cost obligations on behalf of all LAWA members besides Fargo and Grand Forks (the "Small Systems"), subject to the maximum identified in Exhibit B ("Small System Obligations"). Garrison Diversion, however, has been working with the Bank of North Dakota to allow deferred

repayment of the portion of the loan attributed to the Small Systems, ~~which is 18.84% of the Local Project Cost obligations on behalf of all LAWA members besides Fargo and Grand Forks, subject to the maximum identified in Exhibit B ("Small System Obligations").~~ The portion of the loan subject to deferred repayment of the Small System Obligations ~~are~~is and will remain a debt of LAWA.

B. The Parties agree that the funds drawn down from the Bank of North Dakota loan will be first allocated to those portions assigned to Fargo and Grand Forks. As a result, from initial draws, Fargo will be responsible for 82.23% of the debt service and Grand Forks will be responsible for 17.77% of the debt service until each has reached its maximum contribution as set forth on Exhibit B. Once a maximum contribution has been met, any draws will be allocated between Fargo or Grand Forks, whichever has a remaining contribution to be made, at the percentage set forth in this subsection and the Small Systems. Garrison Diversion will notify Fargo and Grand Forks whenever a draw is made that will have allocation assigned to the Small Systems.

C. The Small System Obligations will be reallocated to the participating Small Systems upon finalization of the PPA or as otherwise agreed to in a future interim agreement. At that time, unless otherwise agreed to, the Small System Obligations, along with any other debt advanced by Fargo, Grand Forks, and Garrison Diversion on behalf of LAWA's other members in past ~~Interim Financing Agreements~~interim financing agreements will be equitably reallocated to all participating LAWA member based upon their final nominations in the PPA. The amount subject to reallocation to Small Systems will include Local Project Costs and the Small System's prorated financing costs referenced in Section 3.03. If Small Systems do not sign the ~~Project Participation Agreement~~PPA during this initial contracting period, any future PPA with Small Systems will also be subject to an assessment of an Administrative Fee. The Administrative Fee will be calculated as an additional ten percent (10%) above the Small Systems' pro rata share of the Local Project Costs incurred by others on the Small Systems' behalf in the Interim Financing Agreements Series A, B, C, or D. The pro rata share will be a percentage of the Small Systems' water nomination as compared to the entire amount nominated by all entities as of that time, unless otherwise agreed to by the Parties hereto. Any Administrative Fee collected will be used for Project expenses. Garrison Diversion will not charge interest or other financing costs to LAWA for the Small Systems Obligations.

D. If, after the final execution of the PPA, an original ~~Participant~~Small System nomination from the Project Development Agreement is reduced or if ~~Participants~~a Small System ~~elects~~elects to no longer participate in the ~~project~~Project, ~~their~~its nomination will be reallocated to reserve capacity. As currently contemplated in the draft PPA, the reallocation of nominations to reserve capacity reassigns the nominations to a particular user group and a payment tier level based upon how that nomination could be used in the future. The remaining users will be required to pay for the reserve capacity proportional to their tiered allocation percentage until it can be sold and reallocated in the future at the higher cost share based on the updated user group and tier assignment.

E. Upon the expiration of ~~the~~a Bank of North Dakota deferred payment period, if applicable, relating to the Small ~~Users~~Systems, if no PPA or further interim financing agreement is in place, the payment to Garrison Diversion for the Small Systems' portion of loan payments to

Bank of North Dakota will be obligations of LAWA. LAWA may use whatever method it chooses to allocate and/or assess those costs to its members.

F. The Parties agree that Garrison Diversion may market and sell those water nominations to any third party at any rate, so long as Garrison Diversion, Grand Forks and Fargo are reimbursed any prior costs advanced on behalf of the nominations, including costs advanced in the Cooperation Agreement ~~costs~~, as well as ~~Interim Financing Agreement~~ Interim Financing Agreements Series A, B, and C and to the extent any LAWA member is ultimately assessed for a portion of the Small System expenses arising from this ~~Interim Financing Agreement~~ Series D Agreement.

**Commented [KJ51]:** If the reserve capacity is no longer being held in Garrison Diversion's name, is Garrison Diversion still working to market and sell that reserve capacity?

**Section 3.06 REFUNDING.** Fargo and Grand Forks agree that the funds they pay pursuant to this Series D Agreement are non-refundable in any and all cases except in the event Garrison Diversion does not award a contract for the construction of the infrastructure described in Exhibit A. If no construction contract is issued or if the Project is delayed indefinitely, as determined by Garrison Diversion and LAWA, Garrison Diversion will return any remaining unused funds remitted to Fargo and Grand Forks.

**Section 3.07 PROJECT RISKS.** The Parties acknowledge and agree that there are a number of risks, any or all of which could occur, that could have the effect of increasing the cost of the Project and/or delaying and/or terminating the Project. This includes, by way of illustration and not limitation, the following: (i) litigation; (ii) court order; (iii) changes in legislation affecting the Project, LAWA, and/or the Garrison Diversion; (iv) environmental risks; (v) increased labor costs or costs of materials; (vi) the need to obtain Federal approvals, Federal permits, or additional Federal environmental review; (vii) the Federal Government's decision regarding any permitting or approvals required for the Project; (viii) a change in the State of North Dakota's financial ability to fund its portion of the Project; (ix) climate change and variability; and (x) political interference at the local, state, federal, or tribal level. That said, any increase in the identified budgeted costs would require approval of the LAWA Board and Garrison Diversion.

**Section 3.08 ASSIGNMENT.** This Series D Agreement (and any interest herein or hereunder) may not be assigned, transferred, pledged, hypothecated, or encumbered without the prior written consent of the other Parties.

#### ARTICLE IV. FINANCING AND INVOICING

**Section 4.01 FINANCING ADMINISTRATION.** Garrison Diversion will lead planning, design, construction, operation and maintenance of the items that are subject to this Series D Agreement. Garrison Diversion will advance funds for the initial work, subject to reimbursement from the State and LAWA through Fargo, Grand Forks, and possibly other LAWA members that become obligated through future agreements. Fargo, Grand Forks, and other LAWA members will use whatever sources of funds available to them to make payments, with no expectation that they will issue Debt Obligations.

**Section 4.02 SEPARATE PROJECT FUND.** Garrison Diversion has a Project Fund for the financial administration of the Project. The Project Fund is a separate fund used by Garrison

Diversion only to pay costs and expenses that, under accepted accounting practices, constitute costs necessarily incurred to construct the Project, including but not limited to land, easements, buildings, structures, administration costs, office space, vehicle costs, and all other costs related to Project implementation, along with machinery and equipment, and the cost of all architectural, engineering, legal and other professional services, printing and publication, and other costs reasonable, necessary, and incidental thereto, including issuance costs as it relates to the work contemplated under this Series D Agreement.

**Section 4.03 INVOICES AND PAYMENT.** If any contractor invoices are due prior to the Bank of North Dakota loans being funded, Garrison Diversion will pay the contractor invoice and remit the same to Fargo and Grand Forks for payment of their respective share of each invoice. The amount included in invoices will not exceed the respective maximum amounts included on Exhibit B. Subject to any dispute by Fargo or Grand Forks, each will remit payment on an invoice for any undisputed balance within thirty (30) calendar days after receiving an invoice.

**Section 4.04 DISPUTE.** If Fargo or Grand Forks disputes any portion of a Garrison Diversion invoice, any undisputed portion of the invoice must be paid within thirty (30) calendar days of the receipt of invoice. For any portion of an invoice in dispute, the disputing party must provide an explanation in writing regarding the specific basis of the dispute. Garrison Diversion will review the explanation and provide a written response within thirty (30) calendar days of the receipt of the disputing party's explanation. If the Parties' staff members are unable to help the Parties reach consensus, representatives of each Party will follow the dispute resolution process outlined in the Cooperation Agreement.

#### **ARTICLE V. OPERATIONS AND MAINTENANCE**

**Section 5.01 GENERALLY.** While the PPA will govern the responsibility for operation and maintenance (O&M) of the Project when the PPA is executed, this Series D Agreement addresses any interim O&M needs that arise relating to the projects constructed pursuant to this Series D Agreement. Garrison Diversion will be responsible for conducting all operation and maintenance required for any portion of the Project constructed prior to the PPA effective date and through the term of this Series D Agreement. The O&M expenses will be presented in an annual work plan and budget, brought to LAWA as provided in the Cooperation Agreement. LAWA may choose to task the Technical Advisory Committee to review the O&M Plan and annual work plan. The annual O&M costs will be invoiced to LAWA as part of the monthly payments after the infrastructure on Exhibit A is completed. The Parties will enter future interim financing agreements setting forth the structure of these monthly payments.

**Section 5.02 DISPUTES.** If there is a dispute between any Parties regarding deferred maintenance or the need for changes to operation, maintenance or repairs, the provisions of the Cooperation Agreement at Section 3.05 will govern the resolution of the dispute.

**Section 5.03 O&M PLAN AND MANUAL.** At least six (6) months prior to the first Project Element Service Commencement Date, Garrison Diversion and LAWA shall collaborate to draft a plan and manual for operations and maintenance of the particular items constructed pursuant to this Series D Agreement ("Plan and Manual"). The Technical Advisory Committee will be

consulted and provide input on this Plan and Manual. The Plan and Manual will continue to be supplemented as new Project infrastructure comes online. Once a draft Plan and Manual is completed, Garrison Diversion and LAWA will submit the draft Plan and Manual to Garrison Diversion and LAWA for approval using the decision-making protocol in Section 3.05 of the Cooperation Agreement to obtain approval of the Plan and Manual.

**ARTICLE VI.  
INSURANCE AND LIABILITY**

**Section 6.01 PARTIES' INSURANCE.** Garrison Diversion is working with AON as an insurance consultant, who is providing advice on the insurance limitations to be included in each RRVWSP construction contract. Garrison Diversion will require reasonable insurance limits for all contractors working on the infrastructure described herein. Garrison Diversion will also insure the herein described infrastructure, with the insurance costs classified as an O&M expense to the Project. In addition, all Parties will maintain their own adequate political subdivision liability insurance coverage, as well as coverage for officers and directors.

**Section 6.02 INSURANCE CONSULTANT RECOMMENDATION.** Once the insurance consultant recommends coverages and limits, Garrison Diversion and LAWA will approve the construction documents that include coverage limits for the infrastructure herein described, which will be charged as an expense both during and after construction.

**Section 6.03 LIABILITY.** The funding provided through this Series D Agreement does not create any liability for LAWA, Fargo or Grand Forks as an owner of the Project. LAWA, Fargo and Grand Forks will be named as additional insureds on the construction contracts that are funded by this Series D Agreement.

**ARTICLE VII.  
TERMINATION AND STAY**

**Section 7.01 TERM.** This Series D Agreement will be valid through June 30, 2025, or until the funds authorized and approved hereunder are spent on the identified construction expenses, whichever occurs later.

**Section 7.02 TERMINATION BY MUTUAL AGREEMENT.** The Parties may mutually agree, in writing, to terminate this Series D Agreement. Any and all payments due and owing by Fargo and Grand Forks at the time of termination of this Series D Agreement must be fully paid before Fargo's and Grand Forks' responsibility to make payments hereunder will terminate. LAWA will remain responsible for any deferred payments incurred by Garrison Diversion and paid or due and owing to the Bank of North Dakota.

**Section 7.03 COST SHARE THRESHOLD.** The Cost Share Threshold termination provision of the Cooperation Agreement does not apply to this Series D Agreement.

**ARTICLE VIII.  
MISCELLANEOUS**



**Section 8.01** ENTIRE AGREEMENT. This Series D Agreement contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof, and this Series D Agreement supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to the subject matter of this ~~Interim Financing Agreement~~ Series D Agreement. This Series D Agreement incorporates all provisions of the Cooperation Agreement between LAWA and Garrison Diversion, as if all provisions were included herein unless a contrary provision is included herein.

**Section 8.02** NOTICE. All notices under this Series D Agreement will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses:

If to Garrison Diversion:      General Manager  
   Garrison Diversion Conservancy District Headquarters  
   PO Box 140  
   Carrington, ND 58421

If to LAWA:                      LAWA Board Chair  
   Lake Agassiz Water Authority  
   PO Box 140  
   Carrington, ND 58421

If to Fargo:                      City Administrator  
   Fargo City Hall  
   225 4<sup>th</sup> St. N  
   Fargo, ND 58102

If to Grand Forks:              City Administrator  
   Grand Forks City Hall  
   255 N 4<sup>th</sup> St.  
   Grand Forks, ND 58203

**Section 8.03** GOVERNING LAW. This Series D Agreement shall be controlled by the laws of the State of North Dakota. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this Series D Agreement shall be venued in Cass County in the State of North Dakota, and the Parties waive any objection to personal jurisdiction.

**Section 8.04** SEVERABILITY. Each provision, section, sentence, clause, phrase, and word of this Series D Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Series D Agreement.

**Section 8.05** MODIFICATIONS. Any modifications or amendments to this Series D Agreement must be in writing and signed by all Parties to this Series D Agreement.

**Section 8.06** BINDING EFFECT. This Series D Agreement shall be for the benefit of, and may be enforced only by, the Parties and is not for the benefit of, and may not be enforced by any third party.

**Section 8.07** REPRESENTATION. The Parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Series D Agreement, and agree they have not been influenced by any representations or statements made by any other parties.

**Section 8.08** HEADINGS. Headings in this Series D Agreement are for convenience only and will not be used to interpret or construe its provisions.

**Section 8.09** REPRESENTATION OF AUTHORITY. Each Party signing this Series D Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Series D Agreement and that the Series D Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

**Section 8.10** FORCE MAJEURE. A Party shall not be held responsible for any delay or failure in performance of any part of this Series D Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected Party will notify the other Parties in writing within ten (10) calendar days after the beginning of any such cause that would affect its performance. Notwithstanding, if a Party's performance is delayed for a period exceeding thirty (30) calendar days from the date the other Parties receive notice under this section, the non-affected Parties will have the right, without any liability to the other Parties, to terminate this Series D Agreement. Ongoing litigation and any construction injunction do not qualify as force majeure events.

**Section 8.11** COUNTERPARTS; ELECTRONIC SIGNATURES. This Series D Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

**IN WITNESS WHEREOF**, Garrison Diversion, LAWA, Fargo, and Grand Forks caused this Series D Agreement to be executed.

*(Remainder of page intentionally left blank.)*

*Signature Page for the Garrison Diversion Conservancy District*

The governing body of the Garrison Diversion Conservancy District approved this Series D Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

GARRISON DIVERSION  
CONSERVANCY DISTRICT, a  
governmental agency, body politic and  
corporate

By: \_\_\_\_\_  
Alan Walter, Chair

ATTEST:

\_\_\_\_\_  
Secretary

*Signature Page for the Lake Agassiz Water Authority*

The governing body of the Lake Agassiz Water Authority approved this Series D Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

LAKE AGASSIZ WATER AUTHORITY, a  
governmental agency, body politic and  
corporate

By: \_\_\_\_\_  
Dr. Timothy Mahoney, Chair

ATTEST:

\_\_\_\_\_  
Secretary

*Signature Page for the City of Fargo*

The governing body of the City of Fargo approved this Series D Agreement on the \_\_\_\_\_ day  
of \_\_\_\_\_, 2023,

City of Fargo, a governmental agency, body  
politic and corporate

By: \_\_\_\_\_  
Dr. Timothy Mahoney, Mayor

ATTEST:

\_\_\_\_\_  
Secretary

*Signature Page for the City of Grand Forks*

The governing body of the City of Grand Forks approved this Series D Agreement on the \_\_\_\_\_  
day of \_\_\_\_\_, 2023.

City of Grand Forks, a governmental  
agency, body politic and corporate

By: \_\_\_\_\_  
Brandon Bochenski, Mayor

ATTEST:

\_\_\_\_\_  
Secretary





**EXHIBIT B**  
**Local Project Cost Distribution**

Legislatively Approved State Grant: \$180 million

Local Cost Share Required: \$60 million

Local Cost Responsibility:

	TOTAL ALLOCATION	YEAR 1 - TOTAL ANNUAL PAYMENT	DEFERRED P&I (2-YEARS)
Fargo	\$40,046,460	\$1,463,928	-
Grand Forks	\$8,650,907	\$316,240	-
Garrison Diversion	-	-	-
Small Users – Deferred	\$11,302,634	-	\$826,352



**RED RIVER VALLEY  
WATER SUPPLY PROJECT**


Serving the Water Supply Needs of Central North Dakota and the Red River Valley

# RRWSP PROJECT FUNDING AND FINANCING UPDATE


JULY 12, 2023





## DISCUSSION OVERVIEW

- 

**PROJECT FUNDING UPDATE AND 2023-2025 WORK PLAN REVIEW**

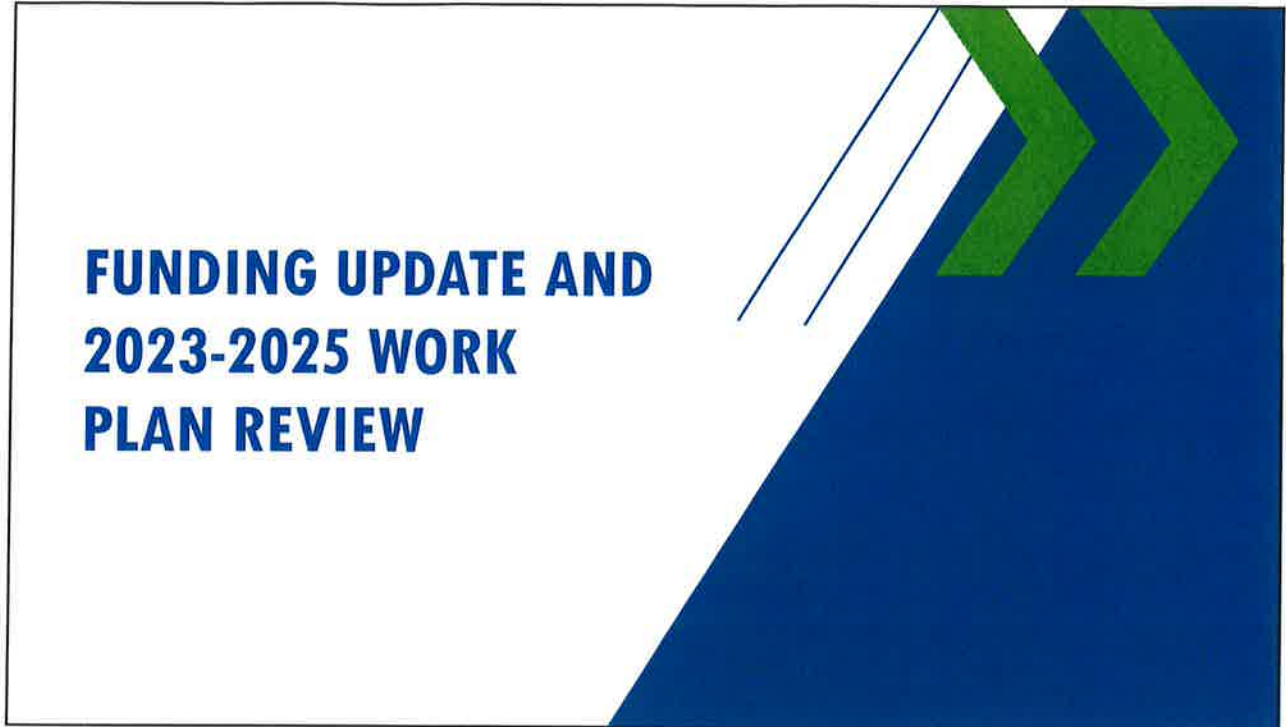
.....
- 

**STATE WATER COMMISSION COST-SHARE APPLICATION**

.....
- 

**BANK OF NORTH DAKOTA 'SERIES D' WIRLF LOAN APPLICATION**

RED RIVER VALLEY WATER SUPPLY PROJECT | 2



## SENATE BILL 2020 2023 LEGISLATIVE SESSION

23.0274 01000  
Sixty-eighth  
Legislative Assembly  
of North Dakota  
Introduced by  
Appropriations Committee

**SENATE BILL NO. 2020**

SIGNED  
BY  
GOVERNOR

1 A BILL for an Act to provide an appropriation for delisting the  
2 water resources.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 SECTION 1. APPROPRIATION. The funds provided in this section  
5 as they be necessary, are appropriated from several funds derived from  
6 income, to the department of water resources for the purpose of delisting the  
7 department of water resources, for the biennium beginning July 1, 2023, and ending July 1,  
8 2025, as follows.

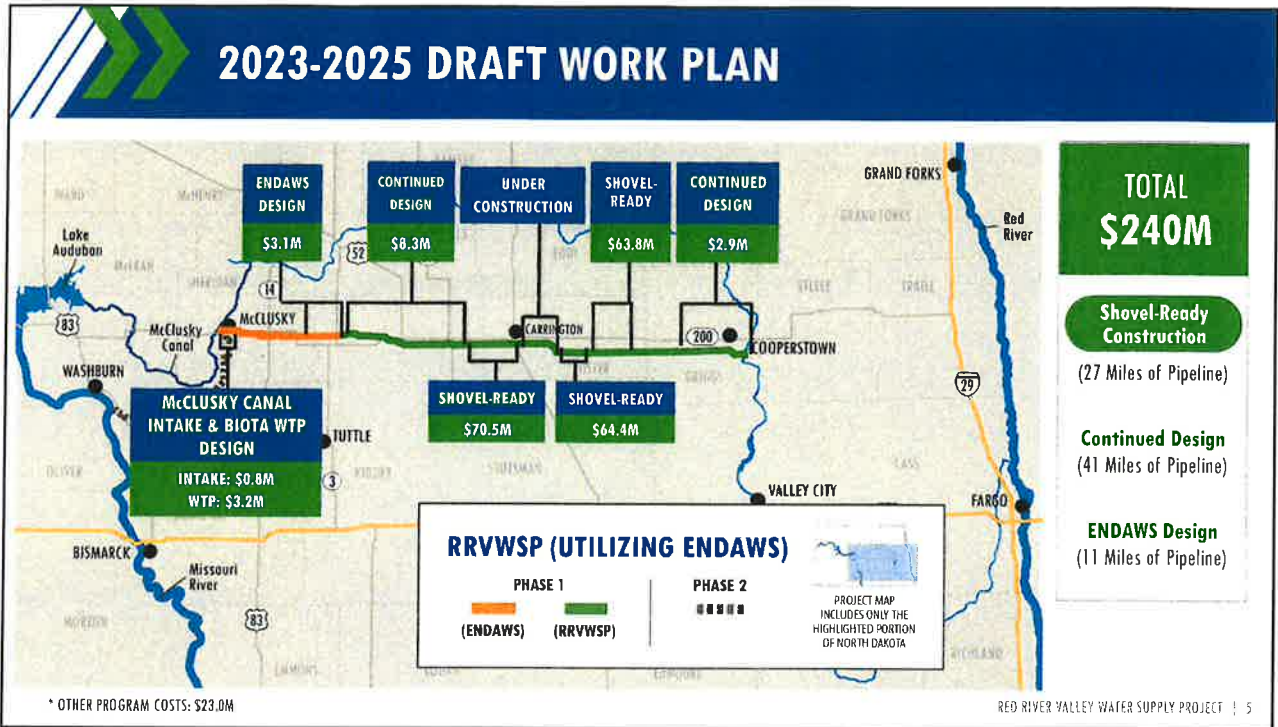
	State Detail	Reappropriation	Appropriation
10			
11	Salaries and wages	\$70,537,867	\$23,809,876
12	Operating expenses	43,386,550	59,419,088
13	Capital assets	98,487,437	172,398,344
14	Water supply - grants	125,000,000	270,000,000
15	Rural water supply - grants	59,600,000	35,000,000
16	Flood control projects	48,000,000	115,000,000
17	Discretionary fund for water projects	0	5,000,000
18	General water - grants	14,222,275	15,222,275
19	Total special funds	\$490,196,129	\$699,919,580
20	Public law equivalent positions	92,000	92,000
21	SECTION 2. ONE-TIME FUNDING. The following amounts reflect one-time funding items		
22	approved by the sixty-seventh legislative assembly for the 2021-23 biennium		
23	One-Time Funding DEM/3600	182,121	202,235
24	Line of total - State of North Dakota	182,121	202,235

Page No 1      23.0274 01000

### SECTION 10. RRVWSP


- › \$180M for 23-25 Biennium
- › \$953M Total State Commitment @ 75% Cost-Share
- › Capitalized WIRLF \$60M for 40 Years at 2%
- › Commitment Based on 10-Year Build Utilizing ENDAWS

RED RIVER VALLEY WATER SUPPLY PROJECT | 4



# SWC COST-SHARE APPLICATION OVERVIEW

## SWC COST-SHARE APPLICATION OVERVIEW



- **\$180M COST-SHARE APPLICATION**  
Completed & Submitted June 26<sup>th</sup>
- **PRELIMINARY SWC REVIEW**  
July 13<sup>th</sup> Pre-Meeting
- **FINAL REVIEW/APPROVAL BY SWC**  
August 10<sup>th</sup> SWC Meeting

RED RIVER VALLEY WATER SUPPLY PROJECT | 7

## SERIES D LOAN APPLICATION OVERVIEW





## SERIES D AND FUTURE SERIES OVERVIEW

1. SERIES D AND FUTURE SERIES LOAN NEEDS
2. DEBT STRUCTURE ALTERNATIVES
 

Traditional Level-Debt Repayment

Traditional Shaped Principal Repayment
3. ALTERNATIVE STRUCTURES OFFERED BY BND
4. SERIES D NEXT STEPS

RED RIVER VALLEY WATER SUPPLY PROJECT | 9

## INTERIM AGREEMENTS

### INTERIM AGREEMENTS

**BETWEEN GARRISON DIVERSION & LAWA, THROUGH FARGO & GRAND FORKS**

Will Fund the Local Share of Ongoing Work

- Fargo, Grand Forks, and Garrison Diversion are pre-paying these expenses, subject to later reimbursement by project participants.
- Currently working on a **Project Participation Agreement** and **Water Supply Agreement** to identify all final project participants.

RED RIVER VALLEY WATER SUPPLY PROJECT | 10

## PURPOSE OF INTERIM AGREEMENTS

<p><b>SERIES A</b> Funds the 10% Local Share up to \$1,444,444</p>	<p>Early Out Construction on the Intake, Pipeline and Discharge Structure</p>
<p><b>SERIES B</b> Funds the 25% Local Share up to \$2,050,000</p>	<p>Continued Design, Permitting, Construction Support, Financial Planning and Project Development</p>
<p><b>SERIES C</b> Funds the 25% Local Share up to \$22,430,000</p>	<p>Continued Construction, Land &amp; Easements, and Project Development</p>
<p><b>SERIES D</b> Funds the 25% Local Share up to \$60,000,000</p>	<p>Continued Construction, Final Design, Land &amp; Easements, and Project Development</p>

RED RIVER VALLEY WATER SUPPLY PROJECT | 11

## SERIES D AND FUTURE SERIES LOAN NEEDS

1. Legislative Intent established to fund **\$953M** for RRVWSP Utilizing ENDAWS Project Alternative
2. Local Share of **\$318M** will be required to provide 25% local cost-share requirement through 2031-2033 Biennium
3. Projected 'Series D' through 'Series H' Principal Balances:


BIENNIUM	23-25	25-27	27-29	29-31	31-33
Loan Series	D	E	F	G	H
Principal Loan Balance	\$60.0 M	\$73.7 M	\$79.0 M	\$84.6 M	\$20.5 M

RED RIVER VALLEY WATER SUPPLY PROJECT | 12

## DEBT STRUCTURE ALTERNATIVES

**TRADITIONAL LEVEL-DEBT REPAYMENT WITH 2-YEAR SMALL USER DEFERRAL:**

1. Traditional Loan Structure Like Series C
2. Proposed Repayment Structure
  - > **40-year Term**  
(2-year P&I deferral of 18.64% for Series D)
  - > **2% Interest Rate**



RED RIVER VALLEY WATER SUPPLY PROJECT | 13

## DEBT STRUCTURE ALTERNATIVES

### TRADITIONAL LEVEL-DEBT REPAYMENT

**PROPOSED REPAYMENT SCHEDULE ILLUSTRATION - 'SERIES D' THROUGH 'SERIES H':**

Series D

Total Repayment in Millions

■ Principal ■ Interest

Series D through H

Total Repayment in Millions

■ Series D ■ Series E ■ Series F ■ Series G ■ Series H

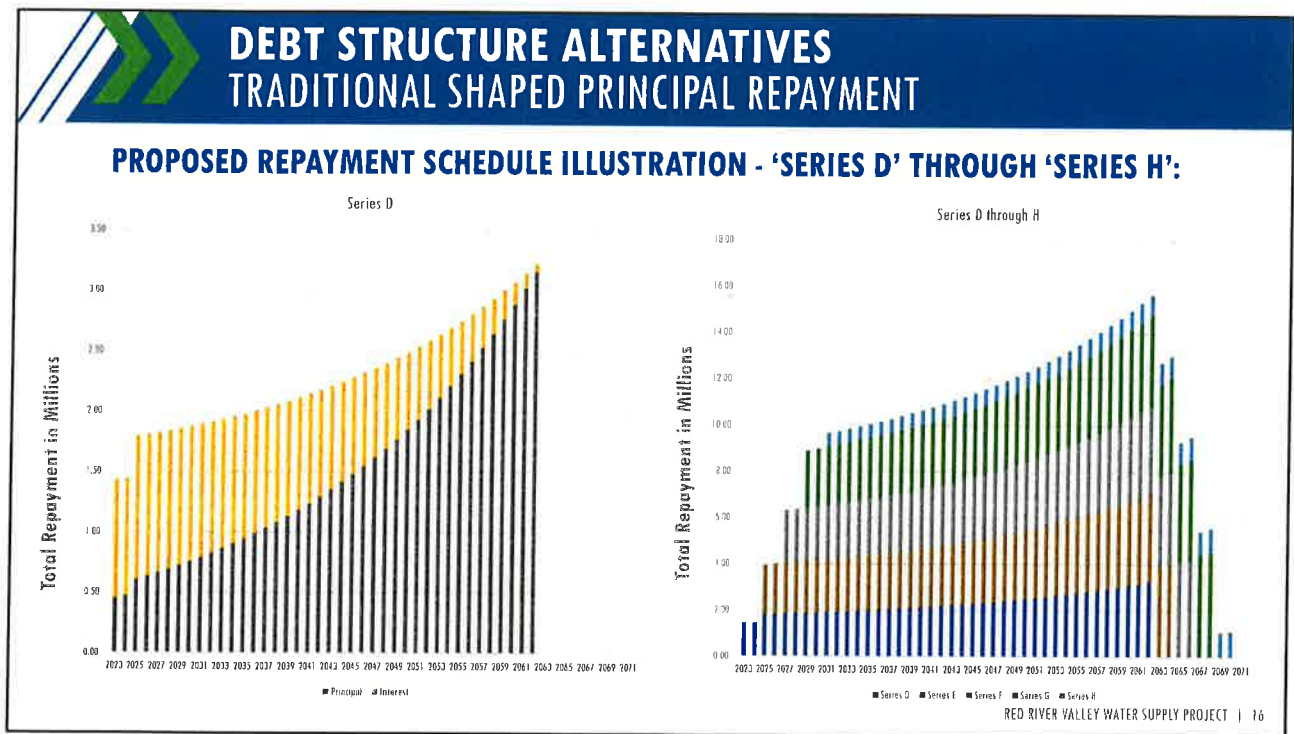
RED RIVER VALLEY WATER SUPPLY PROJECT | 14

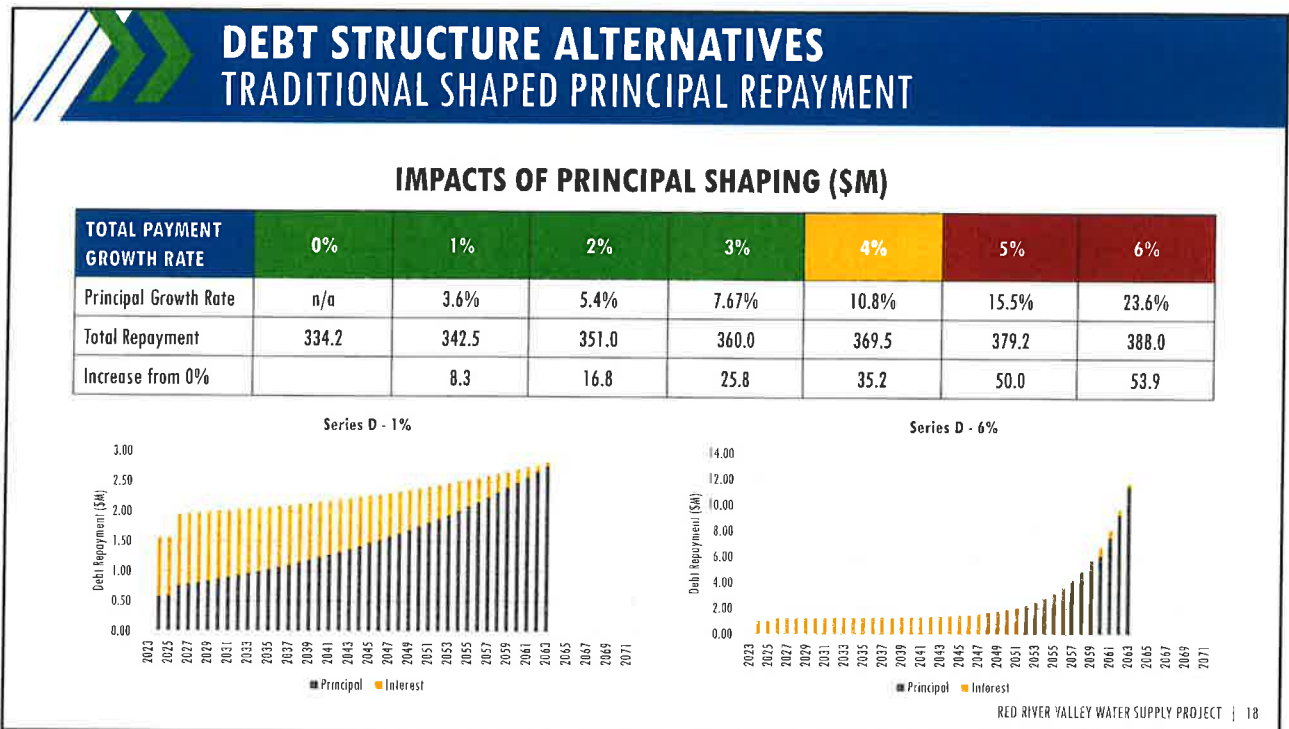
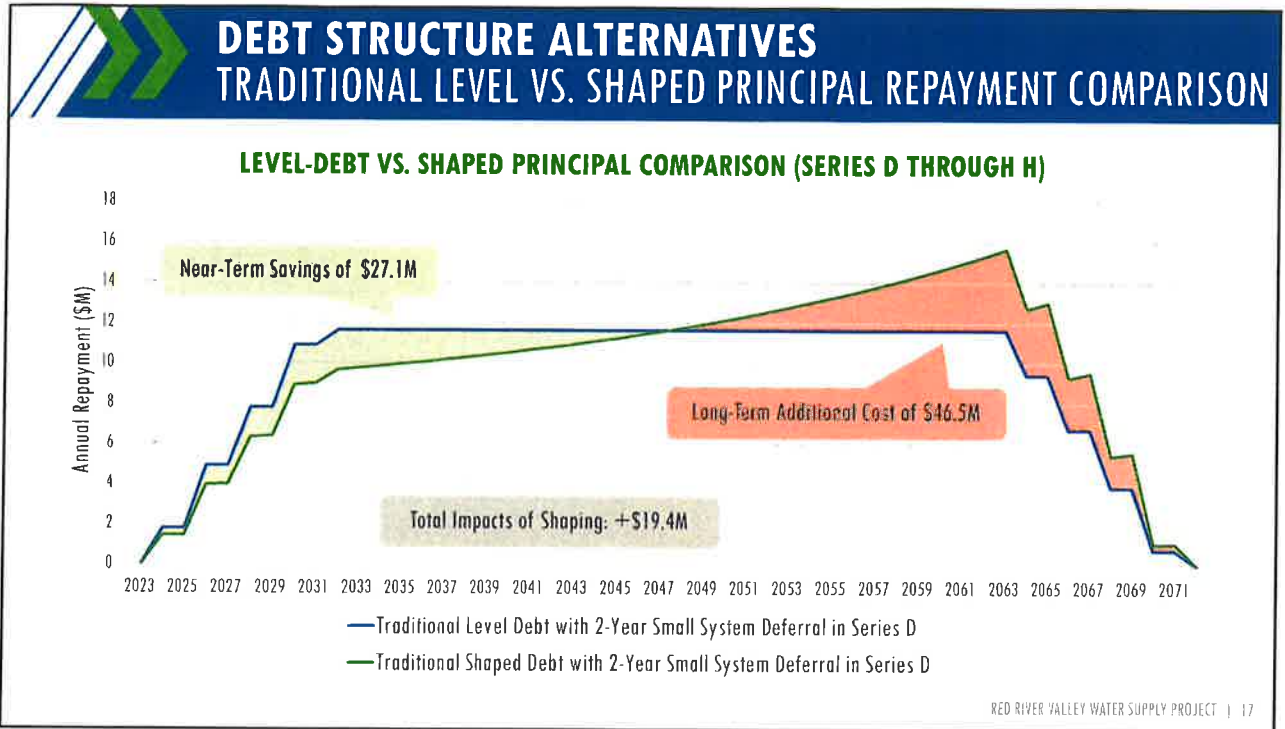
## DEBT STRUCTURE ALTERNATIVES

### TRADITIONAL SHAPED PRINCIPAL REPAYMENT WITH 2-YEAR SMALL USER DEFERRAL:

1. Reshape Payment to Allow Systems to “Grow” Into Debt Service
2. Initial Principal Repayment Set to Match, As Best Possible, Fargo/GF Growth Curves
3. Proposed Repayment Structure
  - > **40-year Term**  
(2-year P&I deferral of 18.64% for Series D)
  - > **2% Interest Rate**
  - > **Total combined P&I Payment Growth of Approximately 1.5% per year**

RED RIVER VALLEY WATER SUPPLY PROJECT | 15







## BND POTENTIAL ALTERNATIVE STRUCTURES

**IN ADDITION TO THE INITIAL STRUCTURES ANALYZED,  
BND HAS ALSO SUGGESTED OTHER OPTIONS FOR LOAN STRUCTURING**

### OPTIONS UNDER REVIEW

#### **BND ALTERNATIVE A:**

- 40-years / 2%
- 2-year 100% Repayment Deferral
- Interest Only — years 3 through 5
- Shaped Repayment years 6 through 40

#### **BND ALTERNATIVE B:**

- 40-years / 2%
- 2-year 100% Repayment Deferral
- Shaped Repayment years 3 through 40

RED RIVER VALLEY WATER SUPPLY PROJECT | 19

## SERIES D — NEXT STEPS

- Loan application completed and submitted June 26<sup>th</sup>

---

- Series D Agreement review and approval by Fargo City Commission and Grand Forks City Council in July. The City of Fargo, the City of Grand Forks and Garrison Diversion are working through the financing of the 18% of local share attributed to the small users.

---

- Preliminary SWC Review — July 13<sup>th</sup> Pre-meeting

---

- Loan application review by SWC — August 10<sup>th</sup>

---

- Final Underwriting and Loan Closing Early Fall 2023


RED RIVER VALLEY WATER SUPPLY PROJECT | 20



46

MEMORANDUM

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: MAYOR TIMOTHY J. MAHONEY** 

**DATE: JULY 24, 2023**

**SUBJECT: APPOINTMENT TO THE SPECIAL ASSESSMENT COMMISSION**

The term of Steve Bladholm on the Special Assessment Commission expired on July 1, 2023.

Mr. Bladholm is willing to continue his service on the Board and I am recommending that he be reappointed for a three-year term ending July 1, 2026.

Your favorable consideration of this recommendation will be greatly appreciated.

**RECOMMENDED MOTION:** Approve the reappointment of Steve Bladholm to the Special Assessment Commission for a term ending July 1, 2026.

mmappt23sac